

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

RECEIVED

NOV 21 2019
SC Court of Appeals

Barry Adickes,

CLAIMANT,

vs.

Philips Healthcare,

Employer,

and

Fidelity and Guarantee Insurance Company,

Carrier

DEFENDANTS.

WCC FILE NO: 1102937

DECISION AND ORDER

Appellate Panel Review held in Columbia, South Carolina on

September 16, 2019,

Appellate Panel Decision and Order filed on November 8, 2019

Appearances: Claimant represented by William L. Smith II, Esquire
Defendants represented by Brooke A. Payne, Esquire

STATEMENT OF THE CASE

The case came before the Single Commissioner pursuant to a Form 50 filed by the claimant on September 19, 2018 and by operation of Regulation 67-603. Claimant alleged defendants had repeatedly refused to provide medications to claimant that they were under order to provide for four separate periods of time totaling 44 days. Claimant sought fines, penalties, and attorneys fees for enforcing the orders.

Claimant also alleged defendants illegally stopped making payment of weekly benefits that were being paid during the pendency of the appeal and remand from the Court of Appeals pursuant to §42-17-60. Claimant sought an order reinstating the benefit along with fines pursuant to §42-9-90; §42-3-175, §42-3-105, and §42-9-260.

Defendants admitted some delays in authorizing medications but denied that it was willful conduct. Defendants also alleged that once Commissioner Barden issued her order determining the amount due on remand, they were no longer required to continue payments to claimant.

The hearing was held before the Single Commissioner on April 19, 2019 in Columbia, South Carolina pursuant to timely and properly served notice on all parties. No objection was raised by either party regarding jurisdiction or venue.

On June 19, 2019, the Single Commissioner issued her Decision and Order, making the following Findings of Fact:

1. A Form 15 was filed on March 22, 2016 starting weekly benefits.
2. There is no order in the file allowing defendants to stop payment of weekly benefits.
3. The award has not been fully paid under the current order.
4. Defendants illegally stopped payment of weekly benefits on February 5, 2019.

5. Defendants are required to reinstate weekly payments at \$704.92 commencing February 6, 2019.
6. §42-17-60 provides that, "In case of an appeal from the decision of the Commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the Commission involved in the appeal or certification until the questions at issue have been fully determined in the accordance with the provisions of this title." Here, defendants filed a further appeal from Commissioner Barden's order for the issue that was on remand from the Court of Appeals. Thus, the questions at issue have not been fully determined in accordance with the provision of this title.
7. Since defendants illegally stopped payment of weekly benefits, they are subject to fines and penalties.
8. Defendants have been under order to provide medications directed by Dr. Mandell since August 27, 2015.
9. Despite repeated requests and demands defendants denied or failed to authorize prescription medications despite being under order to do so. The failure to authorize medications after this many requests while being under order to do so constitutes willful disobedience of an order and defendants are subject to fines for such disobedience.

The Single Commissioner further made the following Conclusions of Law;

1. Pursuant to §42-17-60, defendants are required to make payment of weekly benefits beginning February 6, 2019, as they illegally terminated weekly compensation benefits.

2. Pursuant to §42-9-90 defendants are hereby fined ten (10%) percent of the total unpaid weekly disability installments, beginning February 6, 2019.
3. Pursuant to §42-3-175 defendants are hereby fined \$200.00 per day for the period of 27 days for willful disobedience of the order requiring provision of medication as prescribed by Dr. Mandell.
4. Pursuant to §42-3-175 defendants are required to reimburse Claimant's attorney for the \$50.00 hearing filing fee.

The Single Commissioner then ordered the Defendants to make following payments:

1. Weekly benefits to the Claimant beginning February 6, 2019 in the amount of \$704.92 per week.
2. An amount of ten (10%) percent of the unpaid disability installments (beginning February 6, 2019) to be paid to the Claimant for illegal termination of benefits pursuant to §42-9-90.
3. Fines payable to the State of South Carolina General Fund pursuant to §42-3-175 in the amount of \$5,400.00.
4. \$50.00 payable to Claimant's attorney, Chappell, Smith & Arden, for costs associated in enforcing the order.

Within the statutory period, the Defendants timely filed an application for review and Form 30 in the case setting forth their numerous grounds for review, copies of which were furnished to all interested parties. The Appellant asserted the Single Commissioner erred:

1. Whether the Single Commissioner erred in conducting a hearing in this claim on the issue of payment of permanency benefits, while the issue of calculation of the Claimant's permanency benefits was pending before the Full Commission.

2. Whether the Single Commissioner erred in finding (Finding of Fact No. 2) that there is no order in the file allowing defendants to stop payment of weekly benefits. Finding of Fact No. 2 constitutes an error in law.
3. Whether the Single Commissioner erred in finding (Finding of Fact No. 3) the award has not been fully paid under the current order. The error being that Commissioner Barden's Order was on appeal. Finding of Fact No. 3 constitutes an error of law.
4. Whether the Single Commissioner erred in finding (Findings of Fact Nos. 5 and 6) that the questions at issue have not been fully determined in accordance with SC Code Ann. §42-17-60, requiring Defendants to reinstate weekly benefit payments. Finding of Fact Nos. 5 and 6 constitute an error of law.
5. Whether the Single Commissioner erred in finding and concluding (Findings of Fact Nos. 4 and 7 and Conclusions of Law Nos. 1 and 2) that the Defendants illegally stopped payment of weekly benefits on February 5, 2019 and are subject to fines and penalties for same. Findings of Fact Nos. 4 and 7 and the supporting Conclusions of law also constitute an error of law.
6. Whether the Single Commissioner erred in finding and concluding (Finding of Fact No. 9 and Conclusion of Law No. 3) that the 27 day delay in authorization of a medication constituted willful disobedience of an order, subjecting Defendants to fines of \$200.00/day, as this is unsupported by the preponderance of evidence in the record. Finding of Fact No. 9 and the supporting Conclusion of Law also constitute an error of law.

Briefs were submitted prior to oral arguments, which were presented before the Appellate Panel on September 16, 2019. All proffered testimony has been taken. Such together with all documentary evidence has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to SC Code and Section 42-17-50 (1976 as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own finding of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties.

A review of the record in its entirety shows that the evidence supports the Single Commissioner's Findings and Rulings with one exception. The Single Commissioner instituted fines of \$200 per day for 27 days – the fourth period of failing to provide ordered prescription medications. We find this fine to be inadequate and increase the fine to \$500 per day pursuant to §42-3-175 for the willful disobedience of the Order.

We agree that claimant's benefits were improperly terminated and affirm all of the Single Commissioners other findings as set forth below.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the record as a whole, the Appellate Panel affirms the hearing Commissioner's order with one amendment and makes the following Findings of Facts and Conclusions of Law:

FINDINGS OF FACT

1. A form 15 was filed on March 22, 2016 starting weekly benefits.
2. There is no order in the file allowing defendants to stop payment of weekly benefits.
3. The award has not been fully paid under the current order.
4. Defendants illegally stopped payment of weekly benefits on February 5, 2019.
5. Defendants are required to reinstate weekly payments at \$704.92 commencing February 6, 2019.
6. §42-17-60 provides that, "In case of an appeal from the decision of the Commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the Commission involved in the appeal or certification until the questions at issue have been fully determined in the accordance with the provisions of this title." Here, defendants filed a further appeal from Commissioner Barden's order for the

issue that was on remand from the Court of Appeals. Thus, the questions at issue have not been fully determined in accordance with the provision of this title.

7. Since defendants illegally stopped payment of weekly benefits, they are subject to fines and penalties.
8. Defendants have been under order to provide medications directed by Dr. Mandell since August 27, 2015.
9. Despite repeated requests and demands defendants denied or failed to authorize prescription medications despite being under order to do so. The failure to authorize medications after this many requests while being under order to do so constitutes willful disobedience of an order and defendants are subject to fines for such disobedience.

CONCLUSIONS OF LAW

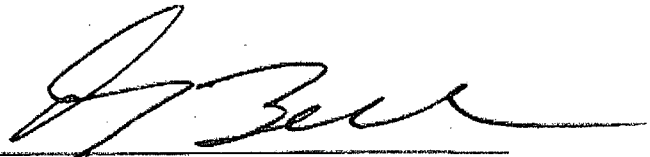
1. Pursuant to §42-17-60, defendants are required to make payment of weekly benefits beginning February 6, 2019, as they illegally terminated weekly compensation benefits.
2. Pursuant to §42-9-90 defendants are hereby fined 10% of the total unpaid weekly disability installments, beginning February 6, 2019.
3. Pursuant to §42-3-175, defendants are fined \$500 per day for the period of 27 days for willful disobedience of the order requiring provision of medication as prescribed by Dr. Mandell.
4. Pursuant to §42-3-175 defendants are required to reimburse claimant's attorney for the \$50.00 hearing filing fee.

ORDER

IT IS THEREFORE ORDERED: The Decision and Order of the Single Commissioner filed in the above entitled matter on June 19, 2019 is hereby affirmed with amendment by the Appellate Panel of the Workers' Compensation Commission. We order the Defendants to make the following payments.

1. Weekly benefits to the claimant beginning February 6, 2019 in the amount of \$704.92 per week.
2. An amount of ten (10%) of the unpaid disability installments (beginning February 6, 2019) to be paid to the Claimant for illegal termination of benefits pursuant to §42-9-90.
3. Fines payable to the State of South Carolina General Fund pursuant to §42-3-175 in the amount of \$13,500.00
4. \$50.00 payable to claimant's attorney, Chappell, Smith & Arden, for costs associated in enforcing the order.

AND IT IS SO ORDERED!



The Honorable T. Scott Beck
South Carolina Workers Compensation Commission



The Honorable Mike Campbell
Commissioner for the Appellate Panel



The Honorable Aisha Taylor
Commissioner for the Appellate Panel

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 November 8, 2019