

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS
COMPENSATION COMMISSION

WCC File No. 1713493
Appellate Case No. 2019-001017

RECEIVED
OCT 25 2019
SC Court of Appeals

Delinzy Grant, Employee, Claimant. Respondent,

v.

Steel Technologies, Employer,
and Zurich American Insurance Co., Carrier,. Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Whether the Workers' Compensation Appellate Panel erred in affirming the Single Commissioner's finding that the employee gave timely notice to her employer regarding her repetitive trauma injury subject to the requirements of S.C Code Ann. § 42-15-20 (C)?

STATEMENT OF THE CASE

Respondent hereby relies upon the Statement of the Case as outlined in the Appellant's brief. The only correction Respondent will make is that Appellant incorrectly indicated that Respondent filed a Form 50, filing a claim, on September 18, 2017; the correct date of the Form 50 filed was September 14, 2017.

ARGUMENT

- I. **The Appellate Panel did not err, as a matter of law, when it affirmed the Single Commissioner's finding that the employee gave timely notice to her employer regarding her repetitive trauma injury subject to the requirements of S.C Code Ann. § 42-15-20 (C)?**

Section 42-15-20(C) of the South Carolina Code requires an employee alleging a repetitive trauma injury to give notice "within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable...." S.C. Code Ann. § 42-15-20(C) (Supp.2010). The statutory notice requirements pursuant to Section 42-15-20 should be liberally construed in favor of claimant. Etheredge v. Monsanto Co., 349 S.C. 451, 458, 562 S.E.2d 679, 683 (Ct. App.2002); Rogers v. Spartanburg Reg'l Med. Ctr., 328 S.C. 415, 418, 491 S.E.2d 708, 710 (Ct. App.1997). The substantial evidence in this case establishes that Mrs. Delinzy Grant ("Mrs. Grant") gave proper notice to her employer regarding her repetitive trauma injury.

Mrs. Grant is fifty-three (53) years old. Hrg. Trs.p. 2. She began working for the Employer, Steel Technologies, in March of 2004. Id. at 18. Her own supervisor, David Brown, believed Mrs. Grant to be an honest, truthful, and hard-working person. Id. at 88.

Mrs. Grant began experiencing low back problems at the end of 2015. Id. at 36. She first sought medical care for her low back problems in September of 2016 with Dr. Thomas Anderson at Southeastern Spine Institute. (APA 1, ps. 1 – 3). None of her medical records indicate that she believed her job had played a role in her low back problem. To the contrary, a note from Dr. Anderson dated July 21, 2017, indicated that her low back problem was not work related. (APA 4, p. 41).

On June 8, 2017, Mrs. Grant underwent a “right L4-L5 posterior lumbar interbody fusion with right-sided pedicle screw instrumentation.” (APA 2, ps. 19 – 20). Consequently, the last date that she worked for Steel Technologies was June 5, 2017. (Hrg. Trs. P. 37). As a result of being out of work due to the surgery, Mrs. Grant applied for and received short-term disability benefits. Id. at 38. She did not apply for workers’ compensation benefits. It was not until August 21, 2017, when the possibility arose that her low back injury was due to her job. (Hrg. Trs. Ps. 38 – 39). After speaking with the short-term disability adjuster, it was Mrs. Grant’s understanding that her injury may have been caused as a result of her work activities. Id. at 40.

Mrs. Grant never personally informed her employer that her work activities could be the cause of her low back injury. Id. at 41. She simply just did not know. Id. at 40 – 41. Instead, she sought and hired legal counsel to determine if, in fact, her repetitive work activities caused the injury to her low back. Id. at 40 – 41.

By and through her counsel, notice of a potential workers’ compensation injury, through a Form 50, was sent on September 14, 2017. It was not until February 21, 2018, when Dr.

Anderson opined, to a reasonable degree of medical certainty, that the injury Mrs. Grant sustained to her low back was more likely than not directly caused by the repetitive activities of her job. (APA 1, ps. 12 – 14).

- a. *The Commission did not err when it placed special emphasis on the doctor's opinion when determining it would be reasonable for Mrs. Grant to have known or should have known about her work-related injury.*

Section 42-1-172(D) states that “a ‘repetitive trauma injury’ is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.” SC Code Ann. § 42-1-172(D). “‘Medical Evidence’ means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.” SC Code Ann. § 42-1-172(C). The first time a qualified, licensed, medical physician, stated to a reasonable degree of medical certainty that the repetitive work activities Mrs. Grant performed at Steel Technologies directly caused the injury to her low back was on February 21, 2018. (APA 1, ps. 12 – 14). Yet, the Employer was put on notice of an alleged repetitive work injury, by Mrs. Grant, on September 14, 2017. Notice was, therefore, timely given pursuant to S.C. Code Ann. § 42-15-20(C).

This case is very similar to this Court’s holding in Murphy v. Owens Corning. Murphy v. Owens Corning, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011). There, the Panel found that “while there is evidence supporting Appellants’ argument that the medical records indicate Murphy should have known of her injuries in 2004, the Commission is the fact-finder, and found she ‘first knew of her condition was work related on September 7, 2007. This is based on [Murphy’s] testimony, the medical reports with special emphasis on Dr. Worsham’s note of September 7, 2007[,] ... and the records as a whole.’” Id.

Here, the Single Commissioner, affirmed by the Appellate Panel, found that the time for Mrs. Grant to have discovered, or could have discovered by exercising reasonable diligence, that her condition was compensable, was when Dr. Anderson rendered his opinion as to whether or not the repetitive work activities of Mrs. Grant's job caused the injury to her low back. Special emphasis was given to the doctor's opinion in Murphy, as it has been given the same emphasis in the matter at hand. The Commission's findings are supported by substantial evidence.

- b. The Commission did not err when it looked at the record as whole and found substantial evidence supporting that Mrs. Grant timely notified her employer of her work-related injury.*

First, Mrs. Grant is a lay person and, therefore, does not have the knowledge basis to know independently that she has a legally defined and compensable "repetitive trauma injury." When the Act was constructed, the legislature understood this simple fact. As such, they gave the injured worker additional time to give timely notice because they are not as educated or familiar with the State's Workers' Compensation Act.

The Defendants/Employer/Appellants, vigorously denied that the repetitive work activities Mrs. Grant had performed for over thirteen (13) years caused the injury to her low back. If the Defendants/Employer/Appellants do not believe that the repetitive activities caused the problems to her low back, how should Mrs. Grant on her own and without medical consultation and legal interpretation think so? Furthermore, even Dr. Anderson initially opined her injury was not work-related. (APA 4, p. 41). How, then, could Mrs. Grant be expected to conclude contrary to the initial opinions of her own physician?

The first mention of even the possibility of Mrs. Grant's low back injury being work-related was after a conversation she had with a short-term disability adjuster. And, upon learning

CONCLUSION

This Court should affirm the Single Commissioner's and Appellate Panel's order. The Respondent has timely given notice to her employer in accordance to Section 42-15-20(C) and such notice is supported by substantial evidence.

Respectfully submitted,

October 24, 2019



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October 24, 2019

VIA OVER-NIGHT DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Delinzy Grant v. Steel Technologies
Case Tracking No. 2019-001017

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SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal in regards to this matter. I have also enclosed a Proof of Service upon counsel for the Appellants. Please return the additional filed copies to me via our courier.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

Marcy Huckabee

Paralegal to Ryan T. LeBlanc

JOYE LAW FIRM

/mjh

Enclosures

cc: Matthew C. LaFave, Esquire

THE STATE OF SOUTH CAROLINA
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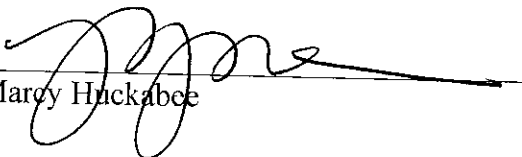
Steel Technologies, Employer,
and Zurich American Insurance Co., Carrier, Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Appellants with a copy of the *Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

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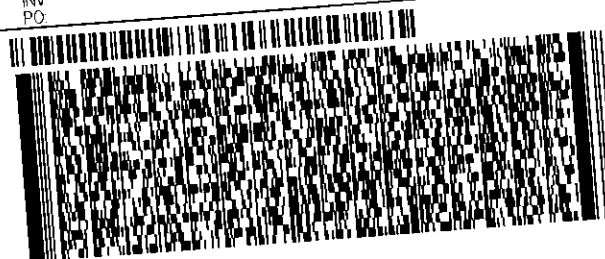
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