

RECEIVED
MAY 14 2021
SC Court of Appeals

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NOS: 1421297 and 1717574

Shelia Hutchins

EMPLOYEE,
CLAIMANT/APPELLANT

VS.

Security Group, Inc.

EMPLOYER,

AND

Hartford Accident and Indemnity Co,

CARRIER,
DEFENDANTS/RESPONDENTS,

Appellate Panel Review held via Zoom on January 25, 2021 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

April 14, 2021

APPEARANCES: Claimant/*Pro Se*/Appellant Shelia F. Hutchins

Defendants/Respondents represented by Tracy W. Tiddy, Esquire

STATEMENT OF THE CASE

This appeal arises out of an Administrative Order issued by Commissioner Mike Campbell on September 8, 2020, granting Security Group Inc. and Hartford Accident and Indemnity Company's (hereinafter "Respondents") Motion to Compel Settlement Agreements in WCC File Nos. 1421297 and 1717574.

The Motion was originally filed by Respondents after mediation, held on April 29, 2020, resulted in a resolution of both claims. Settlement documents were prepared and fully executed by the parties and their respective counsel on the day of the mediation. Claimant was represented by counsel, Thomas Phillips of Smith Jordan, P.A.¹, at the time of the mediation. The Form 70 Mediator's report was filed with the Commission on April 30, 2020, by Derrick Williams of Mickle & Bass, LLC, a former Commissioner. A filing fee check was requested and the documents were promptly forwarded to the commission. Settlement checks were forwarded to Claimant's counsel.

On May 1, 2020, prior to the settlement documents arriving at the Commission, Ms. Hutchins (hereinafter "Appellant") advised her attorney and the Commission that she had changed her mind, and wanted to withdraw from the settlement agreements which both she and her attorney had previously signed. Respondents were simultaneously notified via email that Appellant planned to renege on the settlements and her attorney planned to withdraw as counsel.

On May 11, 2020, Respondents filed a Motion to Compel Settlement in both claims. Mr. Phillips' Motion to be Relieved as Counsel in WCC File No. 1717574 was granted on May 22,

¹ The Commission's file reflects that Claimant was previously represented by Attorney Charles J. Hodge in WCC File No. 1421297 who withdrew as counsel for Claimant in July 2019, noting that a settlement agreement had been reached on the record which the Claimant later did not wish to accept.

2020, by Commissioner T. Scott Beck. Mr. Phillips' Motion to be Relieved as Counsel in WCC File No. 1421297 was granted on May 28, 2020 by Commissioner Melody L. James.

A hearing on the Motion to Compel was originally set on June 16, 2020, before Commissioner James. Prior to the hearing, Appellant informed the Commission she needed additional time to find new representation. An Administrative Order issued June 5, 2020, by Commissioner James gave Appellant 30 days to retain counsel. Appellant did not retain counsel and failed to respond to Respondents' Motion to Compel.

On September 8, 2020, more than 90 days after Appellant was given an additional time to find a third attorney, the Motion to Compel the Settlement Agreements was granted by Commissioner Mike Campbell via transmittal order.

On September 23, 2020, Appellant filed a Form 30 appeal wherein she asserted she was unfit to enter into a settlement at the mediation and she was coerced by Mr. Phillips and Mr. Williams to settle against her will. In her Appellant's Brief, filed on December 16, 2020, Appellant reiterated that she didn't want to go to mediation and agreed to settle only to bring the mediation to conclusion.

In response to the Appellant's Form 30 and Brief, the Respondents contended Commissioner Campbell correctly determined the settlements should be enforced where the agreements were fair, were fully executed by the parties on the day of mediation, and were timely mailed to the Commission. Additionally, Respondents assert the Hearing Commissioner correctly determined the settlements should be enforced as the South Carolina Workers' Compensation Act encourages parties to come to resolution and settle claims prior to a hearing because settlement of claims promotes the efficiency of the process and reduces costs for all parties involved in the system.

An Appellate Panel Review hearing was held via Zoom on January 25, 2021, pursuant to notices timely and properly served upon all parties of interest. After considering Defendants' Motion and attachments, Appellant's Form 30, oral arguments, the extensive Commission files, and the briefs submitted by both the parties WE, THE APPELLATE PANEL AFFIRM, the decision of the Single Commissioner and make the following Analysis, Findings of Fact, and Conclusions of Law and issue the following Order:

APPELLATE PANEL ANALYSIS

WE, THE APPELLATE PANEL, FIND THE FOLLOWING:

The Appellant Panel finds the Single Commissioner correctly held that Respondent should be compelled to comply with the settlements where the agreements were fair, were fully executed by the parties and their counsel on the day of mediation, and were timely mailed to the Commission.

In reaching our decision, the Panel notes South Carolina Workers' Compensation Act encourages parties to come to resolution and settle claims prior to a hearing because settlement of claims promotes the efficiency of the process and reduces costs for all parties involved in the system. The statute governing workers' compensation settlements specifically provides, "[n]othing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and time and manner of payment are in accordance with the provisions of this title." S.C. Code Ann. § 42-9-390 (2007).

The SC Court of Appeals addressed the enforceability of a workers' compensation settlement in Mackey v. Kerr-McGee Chemical Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). In that case, the attorneys appeared before the commissioner and advised the case had settled; but significantly, the Claimant was not present when the agreement was presented to the

Commissioner and did not voice her consent. She later declined later to sign the paperwork. The Mackey court concluded that it could not enforce the settlement based on those facts, but relied on the language of SC Code Ann. §42-9-390, which at that time required approval of the commission. Mackey v. Kerr-McGee Chemical Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). The court specifically noted that while no case had expressly answered the question of whether a settlement is binding prior to Commission approval, the S.C. Supreme Court had indicated in earlier decisions that because the approval of the Commission was required by statute, it followed that a settlement agreement is not binding until approved. Mackey, citing Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960).

The Appellate Panel notes these settlements are distinguishable from those in Mackey. First, the Appellant reviewed and signed the paperwork, along with her attorney at a mediation which was conducted by a respected former commissioner. Perhaps more importantly, the law has changed since Mackey was decided. In 1960, the statute required Commission approval of a settlement between represented parties which, as pointed out by the court, implied that the settlement was not final until it had been reduced to writing and was stamped “approved.” In 2007, the legislature amended S.C. Code Ann. §42-9-390 to eliminate the prior requirement that settlements between represented parties must be approved by the Commission, endorsing the idea that where a claimant is represented by competent counsel and clearly evidences an understanding of the terms of a settlement, it should be recognized as binding by the Commission. This change in the law also acknowledges the fact that acceptance of settlement documents fully executed by represented parties is a perfunctory, ministerial act.

Though the Panel finds no precedent in South Carolina since the statute was amended in 2007, other jurisdictions have enforced workers’ compensation settlements for the sake of public

interest. In B. Frank Joy Co. v. Isaac, 636 A.2d 1016 (Md. 1993), an employee and employer entered into a settlement agreement and submitted that agreement to the commission for approval. The claimant died eight days before the hearing. At the hearing, the employer sought to rescind the agreement arguing they had that right at any time before it was approved by the commission. The commission nevertheless approved and enforced the agreement. In affirming this decision, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement . . . in compliance with the Act. When they present a duly executed settlement agreement . . . the parties thereby relinquish control of the matter to the supervisory powers, authority, and discretion bestowed upon the Commission. Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith. Isaac, 636 A2d at 1025.

Thus, to preserve the integrity of the settlement process, mediation, respect for the Commission, judicial economy and the public interest, the settlements in these matters should be enforced.

FINDINGS OF FACT

1. Appellant and Respondent are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Shelia Hutchins as Employee/Appellant and Security Group Inc. as the Employer and Hartford Accident and Indemnity Company as Carrier, Defendants/Respondents.
2. Notice of the appeal hearing was timely and properly served on all the parties. Such

finding is based upon the Commission's file.

3. Appellant suffered an admitted injury to her right knee during the course and scope of her employment on November 20, 2014. (WCC #1421297) Such finding is based on the Commission's file.
4. Appellant was previously paid indemnity settlements in WCC #1421297 on Consent Orders dated June 16, 2017, and January 17, 2020, totaling 25% to her right knee. Such finding is based on the Commission file.
5. On April 29, 2020, at mediation, Appellant agreed to clincher the indemnity aspects of her claim for an additional 40% to the knee or \$30,000. As part of the settlement, Respondents agreed to leave medical open for her right knee with one of two authorized treating orthopedists. If those physicians declined to see her, the parties agreed that the Commission could appoint another doctor. (WCC #1421297) Such finding is based on the arguments of the parties and the Commission's file.
6. It is also admitted the Appellant suffered a psychological injury during the course and scope of her employment in May of 2017. (WCC #1717574) Such finding is based on the arguments of the parties and the Commission's file.
7. On April 29, 2020, at mediation, Appellant agreed to clincher her psychological claim the on a full and final basis for \$45,000. (WCC #1717574) Such finding is based on the arguments of the parties and the Commission's file.
8. Both agreements appear to be fair on their face. Such finding is based on the arguments of the parties and the Commission's files.

9. The amount of compensation and the time and manner of payment outlined in the settlement agreements is in accord with the provisions of the South Carolina Workers

Compensation Act. Such finding is based on the arguments of the parties and the Commission's files.

10. Claimant was represented by competent counsel at the time of settlement. Such finding is based on the Commission's files.
11. There is no credible evidence that Claimant was coerced, pressured, or forced to enter into these agreements against her will. Such finding is based upon the arguments of the parties and the Commission's files.
12. Former Commissioner Derrick Williams² mediated both claims to conclusion and filed a Form 70 with the Commission, confirming settlement in both claims. Such finding is based on the Commission's files.
13. The settlement documents were signed by the Claimant, her counsel of record and defense counsel at the conclusion of mediation. Such finding is based on the arguments of the parties and the Commission's files.
14. The settlement documents were timely mailed to the commission for filing. Such finding is based on the arguments of the parties and the Commission's file.
15. It is a perfunctory/ministerial act of the Commission to accept settlement paperwork which has been executed by represented parties.
16. Where settlement documents are fully executed by represented parties and their counsel and presented to the commission, the South Carolina Workers Compensation Act clearly favors settlements.

² Mr. Williams was instrumental in drafting the rules and regulations implementing mediation in workers compensation cases in South Carolina.

CONCLUSIONS OF LAW

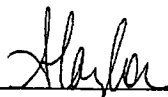
Accordingly, as provided under South Carolina Code of Laws, §42-17-40, and §1-23-320, it is the determination of the Appellate Panel that:

1. Pursuant to S.C. Code Ann. §42-9-390, Commission approval of settlements between represented parties is not required.
2. Also pursuant to S.C. Code Ann. §42-9-390, the amount of compensation and the time and manner of payment as documented in the previously executed clincher agreements in WCC Claim Nos. 1421297 and 1717574, are in accordance with the provisions of the South Carolina Workers Compensation Act and such settlements should be enforced.

ORDER

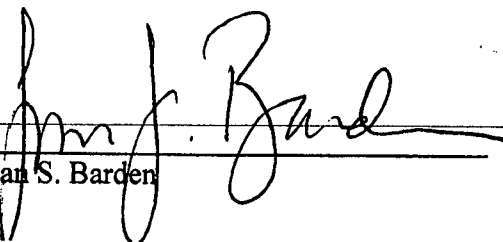
THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Decision and Order of the Hearing Commissioner is **AFFIRMED**.

IT IS SO ORDERED.



Commissioner Aisha Taylor

For the Appellate Panel



Susan S. Barden



Commissioner Gene McCaskill

WE CONCUR:

1421297 and 1717574 Shelia Hutchins vs Security Group Inc.

Order Served via E-Mail:

--	--

Order Served via USPS:

Sheila F. Hutchins 1391 Wilcox Avenue Gaffney, SC 29341-2956		
Tracy Welsh Tiddy, Esquire Willson Jones Carter & Baxley, P.A. 325 Rocky Slope Road Suite 201 Greenville, SC 29607		

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie D. Deller on April 14, 2021