THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

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SC Court of Appeals

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 FINAL BRIEF

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the Workers' Compensation Commission err in finding that Defendants were not liable for medical treatment obtained by the Appellant for treatment of her neck using her personal health insurance and Medicare from April 11, 2014 through the date of the Hearing Commissioner's Order; the error being that the Commissioner and Appellate Panel found the neck compensable after the Defendants explicitly denied treatment to the neck despite repeated specific requests from the Appellant and authorized treating physicians.

II. Did the Workers' Compensation Commission err in finding that Appellant was not entitled to Temporary Total Disability Benefits for the time following her surgery when she was clearly unable to work during this period and the surgery was found to be compensable by the Hearing Commissioner and affirmed by the Appellate Panel.

STATEMENT OF THE CASE

This is an appeal from the Appellate Panel of the Workers' Compensation Commission. This case arises out of an admitted injury to the back of the Claimant and a denied accident to the neck sustained by the Claimant on July 12, 2013. The Employer, the South Carolina Department of Education, and Carrier, the South Carolina Accident Fund, admitted to and treated the injury to the back, while denying treatment for the injury to her neck. After continual denials of evaluation and/or treatment by the Carrier, Claimant was forced to use her private insurance to obtain neurosurgical treatment of her neck.

Claimant filed a Form 50 (Request for Hearing) seeking a disability award for the injury she sustained to her low back, and a determination as to whether she sustained compensable injuries to her neck and arm, and whether she was entitled to reimbursement from Defendants for medical treatment she obtained through Medicare and her own personal insurance.

Defendants filed a Form 51 (Employer's Response to Request for Hearing) admitting to a back injury and denying all other injured or affected body parts.

A hearing in the matter was held on January 18, 2018 before Commissioner Aisha G. Taylor. On December 17, 2018, Commissioner Taylor issued a Decision and Order finding *inter alia* that:

- On July 12, 2013 sustained a compensable injury to her cervical spine as a result of her work related accident, with the Claimant's fall aggravating a pre-existing cervical spine issue.
- Defendants' were found not to be liable for medical treatment for Claimant's neck from April 11, 2014 through the date of the December 17, 2018 order and therefore not subject to reimbursement pursuant to S.C. Code Ann. 42-15-60.
- Claimant sought unauthorized treatment after agreeing to postpone the hearing to make a determination about the neck scheduled for August 4, 2014 via consent order.
- Claimant sustained a 20% permanent partial disability for back due to her lumbar and cervical spine injuries based on the guidelines in the AMA Guides 5th/6th Editions.

  [Order dated December 17, 2018 pages 8-9]

Appellant timely filed and served her Form 30 (Notice of Appeal) on December 27, 2018. Oral argument was heard before the Appellate Panel on March 18, 2019. By Decision and Order dated July 23, 2019, The Appellate Panel Affirmed the Decision and Order of Commissioner Taylor. This appeal followed.

STATEMENT OF THE FACTS

The Appellant, Beverly Bequeath-Collom, was a thirteen year tenured employee of the South Carolina Department of Education working at a remote location in the Kershaw County School District on July 12, 2013. Bequeath-Collom suffered an admitted injury by accident to her low back on the date of the accident. She slipped and fell in an area which had become wet as a result of rainfall.

Appellant Bequeath-Collom presented to Doctors' Care for treatment for the injuries to her back which were the initial reported problems. Appellant was then referred to Progressive Physical Therapy with her first visit on July 19, 2019. The first notation of problems with her neck were contained in the Progressive Physical Therapy Records of July 26, 2013, with references to her neck and back pain stemming from the date of the accident. **See APA #1 (R. 190).** Appellant has testified that she noticed that she could not turn her head, indicating a problem with her neck within two weeks of the date of the accident. **Appellant's Deposition (R. 47).** Appellant had no neck or back issues before the accident. **Appellant's Deposition (R. 61).** She testified without contradiction that she had talked to her nurse case manager about treatment for her neck. **Appellant's Deposition (R. 71-72).**

Appellant was subsequently referred to Dr. David Scott, an orthopaedic surgeon who initially treated her for her back injury. The Workers' Compensation Carrier specifically and unequivocally denied any and all treatment to her neck, despite repeated requests by Dr. Scott and Dr. John Clavett, his associate, and the Appellant. **See Dr. Scott's Records APA #1 (R. 257-261).** Dr. Scott specifically noted that they would be happy to see her at any time with in regard to the pain in her neck. **See Dr. Scott's Records APA #1 (R. 257).**

The Carrier would also have been in possession of the aforementioned Progressive Physical Therapy notes which had indicated complaints of a neck problem. Dr. Scott referred Appellant to Dr. Clavett, for the neck issues, and she treated with Dr. Clavett from November 31, 2014 until July 11, 2015 by means of conservative treatment, which failed to alleviate her problem.

After the repeated specific denials of coverage for the neck by the Carrier and the failure of conservative treatment, Appellant consulted a neurosurgeon in regard to her continuing neck problem and severe continuing pain. Appellant testified that she had been in pain the entire time and with such pain being an 8 on a scale of 1 to 10. The neurosurgeon, Dr. Mike Tyler, evaluated the Appellant's condition and reviewed medical records. Based on his review and the failure of prior conservative medical treatment, Dr. Tyler recommended surgical intervention in the form of a cervical discectomy. At all times prior, the Employer had steadfastly refused to even allow evaluation by the authorized treating physicians of the neck condition.

Dr. Tyler in his initial visit with Appellant on November 5, 2014 noted that conservative options had been exhausted and that Appellant needed surgery. **Deposition of Dr. Tyler (R. 80-81).** Dr. Tyler specifically opined that Appellant's work related accident had aggravated a previously existing neck condition, which had not immediately manifested itself while the back injury was getting the lion's share of attention in the beginning. He indicated that the delayed presentation of symptoms of the neck in this scenario is quite common and that the Appellant's neck got worse over time as the initial treating doctor zeroed in on the back injury. He also indicated that the possibility of referred pain from the neck to the back as being typical. See **Deposition of Dr. Tyler (R. 89).**

Appellant ultimately underwent surgery by Dr. Tyler on November 25, 2014 which alleviated Appellant's symptoms and led to the attainment of Maximum Medical Improvement with Appellant being out of work for two to three weeks due to the cervical surgery.

STANDARD OF REVIEW

The Administrative Procedures Act ("APA") provides the standard for judicial review of decisions by the Commission. *Pierre vs. Seaside Farms, Inc.*, 386 S.C. 534,540,689 S.E. 2d 615,618 (2010); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130,133-34, 276 S.E. 2d 304,306 (1981). Under the APA, the appellate court can reverse or modify the decision of the Commission if the substantial rights of the appellant have been prejudiced because the decision is affected by an error or law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. S.C. Code Ann 1-23-380(5)(d),(e) (Supp. 2011).

"[T]the guiding principle undergirding our workers' compensation system [is] that the Act is to be liberally construed in favor of the claimant. The Commission's decision "must be founded on evidence of sufficient substance to afford a reasonable basis for it." *Wynn v. People's Natural Gas Co. of S.C.*, 238 S.C. 1,12, 118 S.E. 2d 812,818 (1961).

The Commission is permitted to disregard medical evidence only when there is other competent evidence in the record to support their conclusion. *Potter v. Spartanburg Sch. Dist. 7*, 3945 S.C. 17, 716 S.E. 2d 123 (Ct. App. 2011). Where a finding is based on "the medical opinion of the single commissioner, adopted by the Commission," rather than on the opinion of a medical provider, the findings must be reversed as unsupported by substantial evidence. *Burnette v. City of Greenville*, 737 S.E. 2d 200, 401 S.C. 417 (Ct. App. 2012).

ARGUMENT

I. Did the Workers' Compensation Commission err in finding that Defendants were not liable for medical treatment obtained by the Appellant using her personal health insurance and Medicare from April 11, 2014 through the date of the Commissioner's Order; the error being that the Defendants explicitly denied treatment to the neck despite repeated specific requests from the Appellant and authorized treating physicians.

In this case, compensability of the neck has been determined and is unappealed. Disability has been determined and is unappealed. The issue remaining is who pays for the treatment to the body part that has specifically and explicitly been found compensable. The Appellate Panel, in affirming the Hearing Commissioner, found that the Claimant's neck injury was compensable, and the Appellant would aver that the Carrier therefore should be responsible for attendant medical treatment.

Appellant received treatment for her neck by employing her health insurance and Medicare after the Carrier specifically and unequivocally denied the requests of Appellant and her authorized treating physicians. The Workers' Compensation Commission has concluded that the neck injury was in fact compensable, but the medical expenses incurred in connection with the neck injury were not compensable due to their "non emergent" nature, therefore they were not subject to reimbursement pursuant to S.C. Code 42-15-60. **Commissioner's Order (R. 109)**

"The Language of S.C. Code 42-15-60 does not allow an employer to dictate the treatment of injured employees," citing *Risinger v. Knight Textiles* 577 S.E.2d 222, 353 S.C. 69 (2002). "Generally, a Claimant may obtain compensation only by accepting services from the Employer's choice of providers, however, a Claimant is not required to sacrifice much needed treatment merely to comply with Employer's choice of treatment. See *Risinger Id.* Note, *Risinger* refers to much needed treatment as opposed to treatment of an emergent nature. The

overriding tenet of this statute and the Workers' Compensation Act is whether treatment tends to lessen the disability of the Claimant. It is uncontroverted that the surgery was necessary and had been necessary during the entire time of the Claim and the Carrier should not be rewarded for their recalcitrance and their failures to address the obvious medical needs of the Appellant at least by further evaluation when specifically requested by authorized treating physicians. The Carrier had myriad opportunities to address this issue from the outset of the claim but unequivocally and steadfastly refused to do so.

In abrogating the Carrier's responsibility for the medical treatment attendant to a compensable injury, the Workers' Compensation Commission allows the Carrier to escape responsibility for their totally unjustified denial of any effort to address the issue. If compensability of the neck had been accepted by the Carrier, as it should have been, in a timely fashion, the Carrier would in fact have been responsible for payment.

As succinctly stated by Commissioner Beck in the Appellate Panel Hearing "When you say no, we're not accepting it don't you give up the right to control the medical." **See Appellate Panel Transcript (R. 160).** Commissioner James also references hypothesizing a scenario featuring a continuing denial during the pendency of a Court of Appeals Case. **See Appellate Panel Transcript (R. 163).**

It has been medically established by numerous doctors that Appellant's neck injury was co-existent with her back injury and the Carrier's denial and delay of treatment, which was obviously needed under the circumstances, was inimical to the purposes of the Workers' Compensation Act. *Gattis v. Murrells Inlet VFW #10420*, 353 S.C. 100,109,576 S.E. 2d 191,196 (Ct. App. 2003). (holding that the Workers' Compensation Act is to be liberally construed and

reasonable doubts as to construction are to be resolved in favor of coverage). Appellant has testified with the full support of medical records of treating physicians that she was in continuing severe pain during the time in question, thus delays in treatment prolonged her problem and were obviously disadvantageous to her achievement of Maximum Medical Improvement.

Allowing Carriers to escape responsibility in such situations that exist in the present case would result in unmitigated chaos with all Carriers denying and delaying necessary medical treatment in compensable work related accidents. Had the Carrier not denied the compensability of the neck injury, the claim would have played out in ordinary fashion with the Carrier rightfully being assessed with the medical costs associated with all of the injuries incurred during the accident including the neck. Appellant should not be punished for her efficiency in utilizing her own health insurance and other sources of payment. Ultimately, Appellant was punished for utilizing other sources of payment, as Medicare sought reimbursement as evidenced by the attached Payment Summary Form and was forced to make payment to the Department of Treasury to avoid being penalized with garnishments to her Social Security.

Section 42-15-60 does not reference nor implicitly require that any such treatment be emergent in nature and the case law only references whether there is much needed treatment. It is obvious that the treatment in this case was much needed as exemplified by the ultimate outcome.

II. Did the Workers' Compensation Commission err in finding that Appellant was not entitled to Temporary Total Disability Benefits for the time following her surgery when she was clearly unable to work due to treatment of her work related injuries.

Appellant underwent a serious neurosurgery on November 25, 2014. Obviously as testified to by the Appellant and documented by the records of Dr. Tyler, Appellant would have been unable to work for a period of time after the surgery - two to three weeks as testified to by Appellant. **Deposition of Appellant (R. 63)** . It is patently obvious that denying Temporary Total Disability Benefits for this limited period of time is fallacious on its face. In carrying this Temporary total Disability Denial to an illogical extreme, this ruling implicitly dictates that a Claimant should get off the operating table and go back to work or just have the cervical discectomy during her lunch break.

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. A Carrier cannot and should not be allowed to escape responsibility of these expenses by unjustifiably denying compensability. 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.

RESPECTFULLY SUBMITTED,

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