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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.: 2021-000696

Dana L. Dixon, ... Appellant,

v.

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

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

This case arises from a workers' compensation claim in which Appellant suffered admitted injuries to her back, neck, and jaw on December 22, 2016, after being struck by a patient while assisting them into bed. (Single Comm. Hrg. Tr. p. 26, lines 18-20). She received medical treatment for that injury from Palmetto Health Richland emergency room on December 23, 2016. (Defendant's APA p. 65-67). She was released from care the same day and received no additional authorized medical care for this accident. (Defendant's APA p. 67). During March of 2017, Appellant was involved in a motor vehicle accident. (Defendant's APA p.34-53) As a result, Claimant sought treatment at Providence Hospital. There, x-rays were obtained of the Appellant's cervical and thoracic spine as a result of her symptoms. (Defendant's APA p. 34-53).

On September 7, 2017, Appellant's then attorney, Benjamin Cruse, filed a claim on Appellant's behalf via a Form 50, not requesting a hearing, in which Appellant alleged an injury to the back, neck, and jaw. In February 2018, Appellant 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. Appellant, while advised of her right to counsel, elected to proceeded pro se. Appellant subsequently filed a Form 50 February 26, 2019, seeking treatment for her jaw, neck and back. This was past the statutory period for treatment and lapse for an injury and Appellant has provided no evidence which would allow for any of the exceptions to the rule. SC Code § 42-15-60 (2012).

Subsequently, Appellant filed a Form 50 July 8, 2019, requesting a hearing. Following the hearing on October 28, 2019, the parties entered into a Consent Order due to no Form 20 being filed. Appellant again filed a Form 50 requesting a hearing on January 8, 2020. The requested hearing, occurred on June 12, 2020, before the Honorable Commissioner Melody James.

Following the hearing, the Single Commissioner issued an Order dated November 3, 2020, in which she 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 June 12, 2020.

3. Venue is proper set in Richland County, South Carolina.

4. The Appellant's average weekly wage is $449.34, which a resulting compensation rate of $299.57.

5. On December 22, 2016, the Appellant suffered an admitted accident while assisting 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 Appellant stated that the injury she sustained was to her back, neck and jaw.

7. Defendants admitted an injury to the jaw, neck, and back pain and provided medical care and treatment.

8. The Appellant was seen at the Palmetto Health Richland emergency room on December 23, 2016. The notes reflect that the Appellant was struck on the jaw at work the previous day and that she had neck, jaw and back pain. The physician's assessment was muscle spasm and the Appellant was discharged with no recommendations of further care.

9. Appellant received no authorized medical treatment following December 23, 2016.

10. Subsequently Appellant was involved in a motor vehicle accident in March 2017.

11. On March 3, 2017, Appellant presented to Providence Hospital. (Defendants APA p.34, p.53) The notes reflect that the Appellant reported that she had been in a MVA days before her visit. X-rays were obtained of the Appellant's cervical and thoracic spine as a result of her symptoms.

12. No medical evidence was presented to suggest to a reasonable degree of medical certainty that the current request for medical treatment was causally related to the December 22, 2016, injury.

13. Appellant filed a Form 50 (Notice of Claim) on September 7, 2017.

14. A Form 50 (Hearing Request) was filed on February 26, 2019.

15. Appellant currently requests treatment for her back.

16. The Appellant provides a note by a physician into the record (Appellant APA p. 52), but the July 17, 2017, note does not reference the date of the workplace assault or the motor vehicle accident.

17. The July 17, 2017, note from Dr. Saunders (Appellant APA p. 52) includes no indication of reviewing records and makes no mention of prior injuries.

18. The note provided by Dr. Saunders (Appellant APA p. 52) is not stated to a degree of reasonable medical certainty as required by Section §42-15-60.

19. Based on the greater weight of the evidence, I would find that Appellant's request for treatment for the back is denied. The period for which back pain could be claimed has lapsed due to a lack of treatment and no objective medical evidence has been submitted to prove any outstanding issue is causally related to her December 22, 2016, work accident. Therefore, Appellant'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 Appellant 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, Appellant suffered injury to her jaw, neck and back by compensable accident in the course and scope of her employment.

3. Pursuant to S.C. Code Ann. §42-15-60 (A), The employer shall provide medical, surgical, hospital and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgement 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. This standard was reiterated upon in Hartzell v. Palmetto Collision, LLC (S.C. App. 2016) 419 S.C. 87, 796 S.E. 2d 145, which limited the period to 10 weeks and that the commission's decision to extend compensation must be based upon the heightened standard of medical evidence required by statute.

4. While Appellant does provide a note from Dr. Saunders (Appellants APA p. 52) the note does not reach the standard of reasonable medical certainly as required by Section §42-15-60.

5. The undersigned cannot provide an opinion that is the equivalent to a medical opinion. Burnette v. City of Greenville (S.C. App. 2012) 401 S.C.

417, 737 S.E.2d 200. Therefore, the undersigned cannot relate the complaint/ condition to either accident.

6. Pursuant to S.C. Code Ann. §42-15-60 (b)(3), in no case shall an employer be required to provide medical treatment or modalities in any case where there is a lapse in treatment of the employee by an authorized physician in excess of one year.

7. 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.

8. Appellant has allowed her treatment to lapse beyond the statutory period without providing sufficient medical evidence that any ongoing back pain is the result of her December 22, 2016, work accident. As such, her request for treatment for her back in the present claim is denied.

Thereafter, on or around November 19, 2020, Appellant filed a Form 30, ostensibly seeking to appeal the decision of the Single Commissioner. In addition to her Form 30, Appellant filed a document that was construed as a Motion for Additional Evidence regarding a single page document entitled "Employer/Supervisor notification" dated February 3, 2017, which was granted by the Full Commission immediately prior to the Full Panel Hearing.

In an order dated May 26, 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. Subsequently, Appellant filed a notice of appeal with this Court.

SUMMARY OF THE EVIDENCE

At the hearing before the Single Commissioner, the Commission's file and APA submissions were made a part of the record without objection. Appellant was advised of her right to counsel by the undersigned and elected to proceed with the hearing *pro se*. (Single Comm. Tr. p. 4, line 14- p. 5, line 12). Appellant also produced an unnumbered stack of documents which had not been presented prior to the hearing. (Single Comm. Tr. P. 5, lines 9-12).

At the time of the injury in question in this claim, Appellant testified that she was working for Defendant South Carolina Department of Mental Health ("SCDMH"). (Single Comm. Tr. p.

17, lines 21-25; p. 18, lines 5-8) Appellant testified that she started working for SCDMH on December 2, 2016. (Single Comm. Tr. p. 10, line 18). Appellant testified that she has been doing CNA-type work off-and-on, starting in October 1988. (Single Comm. Tr. p. 24, lines 24-25). She maintains both her CNA and CDL licenses. (Single Comm. Tr. p. 29, lines 11-12).

Prior to the December 22, 2016, injury, Appellant testified that she had "never, since 1988, I've never had a workers' comp claim" (Single Comm. Tr. p. 37, lines 8-10). However, that claim is refuted by the Appellants ISO report, which shows several prior workers compensation claims. (Defendant's APA p.77-78 and 80-87). Appellant testified as to the facts of her work-related accident. This accident occurred on December 22, 2016, while Appellant was acting within the course and scope of her employment with SCDMH. Appellant testified that she was injured by a resident she had never sat with before during a one-on-one. (Single Comm. Tr. p. 10, lines 23-24). She stated that a male resident attacked her. (Single Comm. Tr. p. 26, lines 18-20).

Appellant testified that she went to Richland Memorial Hospital on 12/23/16 for medical treatment and was diagnosed with a muscle spasm and received no forms while there, save for a medical excuse from Palmetto Richland (Single Comm. Tr. p. 2, lines 5-11; p. 15, lines 10-12; p. 27, lines 18-19). Appellant had no follow-up medical visits for this injury[1]. (Defendants' APA p. 65-67).

Appellant testified that she was in a car accident during March of 2017, though she provided several varying recollections of the accident (Single Comm. Tr. p. 19, lines 9-11; Tr. p. 23, lines 21-25; Tr. p. 30, lines 17-20 and Tr. p. 40, lines 3-5). She testified that went to the hospital on March 7, 2017 (Single Comm. Tr. p. 29, lines 16-17) She complained of pain in her neck and

[1] Appellant made several allegations that the records from 12/23/2016 provided that she needed additional medical treatment. However, there is no evidence in the record to support this allegation. Contrarily, the records from Providence Hospital related to her March 2017 MVA, more than three (3) months after her work injury, note that Appellant "will be discharged home to follow up with PCP." (Defendants' APA p. 55).

lower back. (Defendants' APA p. 34) X-rays of the back showed mild endplate degenerative changes. (Defendants' APA p. 37) The Appellant filed an insurance claim for bodily injury resulting from the accident. (Defendants' APA p. 72) There are no follow-up medical records indicating treatment for the back injury following the x-ray. In fact, Appellant presented no evidence or witnesses to support a causal relationship between the December 22, 2016, injury and any current back issues that may currently exist.

Prior to the start of the Full Panel Hearing, Appellant was again advised of her right to counsel by the undersigned and elected to proceed with the hearing pro se[2]. (Full Panel Tr. p. 3, lines 16-25). Regarding the submission of evidence[3], the Panel ruled on Appellant's Motion to Add a single page document to the record related to her light-duty status. (Full Panel Tr. p. 4, lines 1-12). Respondents withdrew their previously stated objection, and the document was admitted to the record. (Full Panel Tr. p. 4, lines 13-24). Appellant spent the majority of her argument narrating a version of the facts of the claim, failing to point to any evidence in the record to support a causal relationship between the December 22, 2016, injury and any current back issues that may currently exist. When asked by the Panel in what way the facts and statements she made hurt her claim, Appellant was unable to point to any evidence in the record, other than to state that she believed the transcript produced from the hearing before the single Commission was inaccurate. (Full Panel

[2] It is important to note that Appellant has been repeatedly, at every step in the litigation process, been advised of her right to counsel, and continues to elect *pro se* representation. As such, Appellant's failure to understand the procedures and law that encompasses the litigation process does not sway the outcome of the decision on the merits of Appellant's claim. (Tr. p. 12, lines 12-19). While Respondents understand that Appellant has a right to defend her claim without the assistance of an attorney, her recurring unfamiliarity of the law is not an excuse. Appellant is, and has been, aware of the potential issues that can arise in making such a decision to proceed as a pro se Appellant. (hrg. trans. pg. 4-5). Despite this awareness, Appellant continues to make filings with the Commission and now this Court void of plausible legal or otherwise judiciable claims or articulate arguments.

[3] Save the single document admitted without objection by the Commission at the Full Panel hearing, the record before the Full Panel is limited to the Single Commissioner's file and APA submissions determined at the hearing before the Single Commissioner.

Tr. p.7-8, lines 20-25; 1-19). Therefore, Appellant has failed to satisfy the burden of proof in the case.

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[4]

[4] As Respondents have noted through the litigious life of this claim, Appellant continues to provide baseless accusations, both implied and bluntly stated, that call Respondents' character into question. Respondents adamantly object to any statement found with Appellant's brief that Respondents have been untruthful or unprofessional throughout the life of this claim. These unfounded accusations to do not have a place in the determination of the merits of Appellant's appeal and should not be considered in any manner that would otherwise impair Respondents' right to defend themselves. As you will find in your review of the record, Appellant's claims that she has been deceived by Respondents over and over again are simply not supported by any evidence.

As an initial matter, it appears that Appellant has presented more than sixty-five (65) questions in the "state of issues on appeal" section of her initial 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 found 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).

By and large, Appellant's brief recounts statements from her own medical records and citations to the Full Panel hearing transcript, inserting several questions and demands that are not within the realm of judicial review or reconcilement. 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.

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.

I. THE FULL PANEL CORRECTLY AFFIRMED THE SINGLE COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PROPERLY DENIED HER REQUEST FOR MEDICAL TREATMENT FOR HER BACK.

Appellant's brief outlines several pages of accusations that the Respondents did not provide medical treatment regarding her work accident. These accusations are false, meritless, and wholly untrue as clearly demonstrated by the evidence in the record. Appellant was treated on December

23, 2016, for injuries sustained during her work accident. (Respondents' APA p. 65-67). Upon discharge, Appellant was released with no further medical care or future treatment. (Respondents' APA p. 67). This ER visit and treatment provided therein was authorized by Respondents' and paid for by same. Appellant continues to argue that Respondents' allegedly failed to provide her with an "authorization number" for the care she received and was paid for by Respondents. However, a Form 18 was filed with the Commission showing that the medical evaluation on December 23, 2016, was paid for in the amount of $618.90. (Single Comm. Trans. pg.32, ln 18-25). Had the medical treatment not been authorized, Respondents would not have paid for same. Again, the injury to Appellant's back for which she is alleging she received no authorized treatment is an ADMITTED body part, per the Respondents' Pre-Hearing Brief. (Defs' PHB pg. 2). As such, and as stated ad nauseum above and by Respondents throughout the life of this claim, Appellant's visit to the ER on December 23, 2016, following the workplace accident the day prior was authorized and paid for by Respondents.

Moreover, Appellant's request for additional treatment is precisely governed by S.C. Code 42-15-60(A), which states in pertinent part: "In no case shall an employer be required to provide medical treatment or modalities in any case where there is a lapse in treatment of the employee by an authorized physician in excess of one year." Appellant has failed to produce any medical evidence to suggest to a reasonable degree of medical certainty that the current request for medical treatment was causally related to the December 22, 2016, injury. The South Carolina Supreme Court confirmed the requirements as outlined in S.C. Code Ann. 42-15-60 in Hartzell v. Palmetto Collision, LLC (S.C. App. 2016) 419 S.C. 87, 796 S.E. 2d 145, noting specifically that expert medical evidence is required in order to support an award of additional medical treatment. See Hartzell, 419 S.C. at 97, 796 S.E. 2d at 150. While Appellant may believe or otherwise think she

should be entitled to additional treatment, her personal feelings as to whether her claim for medical care is past the statutory period is irrelevant.

Further, on March 3, 2017, Appellant was treated at Providence Hospital. (Defendants APA p.34, p.53) The notes obtained via subpoena reflect that Appellant had been in a car accident days before her visit. X-rays were obtained of the Appellant's cervical and thoracic spine as a result of her symptoms. By her own admission, Appellant filed an insurance claim as a result. Therefore, Appellant should be estopped from now coming back and alleging that Respondents are somehow responsible for or that Appellant is entitled to additional medical treatment.

Therefore, additional medical treatment was not authorized, and should not now be required to be provided by Respondents.

II. ADDITIONAL SUSTAINING GROUNDS SUPPORT THE PANEL'S DENIAL OF APPELLANT'S APPEAL.

Throughout her brief, Appellant alleges several evidentiary issues that were taken up at both the Single Commissioner Hearing and the hearing before the Full Panel. Respondents respectfully direct the Court's attention to the "statement of issues on appeal" of this brief, *supra*, regarding the appropriateness of the Commission's decision of factual determinations. However, in an effort to more fully respond to Appellant's allegations, Appellant had the opportunity at all times prior and during the Single Commissioner Hearing to submit evidence as to her position for the Commission's review and consideration. Appellant's failure to timely submit all documents in her possession she considers relevant to the claim is not Respondents' fault nor should Respondent be penalized by allowing introduction of whatever evidence Appellant now believes may be relevant. Pursuant to S.C. Workers' Compensation Reg. 6-612(G), both parties were provided the opportunity to review and make objections regarding the APA submissions contained within the

record at the Hearing before the Single Commissioner. Appellant made no such objection. (Single Comm. hrg. trans. 5, ln. 21-25). It is not Respondents' burden to police Appellant's APA submissions and the completion thereof.

Moreover, it appears that Appellant is attempting to bring several allegations as to actions or alleged inactions as it relates to her 2017 claim currently before the Court (Appellate Case no: 2021-000121) as part of this appeal. Inasmuch, Respondents object as this appeal is limited to review of Appellant's 2016 claim. Further, Appellant appears to argue that medical records obtained through properly served subpoenas for her 2017 claim cannot be submitted in the case at bar. There are no legal grounds to prohibit Respondents from submitting any properly obtained medical records they feel are relevant to the defense of a claim. Whether the records include information for prior and/or subsequent injuries is irrelevant. Appellant was properly served with subpoenas pursuant to R 67-214 and the Respondents' APA submissions pursuant to 67-211 (c) prior to the 6/12/20 Hearing. Therefore, Appellant's argument as to the submission or review of the subpoenaed medical documents by both the Single Commissioner and Full Panel is without merit.

CONCLUSION

Appellant's continued filing of frivolous motions and appeals continue to interfere with the spirit of judicial economy and require the Respondents to continually exert unnecessary time and expense in providing responses to Appellant's baseless claims. Therefore, along with the aforementioned grounds and reasons, the Court must **AFFIRM** the Full Commission Appellate Panel's Order denying Appellant's request for additional medical treatment under the Act.

Respectfully Submitted,

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v.

S.C. Department of Mental Health,
Employer and State Accident Fund,
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PROOF OF SERVICE

I certify that I have served the Respondents' Initial Brief by depositing a copy of it in the United States Mail, postage prepaid, **on August 27, 2021,** addressed to Appellant, Dana L. Dixon, 181 Stabler Farm Road, St. Matthews, SC 29135.

August 27, 2021

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August 27, 2021

VIA EMAIL: CTAPPFILINGS@SCCOURTS.ORG
The Honorable Jenny Abbott Kitchings
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RE: ***Dana Dixon v. SC Department of Mental Health***
WCC No.: 1623303
Appellate Case No.: 2021-000696
Claim No.: 2016-4177
DOA: 12/22/2016
Our File No.: 1200-0178

Dear Ms. Kitchings:

Please find enclosed our Respondents' Initial Brief and Designation of Matter in the above-referenced case.

By copy of this letter to the Pro se Appellant, Dana Dixon, I am serving her with a copy of the Brief and Designation of Matter.

Sincerely,

M. Stephen Stubley
MSS/bej
Enclosures
cc: Dana Dixon (via certified and regular mail)
Shannon Bedell (w/encl)
Erin Farthing

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