

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2019-001394

Beverly Bequeath Collom, Employee,Appellant

v.

SC Department of Education, Employer, and
SC State Accident Fund, Carrier,.....Respondents

APPELLANT'S INITIAL REPLY BRIEF

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ARGUMENT

I. Did the Workers' Compensation Commission err in finding that Defendants were not liable for medical treatment obtained by the Appellant for the neck despite repeated specific requests from the Appellant and authorized treating physicians for such treatment.

The Respondent essentially spent their entire brief reiterating and attempting to excuse their unjustifiable failure to acknowledge Appellant's need for treatment to her neck or at least an evaluation of that condition. Respondent's own treating physicians, in addition to the Appellant, attempted to achieve such a situation in the face of repeated denials and obfuscation. The Respondent's Initial Brief contained seven reiterations (See Respondent's Brief Pages 5-8) of such denial along with references to superfluous matters such as Appellant's grocery shopping incident (See Respondent's Brief Page 6) which was found by the Commission to be irrelevant.

The neck injury was ultimately found to be compensable by the Hearing Commissioner, based on a condition which had existed from the outset. The employer had no medical basis for denying medical treatment to the neck and essentially tried to "play doctor" and decided that no evaluation of the neck condition was needed since they were going to deny the claim regardless.

According to the record, Claimant initially complained of a problem with her neck as early as July 26, 2013 - 14 days after the accident. If Appellant had persisted in pursuing her first Form 50, compensability would have been found at that time and medical treatment for the Claimant would have ensued. The finding on the issue of compensability would have been the same no matter when it was determined.

The essence of the case is that Appellant needed the cervical surgery and it would have tended to lessen her disability and any finding that the related medicals were not compensable is

incongruent with the finding of compensability. There is no difference between compensable and reimbursable and findings to that effect are mutually exclusive.

The Respondents stated in their brief, “at no time during this claim did Respondents ever authorize any treatment for Claimant’s cervical spine.” This is absolutely true and represents a complete abdication and dereliction of their responsibility. They also cited truthfully that an Employer is liable for the causally related medical expenses which will tend to lessen a Claimant’s period of disability, citing Williams vs. Boyle Construction, 252 S.C 387,166 S.E.2d 550 (1969). Further stating, an exception to the carrier’s right to direct the claimant’s medical treatment is if the claimant required emergency treatment and the employer failed to provide adequate medical care. This is a misconstruction of Section 42-15-60.

The Respondent conveniently ignores the Risinger case, which clarified and amplified Section 42-15-60. The language of Section 42-15-60 “does not allow an employer to dictate the treatment of injured employees and a claimant is not required to sacrifice much needed treatment merely to comply with the employer’s choice of treatment.” Risinger v. Knight Textiles, 577 S.E.2d 222, 353 S.C. 69 (2002). Further, Appellant would aver as supported by Risinger that a comprehensive reading of Section 42-15-60 references procedures attendant to an accepted or ordered claim and does not apply to denied claims.

The Respondent’s brief repeatedly refers to Claimant’s need for cervical treatment as not being of an emergent nature. As specifically and unequivocally stated by Risinger, the touchstone for the need of treatment is “much needed”as opposed to emergent.

The Employer/Carrier should not be allowed to escape responsibility for medical treatment when they have specifically rejected a claimant’s right to such medical treatment. Once

again, Commissioner Beck in the Appellate Panel Hearing captured this essence in a nutshell when he stated “When you have not accepted it, you give up the right to control the medical.”

Chaos would result if employers are allowed to abuse the system by denying obviously compensable claims and then requesting relief from their manipulation of the system. Tending to lessen a claimant’s disability is the keystone issue at play here and this basic tenet is unassailable under the facts of this case.

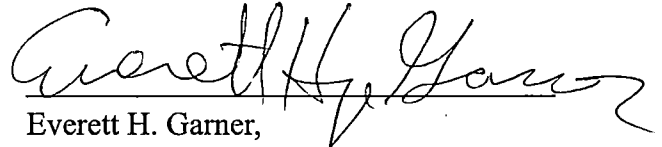
In this case, Medicare has detailed medical expenses which they concluded were workers’ compensation related and has demanded and received reimbursement from Appellant’s funds after threatening to divert her Social Security benefits.

Conclusion

For the foregoing reasons, the Decision and Order below should be reversed. The Court should hold: (1) Appellant’s medical expenses attendant to the ordered finding of compensability of her neck injury should be the responsibility of the Workers' Compensation Carrier. When compensability was found it was undeniable that all the requirements and criteria for reimbursement under the act coalesced and the treatments of the neck which Appellant achieved did tend to and in fact lessen the disability of the Appellant and (2) Appellant is entitled to Temporary Total Disability Benefits for the time she was unable to work following her surgery when she was clearly unable to work due to treatment for her work related injuries.

(signature page to follow)

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Everett H. Garner", written over a horizontal line.

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Columbia, South Carolina
February 20, 2020

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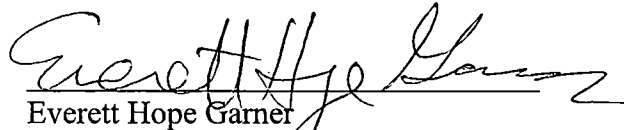
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v.

SC Department of Education, Employer, and
SC State Accident Fund, Carrier,.....Respondents

PROOF OF SERVICE

I certify that I have served the **Appellant's Initial Reply Brief** upon counsel for the Respondents by depositing a copy of it in the United States mail, postage prepaid, on February 20, 2020, addressed to their attorneys of record, Page P. Hilton, Esquire, State Accident Fund, P.O. Box 102100 Columbia, SC 29221 and Shannon Till Poteat, Esquire, and Ashley Dixon, Esquire, of Robinson Gray Stepp & Laffitte, LLC, P.O. Box 11449 Columbia, SC 29211.



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February 20, 2020

VIA HAND DELIVERY

Ms. Jenny Abbott Kitchings
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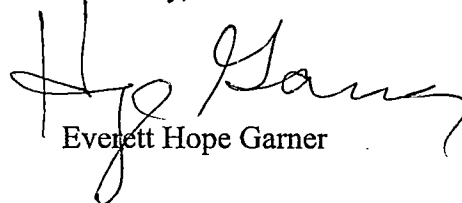
RE: Beverly Bequeath Collom, Employee, Appellant v. SC Department of Education,
Employer, and SC State Accident Fund, Carrier, Respondents
Appellate Case No. 2019-001394

Dear Ms. Kitchings:

Enclosed for filing please find the original and two (2) copies of the Initial Reply Brief of Appellant and Proof of Service in the above referenced matter. Please file the Initial Reply Brief of Appellant and Proof of Service and return them to me in the self addressed self stamped envelope provided for your convenience.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Everett Hope Garner

EHG/emb

Enclosures

CC: Page P. Hilton, Esquire
Shannon Till Poteat, Esquire
Ashley Dixon, Esquire