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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2021-000121

Dana L. Dixon, Appellant

v.

S.C. Department of Mental Health,
Employer and State Accident Fund,
Carrier, Respondents.

FINAL BRIEF OF RESPONDENTS

M. Stephen Stublely
Speed, Seta, Martin, Trivett & Stublely, LLC
Post Office Box 11669
Columbia, SC 29211
803-748-2259
ssublely@speed-seta.com
Attorney for Respondents

Dana Dixon
181 Stabler Farm Road
St. Matthews, SC 29135
470-422-0591
Appellant, *Pro Se*

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STATEMENT OF ISSUES ON APPEAL

As an initial matter, it appears that Dana Dixon (hereinafter “Appellant”) has presented more than 20 questions in her brief for which she seeks the Court’s review. By in large, the questions found in Appellant’s brief are factual in nature and seek answers previously and clearly provided in the Record. In appeals from workers’ compensation claims, factual determinations appropriately rest with the Full Panel. Houston v. Deloach & Deloach, 378 S.C. 543, 551, 663 S.E.2d 85, 89 (Ct. App. 2008). “Accordingly, a reviewing court may not substitute its judgment for that of the [appellate panel] as to the weight of the evidence on questions of fact.” Clark v. Aiken Cty. Gov’t, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005) (emphasis added). Therefore, Respondents are left to conjecture as to what, if any, actual appealable issues are before the Court. Notwithstanding, and in an effort to provide a response to Appellant’s incognizable appeal, Respondents provide the below for the Court’s consideration.

STATEMENT OF THE CASE

This case arises out of a workplace accident wherein Appellant sustained several injuries for which she received all appropriate medical treatment to which she is entitled. At all times relevant to this Appeal, Appellant was employed by S.C. Department of Mental Health (hereinafter “SCDMH”). Appellant alleges that she suffered admitted injuries to her right arm on January 31, 2017 while assisting a resident who was seated in a wheelchair. She received medical treatment for that injury from Carolina Occupational Healthcare and Carolina Physical Therapy. On September 5, 2017, Appellant’s then attorney, Benjamin Cruse, filed a claim on Appellant’s behalf via a Form 50 in which Appellant alleged only an injury to the right hand as a result of her January 31, 2017 accident. (R. p. 294). In February 2018, Appellant requested to terminate the employee-client relationship with Mr. Cruse; he was relieved as Appellant’s counsel by Order of the

Commission on March 15, 2018. (R. p. 323). Appellant subsequently filed a Form 50 requesting a hearing dated November 27, 2018, in which she alleged an injury to, and sought medical treatment for, her right shoulder.

In response, Respondents filed a Form 51 denying injury to Appellant's right shoulder, and instead asserting that the injury was to Appellant's right arm. (R. p. 319). In support of the denial compensability, Respondents pointed to the fact that the previous Form 50 filed in the claim alleged only an injury to the right hand. (R. p. 294).

At the Hearing before the Single Commissioner, Respondents requested a postponement of the hearing as they had not received subpoenaed records from a number of medical providers identified by Appellant during her deposition on February 22, 2019. (R. p. 119, lines 1-3). This includes the provider who treated Appellant following a subsequent motor vehicle accident that occurred after her January 31, 2017 work accident. Appellant objected to this request due to the fact that she was living in a transitional home in North Carolina and has limited access to transportation, making it difficult to appear. (R. p. 119, lines 3-6). In light of this objection, the Single Commissioner denied Respondents' request for a postponement and the hearing commenced. (R. P. 119, lines 10-16). Appellant was the only witness to testify at the hearing. (R. p. 126, Line 4 – p. 161, line 2).

Following the hearing, the Single Commissioner issued an Order on June 12, 2019, in which he reached the following findings of fact and conclusions of law:

Findings of Fact:

1. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.

2. The South Carolina Workers' Compensation Commission has subject matter and personal jurisdiction over all the parties and matters before this Commissioner; all parties having received proper notice of the hearing held set for March 7, 2019.
3. Venue is proper set in Richland County, South Carolina.
4. The Claimant's average weekly wage is \$449.34, which a resulting compensation rate of \$299.57.
5. On January 31, 2017, the Claimant suffered an admitted accident while moving a resident that occurred while she was in the course and scope of her employment with the South Carolina Department of Mental Health.
6. In her initial report of injury to the employer, the Claimant stated that the injury she sustained was to her right forearm.
7. Defendants admitted an injury to the right arm, and provided medical care and treatment for her right arm, including her elbow, and right hand with Carolina Occupational Healthcare, LLC and Carolina Physical Therapy.
8. Claimant was discharged from care for those injuries on March 23, 2017, at which time she was released to return to work full duty.
9. During the time Claimant was in treatment, Defendants did not authorize any treatment for Claimant's right shoulder.
10. Claimant had a preexisting injury to her right shoulder which necessitated surgery prior to her January 31, 2017 work accident.
11. Claimant's initial Form 50 in this claim, which was filed in September 2017 and did not request a hearing, alleged injury to the right hand only.
12. Claimant's second Form 50, which was filed *pro se* by Claimant in November 2018 and is the subject of the above hearing, alleged injury to the right shoulder only.
13. The right shoulder was never an admitted body part.
14. The record does not contain any statements by any medical provider that any injury to Claimant's right shoulder was caused or exacerbated by her January 31, 2017 work accident.
15. Based on the greater weight of the evidence, I would find that Claimant's request for treatment for the right shoulder is denied. The shoulder was never an accepted body part by the State Accident Fund, and they have been deprived of an opportunity to have causation accurately addressed by a physician due to Claimant's delay in alleging an injury to her right shoulder as a result of her January 31, 2017 work accident and in requesting treatment for this alleged injury. Therefore, Claimant's request for treatment is barred under the South Carolina Workers' Compensation Act.

Conclusions of Law:

1. Pursuant to S.C. Code Ann. §42-1-130, the Claimant was a covered employee at the time in question and under S.C. Code Ann. §42-1-140, the Defendant employer was a covered employer under the Act.
2. Pursuant to S.C. Code Ann. §42-1-160, Claimant suffered injury to her right arm by compensable accident in the course and scope of her employment.
3. Pursuant to S.C. Code Ann. §42-9-35, where there is evidence of a preexisting injury or condition, (A) The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury. Claimant has not met her burden under this statute.
4. Pursuant to S.C. Code Ann. §42-15-60, Defendants shall provide medical treatment to effect a cure or give relief for such time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.
5. S.C. Code Ann. §12-15-20 governs the notice that must be provided by an injured worker to his or her employer following an accident.
6. Claimant has failed to establish that she sustained a compensable injury to her right shoulder as a result of her January 31, 2017 work accident. As such, her request for treatment for her right shoulder in the present claim is denied.

(R. pp. 4-13). Concluding in his findings of fact that the Appellant failed to establish she sustained a compensable injury to her right shoulder as a result of her January 31, 2017, the Single Commissioner denied Appellant's request for medical treatment for her right shoulder. (R. p. 13).

On or around June 24, 2019, Appellant filed a Form 30, ostensibly seeking to appeal the decision of the Single Commissioner to the Commission Full Panel (hereinafter ("Full Panel" or "Panel")). (R. pp. 181-203). The Appellant also seems to argue that medical records submitted by the Respondents that were obtained through subpoenas issued for her ongoing 2016 workers compensation claim should not have been considered since they were issued in relation to this specific SCWCC claim number. (R. p. In addition to her Form 30, Appellant filed a document

that was construed as a Motion for Additional Evidence, which was denied by the Full Commission in Judicial Conference.

In an order dated January 6, 2021, the Full Panel affirmed the Single Commissioner's decision, adopting all of the Single Commissioner's findings of fact and conclusions of law as outlined above. (R. pp. 14-31). Subsequently, Appellant filed a notice of appeal with this Court.

STANDARD OF REVIEW

Under the substantial evidence rule, the Court may not substitute its judgement for that of the Commission as to the weight of the evidence. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). Substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case; rather, it is evidence, when considering the record as whole, allows reasonable minds to reach the same conclusion as the Commission. Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 576 S.E.2d 191 (Ct. App. 2002). The possibility of drawing two inconsistent conclusions from the same evidence does not preclude the Commission's findings from being supported by substantial evidence. Houston v. Deloach & Deloach, 378 S.C. 543, 663 S.E.2d 85 (Ct. App. 2008).

Where there are conflicts in the evidence over a factual issue, the findings of the appellate panel are conclusive." Houston v. Deloach & Deloach, 378 S.C. 543, 551, 663 S.E.2d 85, 89 (Ct. App. 2008) (citations omitted). "Accordingly, a reviewing court may not substitute its judgment for that of the [appellate panel] as to the weight of the evidence on questions of fact." Clark v. Aiken Cty. Gov't, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005).

ARGUMENT

Prior to addressing the substance of Appellant's brief, Respondents respectfully bring the Court's attention to several procedural inconsistencies that accompanied the filing and service of Appellant's brief. Specifically, Appellant received two (2) letters from the Court on April 6, 2021, notifying Appellant that her brief and designation of matter contained the following deficiencies requiring correction pursuant to the South Carolina Appellate Court Rules:

1. The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
2. The caption/title does not comply with Rule 267(a), SCACR. Specifically, your caption should read as follows:

Dana L. Dixon, Appellant,

v.

**S.C. Department of Mental Health, Employer, and State Accident Fund,
Carrier, Respondents.**

3. A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
4. The caption/title does not comply with Rule 267(a), SCACR. Specifically, the caption should read as follows:

Dana L. Dixon, Appellant,

v.

**S.C. Department of Mental Health, Employer, and State Accident Fund,
Carrier, Respondents.**

The letters provided Appellant ten (10) days in which to rectify the deficiencies.

Respondents received Appellant's deficient brief on 4/1/21, with no accompanying proof of service. Appellant's brief was undated, however; the designation of matter included bore a date of 3/24/21. In response to the Court's deficiency letter, Appellant filed a second brief, seemingly correcting the above-outlined deficiencies. Respondents received the second brief on 4/15/21. Upon review, Respondents found that the second brief not only failed to rectify the deficiencies outlined in the letter from the Court but was substantially modified and revised from the original copy. Specifically, the following modifications were noted:

1. additions to the table of contents and table of authorities;
2. the "statement of issues on appeal" section has been restructured, revised, and reduced by three (3) pages;
3. the "standard of review" now contains no citations or other legal authority; and
4. the "argument" section has also been restructured and revised.

The deficiencies pointed out by the court were only related to the caption and proof of services for Appellant's brief and corresponding designation of matter. Appellant's second brief fails to correct the deficiencies for which she was provided notice by the 4/6/21 letter from the Court, rather providing numerous corrections and additions to the substance of the brief itself. Appellant failed to utilize the appropriate caption on either title page and provides inconsistent dates of service of on the proofs of service¹. Respondents received a copy of Appellant's second brief on 4/15/21 via U.S. Mail.

While Respondents have time to provide response to Appellant's second brief, Respondents respectfully object to the acceptance of Appellant's second brief insofar as it was substantially augmented and revised from the original submission received by Respondents on

¹ Appellant's second brief denotes a date of service of 3/28/21 while its designation of matter denotes a 3/24/21 date of service. In either event, Respondents received service of same on 4/15/21.

4/1/21. Appellant was provided time to correct the specific deficiencies outlined by the Court limited to the caption and the proofs of service. Appellant should not, therefore, be permitted to rely on revisions modifications that differ from the initial brief received by Respondents on 4/1/21.

Further, from a procedural standpoint, Respondents respectfully request the Court dismiss Appellant's appeal entirely pursuant to SCACR 268 for the continued failure to comply with the SCACR.

Notwithstanding the above, Respondents respectfully request the Court **AFFIRM** the Full Panel's decision and provide response to Appellant's initial brief as follows:

I. APPELLANT FAILS TO PROFFER ANY LEGAL AUTHORITY IN SUPPORT OF HER APPEAL AS REQUIRED UNDER SCACR 208(E).

In her brief, Appellant fails to present any judiciable issues or legal arguments but rather submits several questions that appear to contain her disagreement with the contents of her medical records and overall handling of the claim. SCACR 208(b)(E), states in pertinent part:

(E) Argument. The brief shall be divided into as many parts as there are issues to be argued.

At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority.

SCACR 208(b)(E) (emphasis added). Throughout Appellant's argument section of her brief, there is but one (1) apparent citation to any authority to support her appeal: "...which brings in 42-9-35." (App. Br. pg. 37)². Though unclear, Respondents assume Appellant is referring to S.C. Code Ann § 42-9-35³. However, after its mention, Appellant fails to provide any discussion for which

² Unless otherwise noted, all citations in Respondents' Argument section denoting Appellant's Brief are aligned with the numbering from her initial brief received by Respondents on 4/1/21.

³ In Appellant's second brief, which Respondents contend should not be considered by the Court, Appellant lists additional statutory citations. However, Respondents' argument is unchanged and relevant to both as Appellant fails to provide discussion or any legal argument for any statute provided in either brief.

the above-cited statute may be applicable. In fact, the only other notation of any statutory or case law is in Appellant's table of authorities and standard of review sections. (App. Br. pg. 3-4; 22). Again, other than mere recitation, Appellant does not provide any discussion or otherwise create a nexus between the law and her claims for which she has filed her appeal.

Rather, Appellant spends some 40 pages recounting a litany of statements and citations to the Full Panel hearing transcript, inserting several questions and demands that are not within the realm of judicial review or reconciliation. Appellant's "questions" seeks information contained squarely within the four corners of the record and require no legal or otherwise necessary response from Respondents or determination by the Court.

II. THE FULL PANEL CORRECTLY AFFIRMED THE SINGLE COMMISSIONER'S CONCLUSION OF LAW THAT APPELLANT FAILED TO ESTABLISH A COMPENSABLE INJURY TO HER RIGHT SHOULDER AND PROPERLY DENIED HER REQUEST FOR MEDICAL TREATMENT FOR HER RIGHT SHOULDER.

Appellant contends that her primary injury sustained on January 31, 2017 was limited to her right shoulder. However, her initial report of injury specifically states that she injured her forearm while assisting a patient. This is further supported by the records from her treatment with Dr. Hynes and Dr. Motycka of Carolina Occupation Healthcare. In those records, both Drs. Hynes and Motycka reference specific complaints about Appellant's wrist and forearm including limitations with respect to Appellant's movement of her wrist and fingers.

Further, while Appellant contends that she complained of her right shoulder pain at every visit with the above providers, Dr. Hynes notes that the first time Appellant ever complained of right shoulder pain to him was on February 24, 2017, which was Appellant's **fourth** encounter with the providers at Carolina Occupational Healthcare. Prior to February 24, 2017, Appellant's medical records reflect complaints confined to Appellant's arm **below** her elbow, and all treatment

rendered was to address such complaints.⁴ It is important to note that Dr. Hynes admitted in his office visit notes that Appellant was a difficult historian and that he had a challenging time obtaining a consistent medical history, creating obstacles in his examination and care.

As noted by Dr. Hynes and confirmed by Appellant in her testimony during the hearing before the single commissioner, Appellant had a pre-existing injury to her right shoulder for which she underwent rotator cuff surgery. Pursuant to S.C. Code Ann. §42-9- 35, where there is evidence of a preexisting injury or condition:

(A) The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

S.C. Code Ann. §42-9- 35 (A). As the single commissioner found and the Full Panel affirmed⁵, Appellant failed to meet this burden, and did not establish a compensable injury to her right shoulder for which Respondents would otherwise be entitled to provide medical treatment to Appellant's right shoulder. Appellant presented no medical record⁶ or opinion that the January 31,

⁴ Regarding the allegation in Appellant's brief that the treating physician "popped a pill" when he came in to evaluate her, there is absolutely no evidence in the record to support such a derogatory allegation. It is unsubstantiated and wholly inconsistent with the information contained within the medical records submitted as Defendant's APA submissions. Further, there is nothing within the record before the Commission to suggest that the treating physicians acted inappropriately in their care of Appellant, or that any portion of their medical records is fabricated. Moreover, this allegation was made for the first time more than two (2) years after Appellant's injury, and there is no evidence to suggest that Appellant ever raised or otherwise put Respondents on notice of such concerns.

⁵ See Gadson v. Mikasa Corp., 628 S.E.2d 262, 266 (S.C. Ct. App. 2006) ("Pursuant to the APA, this Court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law.")

⁶ Appellant references an MRI dated 2/1/2019, ordered by, Dr. Jerry Saunders of C.W. Williams Community Health, for the proposition that she sustained a rotator cuff injury as a result of the January 31, 2017 accident. However, this MRI was taken more than two (2) years after her date of injury, after Appellant testified, she worked a number of other jobs in the interim. Additionally, the MRI report was not submitted into evidence and is therefore, not part of the record.

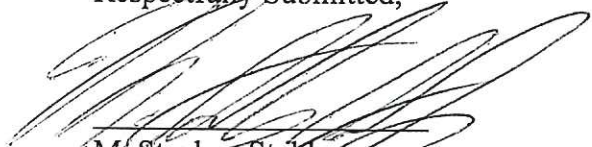
2017 workplace accident aggravated her preexisting right shoulder injury. Section 42-9-35 places the burden on the Claimant to “establish by a preponderance of the evidence” that a subsequent work-related injury aggravated a preexisting condition. Frampton v. SCDNR, 5726 (S.C. Ct. App. 2020). Therefore, Appellant has failed to satisfy her burden and the Full Panel decision should be affirmed.

CONCLUSION

For all the aforementioned grounds and reasons, the Court must **AFFIRM** the Full Commission Appellate Panel’s Order denying compensability and request for additional medical treatment under the Act.

In the alternative, Respondents respectfully request the Court dismiss this Appeal in its entirety for the foregoing procedural deficiencies and Appellant’s continued noncompliance with the SCACR.

Respectfully Submitted,



M. Stephen Stublely
Speed, Seta, Martin, Trivett & Stublely, LLC
Post Office Box 11669
Columbia, SC 29211
803-748-2259
sstublely@speed-seta.com
Attorney for Respondents

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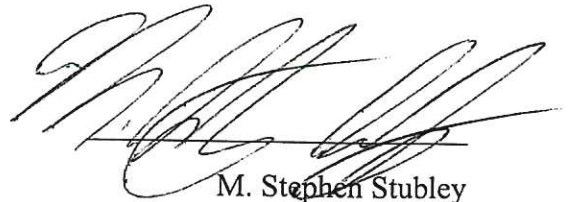
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CERTIFICATE OF COUNSEL

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



M. Stephen Stubley
Speed, Seta, Martin, Trivett & Stubley, LLC
Post Office Box 11669
Columbia, SC 29211
803-748-2259
ssubley@speed-seta.com
Attorney for Respondents

Columbia, South Carolina
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