THE STATE OF SOUTH CAROLINA
In the Court of Appeals

---

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

RECEIVED
FEB 05 2020
SC Court of Appeals

---

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

---

Delinzy Grant, Employee, Claimant. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Respondent,

v.

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

---

**FINAL BRIEF OF RESPONDENT**

---

Ryan T. LeBlanc
Joye Law Firm, LLP
5861 Rivers Avenue
North Charleston, South Carolina 29406
(843) 725-7149
rleblanc@joyelawfirm.com

Attorney for Respondent

## TABLE OF CONTENTS


Table of Authorities ........................................ ii

Statement of Issues on Appeal ........................................ 1

Statement of the Case ........................................ 1

Argument ........................................ 1

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)?** ........................................ 1

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.* ........................................ 3

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.* ........................................ 4

Conclusion ........................................ 6

## TABLE OF AUTHORITIES

### Cases

Bass v. Isochem, 365 S.C. 454, 475, 617 S.E.2d 369, 380 (Ct. App. 2005)................ 5

Etheredge v. Monsanto Co., 349 S.C. 451, 458, 562 S.E.2d 679, 683 (Ct. App. 2002)... 1

Murphy v. Owens Corning. Murphy v. Owens Corning, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011)........................................................................ 3

Rogers v. Spartanburg Reg'l Med. Ctr., 328 S.C. 415, 418, 491 S.E.2d 708, 710 (Ct. App. 1997)........................................................................ 1

Schurlknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002).......... 5

### Statutes and Other Authorities

S.C. Code Ann. § 42-15-20(C)............................................................ 1, 3, 6

S.C. Code Ann. § 42-1-172(C)............................................................ 3

S.C. Code Ann. § 42-1-172(D)............................................................ 3

## 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. (R. p. 144, line 2). She began working for the Employer, Steel Technologies, in March of 2004. (R. p. 146, lines 21 – 23). Her own supervisor,

David Brown, believed Mrs. Grant to be an honest, truthful, and hard-working person. (R. p. 88, lines 13 – 21).

Mrs. Grant began experiencing low back problems at the end of 2015. (R. p. 163, lines 22 - 25, p. 164, lines 1- 4). 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, R. ps. 31 – 33). None of her medical records indicate that she believed or even considered 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, R. p. 75).

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, R. ps. 19 - 20). Consequently, the last date that she worked for Steel Technologies was June 5, 2017. (R. p. 165, lines 11 -13). As a result of being out of work due to the surgery, Mrs. Grant applied for and received short-term disability benefits. (R. p. 166, lines 16 – 17). 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. (R. p. 166, lines 18 – 25, p. 167, lines 1 – 25, p. 168, lines 1 – 6). 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. (R. p. 168, lines 1 – 6).

Mrs. Grant never personally informed her employer that her work activities could be the cause of her low back injury. (R. p. 169, lines 9 – 13). She simply just did not know. (R. p. 168, lines 20 – 25, p. 169, lines 1 – 8). Instead, she sought and hired legal counsel to determine if, in fact, her repetitive work activities caused the injury to her low back. (R. p. 168, lines 20 – 25, p. 169, lines 1 – 8).

By and through her counsel, notice of a potential workers' compensation injury, through a Form 50, was sent on September 14, 2017. (R. p. 25). 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, R. ps. 42 – 44).

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, R. ps. 42 – 44). 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. Id. at 393 S.C at 83, 710 S.E.2d

at 457. "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.

In the case at hand, 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. (R. p. 9, p. 20). 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. (R. p. 136, lines 8 – 25, p. 138, lines 3 – 1, p. 141, lines 3 – 8) 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, R. p. 75). 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. (R. p. 168, lines 1 – 6). And, upon learning of the possibility that her low back injury could have been caused by her repetitive work activities, she hired legal representation and notice, in the form of a Form 50, was made. (R. p. 168, lines 20 – 25, p. 169, lines 1 – 8).

The Appellants argue that because Mrs. Grant testified that her low back hurt when she lifted skids all the way back in September of 2016, she should have reported a work injury to her employer. (R. p. 190, lines 10 – 25, p. 191, lines 1 – 13). This argument defies logic, medicine, and the law.

One of the problems with this argument is that the Appellants are taking Mrs. Grant's testimony out of context. Mrs. Grant agrees that lifting a skid caused pain to her low back. (R. p. 190, lines 10 – 25, p. 191, lines 1 – 13). However, that doesn't immediately translate that the cause of her low back pain is the direct result of lifting the skid. Mrs. Grant had been lifting skids for twelve (12) years prior to her low back hurting and aside from an acute injury from lifting a skid, which resolved after a month of treatment, she never had low back problems, much less from lifting a skid. (R. p. 146, lines 21 -25, p. 176, lines 16 – 25, p. 177, p. 1) Id. at 48 – 49). To conflate pain from doing something to the cause of doing something is not appropriate.

Second, repetitive trauma injuries have a gradual onset caused by the cumulative effect of repetitive traumatic events or "mini-accidents." Schurlknight v. City of North Charleston, 352 S.C. 175, 574 S.E.2d 194 (2002). It is difficult to determine the date an accident occurs in a repetitive trauma case because there is no definite time of injury. Id. "Applying the discovery

rule to such an injury often works to the prejudice of an employee who discovers symptoms of a repetitive trauma injury but continues to work." Id. at 178, 574 S.E.2d at 195.

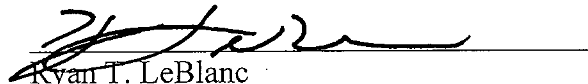
"In a repetitive trauma case, although the statute of limitations begins to run the last day of exposure, a Workers' Compensation claimant is still required to separately give the employer notice of an injury." Bass v. Isochem, 365 S.C. 454, 475, 617 S.E.2d 369, 380 (Ct. App. 2005). Consequently, even if Mrs. Grant experienced pain in her low back, the last date of injurious exposure would have been June 5, 2017, not sometime in September of 2016.

## 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,

February 4, 2020



Ryan T. LeBlanc
JOYE LAW FIRM, LLC
5861 Rivers Avenue
North Charleston, SC 29406
(843) 725-7149
rleblanc@joyelawfirm.com

Attorney for Respondent