

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

Appellate Case No.: 2018-000913
W.C.C. Case No.: 1621577

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MAY 28 2018
SC Court of Appeals

Carolyn Wilson,

Appellant,

v.

Fred's Stores of Tennessee, Inc., Employer, and
Safety National Casualty Corporation, Carrier,

Respondents.

FINAL REPLY BRIEF OF APPELLANT

s/ Andrea C. Roche
Andrea C. Roche, Esquire
Mickle & Bass, LLC
Post Office Box 5639
Columbia, South Carolina 29250
(803) 929-0029
aroche@mickleandbass.com
SC Bar No. 7563
Attorney for Appellant

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ARGUMENTS

- I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED AS A MATTER OF LAW BY REQUIRING THE CLAIMANT PROVE HER JOB WAS REPETITIVE IN NATURE WHERE S.C. CODE ANN. § 42-1-172 ONLY REQUIRES PROOF OF REPETITIVE TRAUMATIC EVENTS AND REPETITIVE ACTIVITIES IN THE REGULAR DUTIES OF EMPLOYMENT.

The claimant relies on the appellant's brief in reply to the arguments raised by the respondents in their brief.

- II. BECAUSE THE DECISION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED BY FINDING THE CLAIMANT DID NOT SUSTAIN A REPETITIVE TRAUMA INJURY.

The claimant relies on the appellant's brief in reply to the arguments raised by the respondents in their brief.

- III. BECAUSE THE DECISION WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION ERRED BY FINDING THE CLAIMANT FAILED TO GIVE TIMELY NOTICE OF HER REPETITIVE TRAUMA INJURY TO HER EMPLOYER.

In reply to the arguments raised by the respondents, in addition to those arguments made in the appellant's brief, the claimant raises the following. Section 42-15-20(C) provides:

[i]n the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

S.C. Code Ann. § 42-15-20(C)(emphasis added). The claimant raised the issue of reasonable excuse before the Commission, and it was legal error for the Commission to fail to address the issue. Furthermore, the claimant's testimony was found credible by the Commission and established a reasonable excuse.

Contrary to the assertion of the Respondents, there was no evidence in the record regarding “extreme prejudice” to the defendants for any purported lack of notice. In their brief, the respondents point to the fact that the claimant was promoted even though she was having issues with her back. The respondents, however, produced no witness or any other evidence that the employer would not have promoted her had it known her condition. The Commission’s finding, therefore, was erroneously based on surmise and speculation.

CONCLUSION

For the reasons stated, this court should reverse the decision and order of the South Carolina Workers’ Compensation Commission and remand to the commission for a determination of benefits, or, in the alternative, remand to the commission for a finding regarding reasonable excuse.

November 27, 2018

Respectfully submitted,

s/ Andrea C. Roche
Andrea C. Roche, Esquire
Mickle & Bass, LLC
Post Office Box 5639
Columbia, South Carolina 29250
(803) 929-0029
aroche@mickleandbass.com
SC Bar No. 7563
Attorney for Appellant

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief of Appellant complies with Rule 211(b), SCACR.

November 28, 2018

s/ Andrea C. Roche
Andrea C. Roche, Esquire
Mickle & Bass, LLC
Post Office Box 5639
Columbia, South Carolina 29250
(803) 929-0029
aroche@mickleandbass.com
SC Bar No. 7563
Attorney for Appellant