

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2010-CP-40-4071

Carmen Morgan Appellant

v.

South Carolina Bank and Trust,
Employer and Cincinnati Insurance
Company, Carrier. Respondent,

APPELLANT'S FINAL REPLY BRIEF

RECEIVED

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SC Court of Appeals

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REPLY TO ARGUMENTS

AS TO ARGUMENTS A, B, & C

Respondent asserts in its Brief that Claimant's Motion for Reconsideration addressed the merits of the claim and therefore was not a proper Motion under Regulation 67-215. The Motion cannot be determined to be a proper Motion unless found so by the Workers' Compensation Commission/Hearing Commissioner. In the present case, the Hearing Commissioner denied and dismissed Appellant's Motion for Reconsideration on September 15, 2009. Appellant then filed a Form 30 Request for Commission on October 1, 2009 which was within the 14 days of the date that the Hearing Commissioner's Order of denial and dismissal was received. Therefore, since this Order was timely appealed, Appellant met the procedural requirements of Reg. 67-601.

Further the Respondent assails Appellant's assertion that a liberal construction of the Workers' Compensation Act is required by depicting various factual scenarios in which this axiom was applied. Regardless of the specifics of the facts of the individual cases, the overriding principle remains that the Workers' Compensation Act is remedial legislation which is entitled to a liberal construction in order to accomplish the ends and purposes for which the Act was enacted and such principle applies regardless of the specific factual situations.

Flemon v. Dickert-Keowee, Inc., 259 S.C. 99, S.E.2d 751 (1972);
Baldwin v. Pepsi Cola Bottling Co., 234 S.C. 320, 108 S.E.2d 409
(1959); Cokeley v. Robert E. Lee, Inc., 197 S.C. 157, 14 S.E.2d
889 (1941); Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712
(1940).

ARGUMENT II

The Respondent in its Brief sketchily addresses the arguments propounded in Section II of Appellant's Initial Brief and completely ignores the undisputed assertion that issues related to Appellant's hospitalization at Baptist Hospital from February 28, 2006 until May 16, 2006 were not raised by the Respondent in their Form 51 or Form 58 and thus it was procedurally improper and a denial of due process for the Hearing Commissioner to rule on these issues without prior notice to the Appellant.

ARGUMENT III

Respondent clearly elucidates ambiguities which exist in regard to the statutory definition of last payment of compensation and Appellant would continue to assert that such ambiguities, if they exist, would fall within the province of the legislature to change or solidify the definition of compensation.

Until the legislature acts, a liberal construction should be applied as stated above.

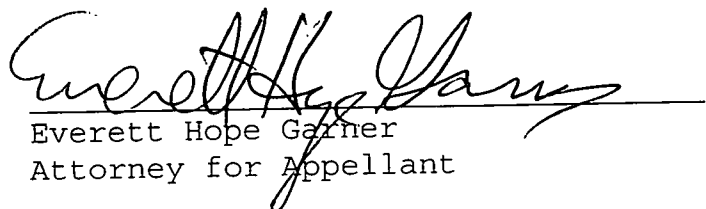
ARGUMENT IV

Respondent's Brief addresses the overwhelming evidence presented by Dr. Boyd which was synopsisized very succinctly in her letter of May 16, 2006 (R.p. 53). Claimant's APA #2 makes reference to a "clarification ostensibly expressed by Dr. Boyd in her deposition (R.p. 48 lines 5-18) when this isolated excerpt does not constitute a contradiction of the opinions stated in her May 16, 2006 letter. Again, a liberal application of the Act dictates findings in accordance with the substantial evidence which is fulfilled by Dr. Boyd's opinion and supporting evidence.

CONCLUSION

Appellant respectfully requests that this Court reverse the judgment of the Circuit Court in full or in part and issue its Order accordingly.

Respectfully Submitted,


Everett Hope Garner
Attorney for Appellant

Columbia, South Carolina
April 2, 2013

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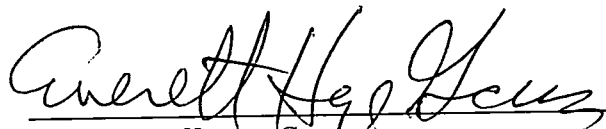
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CERTIFICATE OF COUNSEL

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

April 2, 2013



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