

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1315486

BEVERLY BEQUEATH-COLLOM, EMPLOYEE. CLAIMANT/APPELLANT

VS.

SC DEPARTMENT OF EDUCATION, SC STATE ACCIDENT FUND.
DEFENDANTS/RESPONDENTS.

RECEIVED
AUG 19 2019
SC Court of Appeals

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on March 18, 2019, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, July 23, 2019

APPEARANCES: CLAIMANT/APPELLANT represented by Everett Hope Garner, Esquire, of
Columbia, South Carolina; and

DEFENDANT/RESPONDENT represented by Ashley K. Dixon, Esquire, of
Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by Beverly Bequeath-Collom ("Appellant" or "Claimant") from the Decision and Order of Commissioner Aisha G. Taylor ("Hearing Commissioner) filed on December 17, 2018.

By way of background, the claimant filed a Form 50 Hearing Request on April 21, 2014 asserting that she sustained an injury by accident resulting in injuries to her back and neck on July 12, 2013. She requested additional medical treatment for the same, to include a cervical fusion. Defendants timely filed a Form 51 admitting an injury to the claimant's lumbar spine only and denying the claimant's alleged neck injury on April 30, 2014. A Hearing was subsequently set for August 4, 2014. Prior to the scheduled Hearing, parties entered into a Consent Order to allow time for additional discovery. The Consent Order was served on November 18, 2014.

After entering into the Consent Order, the claimant continued to seek unauthorized medical treatment for her neck. Defendants continued to deny this treatment. The claimant paid for the unauthorized treatment through her personal health insurance with Blue Cross Blue Shield and/or Medicare. Dr. Mike O. Tyler performed an unauthorized anterior cervical discectomy and partial corpectomy fusion on November 25, 2014. The claimant did not request authorization for the procedure from defendants prior to undergoing to unauthorized surgery. The claim was closed with the Commission on December 6, 2014 by way of a Form 19.

The claimant filed a second Form 50 Hearing Request on September 17, 2015 seeking retroactive reimbursement for the unauthorized cervical fusion performed by Dr. Tyler on November 25, 2014. Defendants timely filed a Form 51 on October 15, 2015 admitting an injury to the claimant's lumbar spine only and continuing to deny the alleged injury to the claimant's neck.

Following the submission of Pre-Hearing Briefs by both parties, the claimant ultimately withdrew her Form 50 Hearing Request on November 30, 2015. The claimant reinjured her neck on February 16, 2016 while shopping for groceries. This subsequent accident was wholly unrelated to her employment. The claim was again closed with the Commission on February 22, 2016 by way of a Form 19.

The claimant filed a third Form 50 Hearing Request on May 26, 2016. Defendants timely filed a Form 51 on June 23, 2016 denying the claimant's alleged neck injury. A Hearing was subsequently scheduled for August 31, 2016 in Columbia, South Carolina. Prior to the Hearing, parties entered into a Consent Order to allow time for additional discovery. The Consent Order was served on August 16, 2016. Defendants took the claimant's deposition on September 13, 2016 and the deposition of Dr. Tyler on September 28, 2016.

The claimant filed a fourth Form 50 Hearing Request on December 20, 2016 alleging injuries to her neck, back, and left arm. The Form 50 was returned due to improper service. The claimant refiled the Form 50 Hearing Request on January 11, 2017. Defendants timely filed a Form 51 on February 9, 2017 admitting an injury to the claimant's back only and denying all other injuries as alleged. A Hearing was subsequently scheduled for April 3, 2017 in Columbia, South Carolina. Following the submission of both parties' Pre-Hearing Briefs, the Hearing was reset for April 25, 2017 in Columbia, South Carolina before the Hearing Commissioner. At the Pre-Hearing Conference, the Hearing Commissioner ordered Mediation. The Order was served on May 8, 2017. The Mediation took place on August 22, 2017. A settlement was not reached.

This claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by defendants on September 15, 2017. Defendants sought to pay permanency

for the claimant's lumbar spine. A Hearing was subsequently set for October 26, 2017 in St. Matthews, South Carolina before the Hearing Commissioner. Prior to the scheduled Hearing, the claimant requested a postponement due to a long-standing trip. The Hearing was reset for January 18, 2018. The claimant sought a finding of compensability for both her neck and lower back, to include reimbursement from defendants for the unauthorized medical treatment she obtained for her neck under her personal insurance and/or Medicare; specifically, she sought reimbursement for the cervical fusion performed by Dr. Tyler. Additionally, the claimant contended she was entitled to temporary total disability (TTD) benefits for the brief period of time she was out of work following her surgery.

Defendants maintained their denial of the claimant's alleged neck injury. Defendants also took the position that they were not responsible for reimbursing the claimant for the non-emergent, unauthorized medical care she received. Defendants contended the claimant had reached maximum medical improvement (MMI) as it related to her lumbar spine and sought a determination of permanent disability, if any, for the same. Finally, defendants asserted the claimant was not entitled to TTD benefits. The Hearing Commissioner left the record open to allow the claimant to submit post-Hearing evidence, if so desired. The claimant informed the Hearing Commissioner through counsel on February 13, 2018 that she wished to rely on the record as it currently stood and requested that the record be closed without the submission of any additional evidence. Accordingly, the record was closed on February 13, 2018.

Order instructions were sent to the parties on July 11, 2018. The Hearing Commissioner determined that the claimant sustained compensable injuries to the lumbar and cervical spines only. Specifically, she determined that the claimant aggravated her pre-existing cervical spine

issues. The Hearing Commissioner also found that although the claimant had a subsequent incident involving her neck in February 2016, the incident was not sufficient to break the chain of causation as to the defendants' liability for the claimant's cervical spine injury. The Hearing Commissioner also determined that defendants were not liable for any unauthorized medical treatment the claimant received for her neck injury from April 11, 2014 through December 17, 2018, the date of the Hearing Commissioner's Order. The Hearing Commissioner opined the medical treatment obtained by the claimant through her own means was non-emergent in nature and therefore not subject to reimbursement from the defendants pursuant to S.C. Code Ann. §42-15-60.

The Hearing Commissioner found that the claimant requested a Hearing on the issues of compensability and entitlement to medical treatment for her neck, but subsequently agreed to postpone the Hearing scheduled for August 4, 2014 via Consent Order. Despite consenting to not go forward with the scheduled Hearing, the claimant continued to seek unauthorized medical treatment for her neck. The Hearing Commissioner determined the claimant had reached MMI for both her lumbar and cervical spine injuries. She assigned twenty percent (20%) permanent partial disability (PPD) to the claimant's back due to both her lumbar and cervical spine injuries.

The Hearing Commissioner also determined that the claimant was not entitled to any additional medical treatment for her lumbar or cervical spine, outside of lifetime repair, replacement, or removal of her cervical hardware pursuant to S.C. Code Ann. §42-15-65. Within the statutory period, the claimant filed an Application for Review in the case setting forth her reasons for appeal on December 31, 2018. The claimant served her Appellate Brief on February 27, 2019. Oral arguments were presented before the Full Commission Appellate Panel ("Appellate

Panel”) on March 18, 2019 at 2:30 P.M. in Columbia, South Carolina. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has since been under study and consideration. Specifically, the claimant respectfully requests the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner in part based upon the following grounds:

1. Did the Hearing Commissioner err in finding that the defendants are not liable for medical treatment obtained by the claimant using her personal health insurance and Medicare from April 11, 2014 through the date of her Order?
2. Did the Hearing Commissioner err in not addressing the fact that the claimant was entitled to TTD for the time she was out of work following her surgery?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed with Amendments.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. This matter was heard before the Hearing Commissioner on January 18, 2018. At the close of the Hearing, the record was left open in order for the claimant to submit post-Hearing documentation, if so desired. On February 13, 2018, claimant, through counsel, informed the Hearing Commissioner that she decided to rely on the record as it currently stood and requested the record be closed without the submission of additional evidence. As such, the record closed on February 13, 2018.
2. Defendants are subject to and bound by the terms and provisions of the South Carolina Workers’ Compensation Act, as amended, with Beverly Bequeath-Collom as employee-claimant and South Carolina Department of Education as employer and State Accident Fund as carrier, defendants.
3. The average weekly wage of the claimant at the time of the above-described accident was \$1,335.38, and her compensation rate was \$743.72.

4. The claimant sustained compensable injuries to her lumbar spine and cervical spine as a result of her work-related accident. The claimant's fall at work caused an injury to her lumbar spine and aggravated her pre-existing cervical spine issues. This finding is based on the preponderance of the evidence as a whole, as well as the Affidavit and testimony of Dr. Tyler.
5. Although the claimant had a subsequent incident wherein some boxes fell on her neck, the incident was not sufficient to break the chain of causation as to the defendants' liability for claimant's cervical spine injury. This finding is based on the testimony of the claimant, which was credible. Specifically, the claimant testified she saw her family doctor and then completed a few physical therapy visits and had returned to baseline following the minor accident.
6. Defendants are not liable for medical treatment for the claimant's neck from April 11, 2014 through the date of the Hearing Commissioner's Order as the medical treatment she obtained by her own means was non-emergent and therefore is not subject to reimbursement pursuant to S.C. Code Ann §42-15-60.
7. Specifically, the claimant requested a Hearing on the issue of compensability and entitlement to medical treatment for her neck, but subsequently agreed to postpone the Hearing scheduled on August 4, 2014 via a Consent Order. Nevertheless, the claimant continued to seek unauthorized medical treatment after the postponement despite having requested a Hearing on the issue from the Commission and ultimately agreeing not to go forward to determine whether she was entitled to the same.
8. The claimant is at MMI for both her lumbar spine and cervical spine injuries. This finding is based on the medical evidence submitted into the record, specifically the medical opinions of Dr. David Scott and Dr. Mike Tyler.
9. The claimant has sustained twenty percent (20%) PPD for her back due to her lumbar and cervical spine injuries. This finding is made pursuant to the guidelines for evaluating spinal injuries in the AMA Guides 5th/6th Editions.
10. No future medical treatment has been recommended by the authorized treating physician for the claimant's lumbar spine injury, therefore she is not entitled to any additional treatment for her low back.
11. The claimant is entitled to lifetime repair, replacement, or removal of her cervical hardware pursuant to S.C. Code Ann. §42-15-65. Moreover, no future medical treatment was recommended relating to the claimant's cervical spine injury and, as such, defendants are not responsible for any future medical treatment as to her neck.
12. The claimant is entitled to a lump-sum payment of her award pursuant to James v. Anne's, Inc., 2010 S.C. Lexis 340 (S.C. Oct. 25, 2010).

13. No hearing costs are to be assessed.
14. The claimant is not entitled to any period of TTD benefits as no physician has taken the claimant out of work during any period of her treatment.

CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, S.C. Code Ann. (1976), as amended, it is the determination of this Commission that:

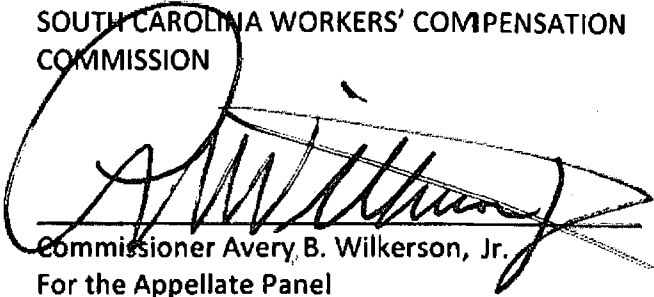
1. Pursuant to §42-1-30, the claimant was a covered employee at the time in question; and pursuant to §42-1-140, defendant/employer was a covered employer under the Act.
2. Pursuant to §42-1-40, the claimant's average weekly wage at the time of the above-described accident was \$1,335.38, and her compensation rate was \$743.72.
3. Pursuant to §42-1-160, the claimant sustained injuries to her lumbar and cervical spine, which arose out of and in the course of her employment with the South Carolina Department of Education.
4. Pursuant to §42-15-60, defendants are not liable for medical treatment obtained by the claimant for her neck using her personal health insurance from April 11, 2014 through the date of the Hearing Commissioner's Order as this treatment was non-emergent and the claimant is therefore not entitled to reimbursement for the same.
5. Pursuant to §42-15-60, the claimant is at MMI for both her lumbar spine and cervical spine injuries.
6. Pursuant to §42-9-30, the claimant is entitled to an award of twenty percent (20%) PPD to her spine (60 weeks) as a result of her neck and low back injuries.
7. Pursuant to §42-15-60, the claimant is not entitled to any additional treatment for her lumbar spine or cervical spine as none was recommended by the authorized treating physician.
8. Pursuant to §42-15-65 the claimant is entitled to lifetime repair, replacement, or removal of her cervical spine hardware.
9. Pursuant to §42-9-10, the claimant is not entitled to TTD benefits for any period of time as no physician has taken her out of work during the course of her treatment.

ORDER

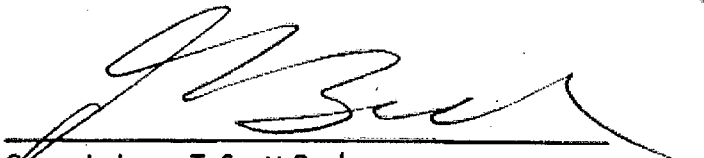
IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above captioned matter on December 17, 2017, is hereby UNANIMOUSLY AFFIRMED WITH THE AMMENDMENTS LISTED HEREIN.

AND IT IS SO ORDERED.

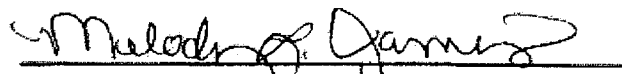
SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



Commissioner Avery B. Wilkerson, Jr.
For the Appellate Panel



Commissioner T. Scott Beck



Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on July 23, 2019