

RECEIVED

APR 15 2021

SC Court of Appeals

Brief of Appellant

The State of South Carolina
In the Court of Appeals

Appeal from Richland County
S.C. Workers' Compensation Commission

Commissioners: A. Taylor, M. Campbell,
G. McCaskill

Case No. 2021-000121

Stephen Stukley as
Representative for
Dept. of Mental Health

Respondent

v.

Dana L. Dixon

Appellant

Initial Brief of Appellant

Dana L. Dixon

181 Stabler Farm Rd.

St. Matthews, S.C. 29135

(470) 432-0591

Appellant

Table Of Contents And Cases

Table of Authorities 1

Regulation: 67-707(c) 6

Regulation: 41-15-80 8

Regulation: 67-211 (c) 2 9

Regulation: 41-15-80 18

Regulation: 41-15-80 36

Regulation: 67-211 39

Statement of Issues on Appeal 5

Statement of The Case 19

Standard of Review 21

Argument 27

Conclusion 40

Table Of Authority And Cases

J.C. Legislature Code of Laws

Title 41 Labor & Employment

Chapter 15

Occupational Health And Safety

Article 1

General provision

Section 41-15-80. Employers shall furnish safe place;
Compliance of Employers and Employees to Certain Rules

1. Each Employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and he shall comply with Occupational and health rules and regulations promulgated under this Chapter

2. Each employee shall comply with Occupational Safety and health rules, regulations and orders issued pursuant to this Chapter which are applicable to his own actions and conduct.

* History: 1962 Code Section 40-257 1. 1974(58)2328*

Table Of Authorities

Section 41-15-90. Employers shall inform employees of protections and obligations; exceptions

The Director of the Department of Labor, Licensing and Regulation or his designee shall issue rules and regulations requiring that employers keep their employees informed of their protections and obligations under this chapter, including the provision of applicable safety and health regulations, through the posting of notices or other appropriate means. 1962 Code Section 40-257.2;

The Defendants did not comply to either of the Rules or regulations of Labor & Employment, when they used intimidation for me to return to work knowing that I was medicare reverse by Dr. Hynes, on the morning of ^{my} work related injury. Then submitted the Employee/Supervisor notification on 03/07/2019, dated 02/10/2017.

Table of Authorities

Regulation 67-707:

Additional and Newly Discovered Evidence

A. When additional evidence is necessary for the completion of the record in a case on review the Commissioner may, in its discretion, order such evidence taken before a Commissioner.

B. When a party seeks to introduce new evidence into the record on a case on review, the party shall file a motion and affidavit with the Commissioner's Judicial Department.

C. The moving party must establish the new evidence is of the same nature and character required for granting a new trial and show:

1. The evidence sought to be introduced is not evidence of a cumulative or impeaching character but would likely have produced a different result had the evidence been procurable at the first hearing.

2. The evidence was not known to the moving party at the time of the first hearing, by reasonable diligence.

Table of Authorities

67-707:

The new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery.

My motion to ADD was denied unfairly. The Respondents were able to use 22 pages from my medical record at Carolina Occupational Healthcare. But when I filed a motion to add my medical record in its entirety I am denied, when it's from the SAME record.

Statement Of Issues on Appeal

On March 07, 2019, Respondents Submitted a form titled: Employee/Supervisor Notification that is dated 02/01/2017, A day after my work injury (01/31/2017) with instructions from Caroline Occupational Healthcare. That states "Out of work until medical visit on 02/08/2017." The form does not have my signature. Section 41-15-80.

So why was I called on 01/31/2017 to be informed of my new modified assignment at Bryan A&D and told to report on 02/01/2017 @ 8:30 am if Respondents had received the faxed paperwork? (see medical record pages "Faxed and phone numbers")

* The shift that I worked was 3rd (11pm-7¹⁵am) I didn't have a car, that's why I had to wait 4 hrs before arriving at Dr. office. And that was the reason documents was faxed to my supervisor Lorain Tracy.*

On 02/01/2017, I could not report to Bryan due to severe shoulder pain. I told the Respondents that.

Statement of Issues On Appeal

On 03/20/2017, the Respondent denied the MRI order that Dr. Hynes wrote on 03/06/2017, by an email. And in the email it states: Wrist, forearm. (designation of matter)

Q: What was the Respondents final diagnosis Was it Right Hand; Right Wrist; Right lateral Epicondylitis?

I filed a motion to ADD. Q: Why was the Respondents against me wanting to add the entire medical record of the same nature Respondents used by submitting pages from same medical record of Carolina Occupational Healthcare?

(R. 67-707)

On 02/22/2019, I stated on record that I was working at Burger King Expediting customers food + drinks at drive thru window. And I had to quit those jobs when I was asked to sweep and mop or wash dishes due to me not being able to lift or do things repetitively using my right arm, in 2018

Q: Why would I go to my new doctor complaining of R. shoulder pain enough times for Dr. Jerry Saunders to order an MRI?

Statement Of Issues On Appeal

Why did I receive a totally different Employee/
Supervisor Notification With out instructions of Dr. Hynes?

Section 41-15-80

On 01/31/2017, The primary doctor was Dr. Hynes ~~aside~~
from 02/17/2016 when Dr. Motycka filled in for Dr. Hynes

Who gives me another new injury of Right Lateral
Epicondylitis (Tennis Elbow). (Q): Why Was this new
injury Accepted When I didn't Write it in the first
Report of injury or the fact that the primary doctor.

(Hynes) never assessed me before or after. Dr. Motycka
diagnoses?

On 03/06/2017, Dr. Hynes wrote an order for and MRI "due to
Chronicity" which means of Long duration, Continuing, lasting for a long time.
So that would indicate that I had mentioned my shoulder before
February 23 (physical Therapy) February 24th 2017.

(Q): So Since I was still under Dr. Hynes medical care
and he wanted to know why I could not lift my right arm why
was the MRI denied But Right Lateral Epicondylitis was
Accepted when I never had an issue with my elbow?

on the morning of 02/02/2017, I received a call from the Respondents telling me that I was to have reported to Bryan A&D at 8:30, and if I did not report that morning I could be terminated. I clocked in at 10:30 that morning. (please see Time Card)

- on 02/03/2017, while at work (Bryan A&D) Respondents gave me a memorandum of Transitional Light Duty, and a Employee/Supervisor Notification Form that states where I was to report, the hours I was scheduled to work. And my next doctor appointment of Feb 08, 2017. And I signed it.

So, why didn't the Respondents submit the Employee/Supervisor notification that I had signed since they were signed by (The preparer of the forms) the same person?

Section 41-15-80.

On 01/31/2017, I was told that I had to go to the doctor (Comperdium) they sent me to, for medical treatment. And the form that's attached with the Report of Injury (Respondent's exhibit A) titled Healthcare professional's Report was signed by Dr. Hynes. States the following "For whatever treatment is necessary for my health and well being including the use of whatever medication deemed necessary"

So if I had consented why wasn't the MRI authorized, since I was still under Dr. Hynes medical care?

On 02/10/2019, I had an MRI in Charlotte, N.C. My doctor at the time Dr. Jerry Saunders, ordered it. 02/15/2019, it was read and I was informed that I had a torn Rotator Cuff.

On 02/18/2019, I put 2 copies in the mail, one for S.C. W.C.C. and one for State Accident Fund. I was told by W.C.C. that they had received theirs on 02/21/2019. Respondent's states they did not receive theirs. 67-211 C(2)

Statement Of Issues On Appeal

01/31/2017 @ 6:00 AM I am injured by keeping Ms. Ruby from falling face forward out of her wheelchair.

01/31/2017 @ 6:05 AM I reported my injury to the Charge Nurses (Mrs. Davis & Ms. Williams).

01/31/2017; Ms. Davis gives me a form titled: J.C.D.M.H Witness statement of injury or illness.

01/31/2017 @ 6:43 AM I then report to the Supervisors Office to complete paperwork (Dependents Exhibit) and to speak to representative of Compendium to receive authorization code and to find where Compendium (insurance carrier at the time) was sending me for medical treatment.

01/31/2017, I wrote "FOREARM" on the form. (Exhibit A)

01/31/2017, After sitting for more than 3 hours after injury, Right Shoulder (Entire Arm) started throbbing. Could not lift Right Arm

01/31/2017, I arrived @ Carolina Occupational Healthcare

01/31/2017, Dr. John Hynes, writes in my medical record "States strained right hand, wrist." I never stated that due to the fact I had used my right hand to complete the paperwork that both of my supervisors (nurse, supervisor) had given to me. And the 3 pages I had to complete at Dr. office.

After looking over the different alleged ways of how I injured myself various

Statement Of Issues On Appeal

For instance Dr. Hynes: "Assisting a pt into wheelchair
APA p.1. 01/31/2017.

02/23/2017 Physical Therapy " when she reports helping a pt
to transfer. APA p.18

09/05/2017: Attorney Ben Cruse "Assisting pt to sit claimant
hand jerked down (form 50 filed on 09/05/2017.)

09/05/2017, my then Attorney Benjamin Cruse, filed another form
50, for my 12/22/2016, work related injury for a back injury. I
was still in pain, I would not have been adjusting a
resident due to the back injury

01/06/2017. The signed order " while adjusting a resident
who was seated in a wheel chair"

This is the information about the resident who
I was tending to the morning of my work related injury.

Ms. Ruby, is an African American female. who is
total care. She did not speak. She could not stand
or walk. And she is blind. So there was no way that
she was able to assist me with anything.

* A person who can't see (Blind or Blindfolded) normally
holds their arm out in front of them. Ms. Ruby always grabbed
on to whatever her hands touched.

Statement of Issues on Appeal

Right Lateral Epicondylitis is a painful condition that occurs when tendons in your elbow are over loaded, usually by repetitive motions of the wrist and arm. The initial phrase involves rest of the extremity until the acute pain improves.

Q: So if I had, had Tennis elbow why didn't I receive the ultra sound to show the tendons as Dr. motycka had wanted (stated in his notes on 02/17/17)?

Q: Why didn't I receive a sling for my right elbow if I had Tennis elbow?

Q: Why was Dr. motycka diagnosis of Tennis elbow accepted with no exam of my elbow?

Q: If Dr. Hynes didn't mention Tennis elbow before 02/17/2017, and didn't mention any swelling, redness, crepitin nor I, why was Dr. motycka assessment accepted for something I never had?

Q: Did the Respondents not see that on 02/17/2017, Dr. Hynes darkened the box that states "ALL other systems reviewed and are negative/non-contributory. Then he dated and initialed. (page 6 of alleged medical records)?

Statement of Issues on Appeal

I had requested a phone conference due to no one at S.C.W.C.C. or State Accident Fund of what the definition of their "Arm". So on 05/29/2019 at 4:00 pm. I spoke to Attorney Erin Farthing, Commissioner A. Wikerson. And I was told that the definition of the arm is from my fingertips to the Elbow.

Q: Is it a coincidence that the 3 new injuries that the doctor gave me is the Respondents definition of the arm?
~~* All of which I did not have.~~

The Respondents have stated that my then attorney filed a form 50 on my behalf and stated injury body part was right hand. I stated on 02/22/2019 that I did not know that he filed the form 50 or that he stated right hand.

Q: When I hired Shelly Lecks law firm their representative came to the address (my home) on the Drivers' license in my designation of matter, to take my statement (recording) so if I never had an issue with my right hand I would not and did not mention right hand. And my then attorney had ample amount of time to amend the form 50 but he did not. So would you have wanted him to represent you?

Statement Of Issues On Appeal

I wrote forearm on the S.C.D.M.H Report of injury @ 7:23 AM. And after waiting 4 hours before arriving at Carolina Occupational Healthcare at 10:00AM

Why would I be trying to define State Accident or S.C.W.C.C. definition of the arm, while in severe pain?

On May 29th, 2019, at 4:00 PM I had phone conference with Erin Farthing of State Accident Fund, Commissioner Wilkerson. On this date Erin Farthing told me the definition of the "Arm" Their definition is from my fingertips to my Elbow only.

On 02/03/17, I received a form Titled: Employee/Supervisor given by the Defendants that I signed. This form had my New Job location, the name of the facility, The time I was Scheduled to work. This form is typed, And signed by Mr. Galen Sanders, Rd. On 02/22/21, Commissioner Taylor acknowledged the fact that This form was Submitted Several times but was NEVER Scanned into W.C.C system for W.C.C. file nos. 1712879 (01/31/2017) or 1623303 (12/22/16). On 03/07/2019, Defendants submitted a Employee/Supervisor form that shows the instructions from Dr. Hynes, of me being out of work from 01/31/2017 til 02/08/2017.

Statement Of Issues On Appeal

The respondents have stated in the 06/08/20 transcript page 11. Line 25. "And it's her burden of proof and there." Transcript page 12. Lines 1-3. States "Is no medical evidence within the record to support an aggravation to her prior right shoulder injury." If the respondents did not give Dr. Hynes Authorization for the MRI that he wrote an order for due to "Chronicity" how would there have been evidence?

Dr. Hynes wrote the order on 03/06/2017. (pg 14 of alleged medical record) and it took the respondents 14 days to state "PLEASE DO NOT AUTHORIZE THE R SHOULDER MRI. THANKS"

Dr. Motylka wrote his order for physical therapy and received authorization in 4 days. for a diagnosis I didn't have

Why wasn't Dr. Hynes order for the MRI authorized when I stated some thing popped in my ^{R. RM} and while I was still under medical care?

Statement of Issues on Appeal

On 01/31/2017, I was told to go to Carolina Occupational Healthcare for medical treatment. On that morning I had to write my statement on the form titled: S.C.D.M.H. Witness Statement of Injury or Illness Form. Complete the S.C. Workers' Compensation Package. Complete the new patient packet for Carolina Occupational Healthcare. All using my right hand.

Q: So why would I "state" I had strained my wrist, right hand after completing those forms?

Q: Why was the new injury of the hand accepted when I never wrote that on the first report?

After waiting from 6:00 AM (injury occurred) til 10:00 AM (arrived at Dr. office) and writing something popped in my right shoulder on the witness statement form that is mandatory. And writing "At Arm" on the form that was given to me there. Q: Why is it so unrealistic for the pain not to have intensified by the time I arrived at the doctor's office?

Statement of Issues on Appeal

Respondent sent me to Caroline Occupational Health Care. From 01/31/2017 thru 02/08/2017, Dr. Hynes assessment was R Hand, Wrist, Forearm strain.

Then on 02/19/2017, Dr. Motycka, assessment was (R) Lateral Epicondylitis. On 02/24/2017, Dr. Hynes, assessment was (R) forearm, Wrist, hand, (R) Shoulder strain.

On 03/06/2017, Dr. Hynes, assessment was (R) Forearm, Wrist, hand, (R) Shoulder strain. On 03/23/2017, Dr. Hynes, assessment was (R) Wrist, forearm strain, (R) Shoulder pain not authorized by WKC. And I am released from care.

Q: Why was Dr. Motycka diagnosis accepted for something I never stated I had or wrote? Dr. Hynes was my doctor and he NEVER assessed me with an ELBOW injury. So why wasn't the doctor who treated me from day one, assessment of my (R) Shoulder not accepted? But only the Respondents definition of the arm accepted? (Hand, Wrist, Elbow) all of which I did not have and never stated I had. And I told the doctors the same.

Q: Why did Dr. Hynes go from R. Shoulder strain to Order of MRI to R. Shoulder pain not authorized by WKC, to return to normal duty when I could not lift my R. Arm?

Statement Of Issues On Appeal

I stated on record that the Respondents did accommodate me (by finding light duty at Bryan A&D). But they didn't. Q: Why didn't the Respondents give me the Employee/Supervisor Notification Form that they submitted at the hearing on 03/07/2019 with the instructions of Dr. Hynes on 02/01/2017?

Section 41-15-80

If I got injured at 6am. Reported it at 6:05am (The shift I worked was 11pm til 7am) Arrived at Dr. Office at 10:00 AM. Check-out was at:
Went to CVS to fill prescription. Then went home.

Since I didn't have transportation of my own the Receptionist faxed documents to my Supervisor.

Q: So why did I receive a call on 01/31/2017 telling me to report to Bryan A&D on 02/01/2017 if the Respondents had Dr. Hynes instructions of me out of work from 01/31/2017 til 02/08/2017? (my next Dr. Appointment)

I didn't go in on 02/01/2017, was in severe pain and could not lift my right arm. 02/02/2017, Respondents called me again to tell me I was to have reported to Bryan A&D at 8:30 AM. And if I didn't report that morning I could be terminated. I clocked in at 10:30 AM. See Time Card

Statement of The Case

This matter Comes before the Court of Appeal via appeal by the appellant from the Full Commissioner's Order dated January 06, 2021.

This was an admitted claim in which I suffered admitted injuries to my right arm on January 31, 2017 while keeping a resident from falling face forward out of her wheelchair. I received medical treatment from Carolina Occupational Healthcare. On September 05, 2017, my then attorney, Benjamin Cruse filed a Form 50 in which he wrote injury to right hand as a result of my January 31, 2017 accident.

In February 2018, I requested to terminate the employee-client relationship with Mr. Cruse, and he was relieved as her Counsel by Order of the Commission on March 15, 2018. I then filed a form 50 requesting a hearing due to the case had closed. Which was the subject of the above hearing dated March 07, 2019, in which I claim injury to and for right shoulder.

In response, Respondents filed a form 51 denying injury to my right shoulder, and instead asserting that injury to my right arm. In support of their denial that I sustained a compensable injury to my right shoulder, respondents pointed to the fact that the previous Form 50 filed in the claim alleged only an injury to right hand.

Statement Of The Case

a hearing was set on my Form 50 on March 07, 2019. At the start of the hearing Respondents requested a postponement of the hearing alleging they had not received subpoenaed records from a number of medical providers identified by me at my Deposition on February 22, 2019.

This includes provider who treated me (93 days after my work injury) following a motor vehicle accident on March 05, 2012.

Respondent lecture that I objected to their request due to the fact that I was living in a transitional home in North Carolina and had limited access to transportation. In light of this objection, the Single Commissioner denied Respondents request for postponement.

I was the only witness to testify at the hearing.

Following the hearing, the Single Commissioner issued an Order on June 12, 2019. I filed a motion^{to} request medical records be admitted in its entirety. I was denied.

Respondents stated that medical records were obtained through subpoenas issued for my on going 2016 Worker Compensation claim, but failed to mention the pre-hearing brief along with the form⁵⁸ and the written medical report, Certificate of Service forms that was certified mailed to me with postmark of 02/22/2019, 16 days before the hearing.

Standard Of Review

On 01/31/2017: I was told I HAD to go to their doctor, that Defendants gave authorization for.

11/31/2017: Dr. Hynes; stated in his notes that I told him that I told him I strained my Hand, Wrist, Forearm, And that "Holds (R) Arm protectively" pg 1. RT ARM. Dr. Hynes also stated I was assisting pt into wheel chair.

~~02/17/17: Dr. Motycka. Diagnosed me with a NEW injury of Right Lateral Epicondylitis (Tennis Elbow).~~

I never stated I had any issues with my elbow, And I told the doctor the same. I never received an ultra sound, or an X-Ray. For a conditions that deals with the TENDONS (alleged medical record pg 6 & 9) wrote order for physical therapy.

Dr. Hynes; changed his assessment to Right Shoulder strain. And wrote a new prescription.

Dr. Hynes; notes "Having PT for Wrist, Elbow," Continued. (R) Shoulder pain."

Dr. Hynes: R Shoulder strain. Return after MRI.

Dr. Hynes: Writes and order for MRI.

Dr. Hynes: Also mentions Continued R shoulder pain.

Dr. Hynes: R. Shoulder pain NOT authorized by WKC.

On 03/03/20 Dr. Hynes; releases me and wrote I stated I am ready to return to normal duty.

Standard of Review

I went to a doctor that was not my choice. And on the first day I was diagnosed with 2 new injuries, Two that I never stated I had. Those injuries get authorization for an X-Ray by Respondents. On 01/31/2017.

On 02/17/2017, I am seen by a new doctor and I am diagnosed with another injury of Right Lateral Epicondylitis (Tennis Elbow) something I never stated or wrote on the report of injury. On 01/31/2017, The problem I had was something popped in my Right shoulder that caused me not to be able to lift my arm. The new doctor name was Thomas Motycka. On page 6 of the alleged medical record Dr. motycka, wrote (physical Examination) Line #6. "I like to order ultra sound for Tennis Elbow" I never received an ultra sound. Dr. motycka knew that an ultra sound would show the Tendon, and is a painful condition. And if I did have Tennis Elbow it would have taken 6 to 12 month for the Tendon to heal.

Dr. motycka, never stated to me to rest my arm, or gave me a brace or a sling. Instead he gave me an order for physical therapy the same day. I told both doctors I didn't have a problem with my hand, wrist, Elbow.

The Respondents, have stated the shoulder was denied due to it was a new injury. But accepted the

Standard of Review

the 3 new injuries that the doctors gave to me on May 29th 2019, they told me that w.c.e. definition of the arm is "From my Fingertips to my Elbow. While having phone conference with the Commissioner (Wilkerson) that was scheduled at 4pm. And while under medical care of Dr. Hynes, the doctor changed his assessment to right shoulder strain and orders a MRI to determine why I was not able to lift my right arm and what was causing the pain but Respondents denied authorization for the MRI. In the transcript Defendants states that I wrote Forearm on 1-31-17, in the first report of injury, there is no mention of hand, wrist, elbow. And in the Respondents alleged medical record there is no mention of treatment for my Forearm.

Dr. motycka, saw me only that one day.

Dr. Hynes, changed his assessment to R. Shoulder strain, to ordering a MRI, to writing that I stated I was ready for normal duty. But I could not lift my right arm. So after 5 weeks I am released from care, still in pain and I am Diagnosed with Right Lateral Epicondylitis -23

Standard of Review

On 01/13/2017 I was diagnosed with 2 new injuries of Hand, Wrist. After I had completed my written statement and completed documents. Then on 02/17/17, I have another new injury of Right lateral Epicondylitis (Tennis Elbow)

I never wrote that I had any issues with either. And on 03/20/2017, the email that I submitted with that date states the following

Hey Raquel,

The notes indicate she has a previous R RTC Surgery. Also, it seems the reporting on the shoulder (in relation to this injury) is inconsistent.

The claim came in for right arm pain, but it was specified as right "lower" arm pain. This claim is accepted for the R wrist/forearm strain only at this time."

Please do not authorize the R shoulder M.A.I.

Standard Of Review

by a doctor who seen me only once (2/17/2017)

for a injury that (Dr. Matycka) I never had.

I was misdiagnosed by both doctors. And the
Final diagnoses of Right Lateral Epicondylitis.

And the respondents did not even follow the doctor

instructions for me to be out of work from 1-31-17 til

2-8-17. But instead gave me another Employer/Supervisor

Notification Form on 02/03/2017 to sign that

does not have doctor instructions like the form

respondents gave at the hearing on 03/07/2019.

Standard Of Review

On 01/31/2017, Dr. John Hynes popped a white pill while I was in the exam room. He told me that he was just returning from having back surgery.

I did not inform the respondents. I reported Dr. Hynes to S.C. Board of Examiners. They investigated.

Dr. Hynes, is no longer employed with Carolina Occupational Healthcare.

The *Duces Tecum* is included in my documents.

ARGUMENT.

I went to a doctor that was not my choice. And on the first day I was diagnosed with 2 new injuries, Two that I never stated I had. Those injuries get authorization for an X-Ray by Respondents. On 01/31/2017.

On 02/17/2017, I am seen by a new doctor and I am diagnosed with another injury of Right Lateral Epicondylitis (Tennis Elbow) something I never stated or wrote on the report of injury. On 01/31/2017, The problem I had was something popped in my Right Shoulder that caused me not to be able to lift my R arm. The new doctor name was Thomas Motycka. On page 6 of the alleged medical record Dr. Motycka, wrote (Physical Examination) Line #6. "I like to order ultra sound for Tennis Elbow". I never received an ultra sound. Dr. Motycka knew that an ultra sound would show the Tendon, and is a painful condition. And if I did have Tennis Elbow it would have taken 6 to 12 month for the Tendon to heal.

Dr. Motycka, never stated to me to rest my arm, or gave me a brace or a sling. Instead he wrote an order for Physical Therapy the same day. I told both doctors I didn't have a problem with my hand, wrist, Elbow.

The Respondents, have stated the shoulder was denied due to it was a new injury, But accepted the 3 new injuries.

ARGUMENT

ON Transcript page 27 Lines 23-25, page 28 Lines 1-3

Respondents states I stated right forearm on their Exhibit A.

ON Transcript page 29 Line 9 I stated that Dr. Hynes sent me

for physical therapy that's incorrect. Respondents alleged medical

record shows Dr. motyka wrote the order for physical therapy.

ON Transcript page 29 Line 13 I stated that Dr. Hynes had me on light

duty.

ON Transcript page 30 Line 4 I stated I had went to C.W.

Williams Community Health. (But Respondents never subpoenaed their records)

ON Transcript page 30 Lines 12-17, Respondents states that I had

told her that I haven't received treatment between 2017 march

and January 2019, I stated "No I couldn't have said that because

I had MRI done there."

ON Transcript page 31 Lines 12- I stated "I know I had

used up all my time when I got injured on the job. When I was

out for those 8 days I had used my time to sit home."

I ADT Confuse. I never sat home for this

injury see the time cards. I was home for my 2016

injury only. (on Lwop)

ARGUMENT

On Transcript page 31 Line 15 I stated I was talking to Megan. And at my subpoenaed deposition I stated I have a voicemail to show that I was contacting (Megan & Raquel) the respondents about right shoulder pain. And on 03/07/2019, I held up my blue cell phone and stated I have a voicemail. Commissioner Wilkerson or respondents did not acknowledge. And I filed a motion to add the voicemail and other documents including medical records and it was denied. (Transcript line 32 lines 3-6.

On Transcript page 33 lines 20-22, The respondents question was "The medical records indicate you did a number of tests on your right wrist and your elbow and your forearm and that was eliciting pain."

On Transcript page 34 lines 16-25. "I stated "once again, show me in any paperwork where it states where I came in and said it's my hand and my elbow because I didn't see it. When it first happened I said my arm. I had numbness in my hand. yes

On Transcript page 34 line 24-25. Respondents question was And you ultimately got -- he diagnosed you with right

ARGUMENT

lateral Epicondylitis, tennis elbow"? Dr. Hynes never diagnosed me with that.

The Respondents asked me about a car accident I was involved in on 03/05/2017 for this claim on 02/22/2016 at deposition in N.C. And at hearing on 03/07/2019.

~~The Respondents continues to bring up the fact that~~
the attending doctor (Hynes) noted on page 10 of their alleged medical record the following "States pain in right shoulder now, -- difficult historian hard to obtain cohesive history" (Tr. p. 38. Lines 13-14)
"So, February 24th of 2017, was the first time that you indicated your right shoulder was injured -- was bothering you?"

Respondents failed to mention that on February 23rd was my first day of physical therapy, and by me trying at least once to touch the top of the door using my right arm caused severe pain in my right shoulder. That is why there are X and NT noted for doorway stretch (page 23 of the alleged medical record.) So when I went to my appointment on the 24th of February, my shoulder was hurting worse and was radiating from R shoulder

ARGUMENT

down my arm. And I feel that if Dr. Hynes worked in sports medicine he would have known I had a torn Rotator Cuff from day one (1-31-17)

Transcript Page 11 Lines 9-12 states "She states she is not having MRI anymore but she follow up with M.D. tomorrow + will let us know M.D. advisement @ that time". Dated 03/22/2017, page 12 of respondents alleged medical record. Then on 03/23/2017, I am released from care.

There is another progress note form in the other pages in the original medical record that's dated 03/23/2017, in reference to my release, that respondents did not extract from original medical record.

↑ Transcript References for the above is from 03/07/19 Hearing. ↑ The Respondents continually states the fact that (Tr. p. 11. Lines 9-12) My then Attorney filed a form 50 Alleging an injury to the right hand, The Case is accepted for the Right Hand, the Right Wrist, and the Elbow. The New injuries that makes up Respondents definition of the Arm. 3 injuries I never wrote or stated I had any problems with. (Respondents have stated on 05/29/2019

requested While on phone Conference @ 4:00 pm, their definition of the arm is from fingertips to Elbow) (Transcript is of 06/08/20.)

Argument

The Respondents Stated that the right Shoulder was a new injury, Because I did not write it on the W.C.C. First Report of injury on 01/31/2017.

The Respondents Accepted the New injuries of Dr. Hynes Hand + Wrist. Something I didnt write on the First Report of injury on 01/31/2017.

The Respondents Accepted the New injury of Right Lateral Epicondylitis (Tennis Elbow)

On 05/29/2019, I had a requested phone Conference at 4:00pm With Commissioner A. Wilkerson, Erin Farthing of State Accident fund. And on this day I was told that the definition of the "ARM" is from my fingertips to my elbow, and the Shoulder is Not part of the arm.

On 03/06/2017, Dr. Hynes wrote and order for a MRI due to Chronicity. (The state of being chronic, having a long duration)

The Respondents cannot provide one document to show where I wrote Hand, Wrist, Elbow. But even after Dr. Hynes changed his assessment I still could not

Argument

- receive treatment for my right shoulder.

The Respondents had called me in to work

Knowing that Dr. Hynes had me out of work

from 01/31/2017 til my next doctor appointment on

02/08/2017.

The Respondents deception of not giving me the Employee/

Supervisor Notification with instructions of Dr. Hynes, dated

02/01/2017, But do gives me a Employee/Supervisor Notification

on 02/03/2017, Without the instruction of Dr. Hynes, that

I signed, along with the memorandum of Transitional light

duty, dated 02/01/2017, after I reported to work by intimidation.

The Respondents asked me on 02/22/2019, did I ever

contact anyone at S.I.W.C.C or insurance carrier, I stated

that I had spoken to Megan and Rachel about still having

issues with my right shoulder. And I stated I had a

Voice mail. (That was on the motion to ADD list.) 1-7-707.

The Respondents asked me if I had been treated

by another ^{Dr.} in Columbia. My reply was no, and that I

had went to C.W. Williams Healthcare in Charlotte, N.C.

for my shoulder & Back. Respondents never subpoenaed

those medical records.

ARGUMENT

Transcript (6-9-20) pg 11. Lines 16-19. Respondent stated "And one of the things that Ms. Dixon has left out is She has a prior Shoulder injury, a prior Worker's Compensation claim where she had rotator cuff surgery, which brings in 42-9-35.

The Respondents subpoenaed my medical records I didn't. I stated the doctor's name and the hospital on 02/22/2016, at my subpoenaed deposition in Charlotte N.C. And on 11/21/2016 I received a physical from the Respondents. I submitted the offer letter dated 11/18/2016 as part of my apt. Also on 02/22/2019 and 03/07/2019 I stated the fact of rotator cuff surgery. And I stated that fact on 02/28/2017 pg 18 of physical therapy patient information form in respondents alleged medical record. A on page 11 of the 03/07/2019 Transcript lines 19-23 "Ms. Dixon indicated in her deposition a prior injury to that right -- a prior workers comp claim involving that right shoulder where she had rotator cuff tear and surgical repair" On 02/22/2019, I stated I had surgery in 2002. I've submitted the letter showing some dates of my employment with the respondents after my RTC surgery, as part of my Apts.

ARGUMENT

I never had Right lateral Epicondylitis

I never had issues with my hand or wrist (right).

I was the person who wrote the witness

statement, completed the new patient packet (see numbers on

alleged medical record the WC pages are missing - some) I

completed the first report. I did not write hand,

wrist or elbow on the morning of 01/31/2017.

I have included documents in my designation of

matter to show. By the Respondents not following the

doctor instructions of me being out of work from 01/31/2017

til 02/08/2017 and due to Respondents Spoilation of the Employee/

Supervisor Notification that was never given to me to sign was

premeditation of non compliance by Respondents. The forms are

dated 02/02/2017 (Employee/Supervisor Notification, S.C.P.M.H. memorandum)

I told the doctors (Hynes, Motyluck) that I did not

have the issues they diagnosed me with. Respondents accepted

all 3 New injuries. But when the primary doctor learns that I

had rotator cuff surgery he changes his assessment to

Shoulder Strain, orders an MRI and Respondents denies it.

I was misdiagnosed, and by Respondents

sending me to physical therapy was not appropriate

for an injured employee who could not raise right arm.

ARGUMENT

NON - Compliance

on 01/31/2017, Dr. John Hynes Office (Carolina Occupational HealthCare) faxed instructions to the Defendants informing them I was to be out of work from 01/31/2017 til 02/02/2017 (my next doctor appointment)

On 01/31/2017, Respondents Called to tell me to report to my new modified Light Duty Assignment, gave me the address to where I was to report, On 02/01/2017, The Respondent manually wrote the doctor instructions on 02/01/2017, On the Employee/Supervisor Notification that Defendants never gave to me to sign. Defendants used intimidation of me being terminated on 02/01/2017, via phone call, Defendants called me at home to tell me I was to have reported at 8:30am to Bryan A&D. And if I didn't report that morning I will be terminated. I clocked in at 10:30 AM (See Time Card)

Why would I want to go to work in pain and not able to lift my right arm? The Defendants were so determined to keep me from receiving compensation, they gave me a Employee/Supervisor notification form that is/was typed that does not have the instructions of the doctor, that I signed on 02/03/2017. Section 41-15-80

ARGUMENT

The mandatory form titled S.C.D.M.U. Witness Statement that I wrote on 01/13/2017, where I wrote something popped in my Right Shoulder. Defendants did not submit that form.

I have submitted that same form from my D.C.C. file NO. 1623303 that I was given on 01/13/2017 by my Supervisor, for my 12/22/2016 work injury to show that the form is mandatory.

If the form was not ^{mandatory} ~~mandatory~~ why would my Supervisor call me in to write my statement 22 days AFTER my work injury of 12/22/2016? But Respondents did not submit that form because the form states "Something popped in my right shoulder". I did file a motion to ADD but was denied.

Argument

I was told to go to Carolina Occupational Health Care on 01/31/2017. Dr. Hynes, wrote on page 1 of the of Respondents alleged medical record that I told him I strained my hand wrist, forearm, which is NOT true. I had to write my mandatory statement (1 pg) given to me by my supervisor, and completing of the 4 page first Report of S.C.D.M.H, and the new patient packet from Carolina Occupational Healthcare.

So how would I complete the forms with a strained hand, wrist?

But when the primary doctor (Hynes) writes an order for the MRI it's denied, so if the Respondents was not going to treat ^{let Dr.} ~~me~~ Hynes, treat me with his diagnosis and what he felt the need to do to find a definitive finding to the problem of my right shoulder.

ARGUMENT

Respondents stated on record that they had not received subpoenaed medical records (page 4 of Transcript of 2019) but had certified mailed them to me with pre hearing brief and Certificate of Service, Before the hearing. Why?

Defendant had no intentions of using the subpoenaed medical record, due to subpoena states for the medical record to be mailed to them on or before the 13 of March, but the hearing was March 07, 2019.

Conclusion

I am wanting the Respondents to pay medical bill at Atrium Health for the MRI

I am wanting the Respondents to accept the claim for right shoulder injury of 01/31/2017

I am wanting the medical record from Carolina Occupational Healthcare to be included as designation of matter for this case 2021-000121.

I am wanting the Respondents to compensate me from 01/31/2017 to date.

This is the relief I am requesting.

Proof of Service of A Notice of Appeal

The State of South Carolina
In The Court of Appeals

RECEIVED

APR 15 2021

SC Court of Appeals

Appeal From Richland County
S.C. Workers' Compensation Commission

Commissioners: R. Michael Campbell, II,
Aisha Taylor, Gene McCaskill.

Case No. 2021-000121

Dana L. Dixon

Appellant

v.

S.C. Department of Mental Health,

Respondents

Employer, And

State Accident Fund,

Carrier.

I Certify that I have served the notice of Appeal on
Stephen Stubleby by depositing a copy of it in the United
States mail, postage paid on March 28, 2021. Addressed to
attorney of record M. Stephen Stubleby, P.O. Box 11669 Columbia, SC 29211

ON March 28, 2021

Dana L Dixon

181 Stabler Farm Rd

ST. MATTHEWS, S.C. 29135

(470) 422-0591

181 Stabler Fern Rd
St. Matthews, S.C. 29135



RECEIVED

APR 15 2021
SC Court of Appeals

South Carolina Court of Appeals
Jenny Abbott Kitchings, Clerk
P.O. Box 11629
Columbia, S.C. 29211

