

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Gertrude Shiver,)
)
Claimant/Appellant,)

Civil Action No.: 2011-CP-40-03561

v.)

ORDER

Palmetto Health Richland,)
)
Employer,)

RICHLAND COUNTY
FILED
2013 MAR 26 AM 9:22
JEANETTE W. McBRIDE
C.C.P. & G.S.

Key Risk Management Services, Inc.,)
)
TPA,)

Palmetto Hospital Trust Services,)
)
Carrier,)

Trident Regional Medical Center,)
)
Employer,)

Zurich American Insurance Company,)
)
Carrier,)

Respondents.)

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APR 26 2013

SC COURT OF APPEALS

This matter came before the Court for a hearing on November 1, 2012 on an appeal filed by Claimant Gertrude Shiver ("Claimant"). Present at the hearing were Michael Chase, Esquire, counsel for Palmetto Health Richland and Key Risk Management Services; Mary Sowell League, Esquire, counsel for Palmetto Hospital Trust Services and Palmetto Health Richland; and Allison Carter, Esquire, counsel for Trident Regional Medical Center and Zurich American Insurance Company (collectively "the Respondents"). Claimant appeared pro se. After considering the law, the South Carolina Workers' Compensation Commission's (WCC) records, and the submissions and arguments of all parties, the decision of the WCC is **AFFIRMED**.

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FACTS

This appeal from the WCC arises out of seven claims made by Claimant, dating from 1995 to 2006, all of which were joined and heard together. The claims involve a number of different employers and workers' compensation insurance carriers. Commissioner David Huffstetler issued a single Order addressing each claim on October 23, 2007. Claimant subsequently sent a letter to Commissioner Huffstetler dated November 5, 2007 asking to submit additional evidence and addressing the merits of the Order. The Commissioner treated the letter as a Motion for Additional Evidence and a Form 30 appeal to the Order. The Full Commission denied Claimant's Motion to Include Additional Evidence in an Order dated December 6, 2007, but did not address Claimant's appeal on the merits. Claimant subsequently filed a Petition for Appeal to Circuit Court. On July 9, 2010, Claimant's appeal was dismissed as interlocutory and the matter was remanded to the Full Commission for an appeal on the merits of the October 23, 2007 Order. On November 2, 2010, Claimant made a second motion to include additional documents and the Full Commission denied this motion. The Full Commission considered the appeal without oral argument on February 24, 2011 and affirmed Commissioner Huffstetler's Order in its entirety on May 3, 2011. On May 28, 2011, Claimant sent a letter to the WCC indicating her intent to appeal the Full Commission's decision to the Circuit Court. On June 1, 2011, Claimant filed her appeal in this Court.

STANDARD OF REVIEW

In workers' compensation cases, the South Carolina Workers' Compensation Commission is the ultimate finder of fact. *See Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000). A Circuit Court's review of the Commission's findings of fact is limited to determine whether the findings are clearly supported by substantial evidence in the record. *See Johnson v. Rent-A-Center, Inc.*, 398 S.C. 595, 730 S.E.2d 857 (2012). "When the evidence is conflicting over a factual issue, the findings of the [Commission] are conclusive." *McCuen v. BMW Manufacturing Corp.*, 383 S.C. 19, 24, 677 S.E.2d 28, 31 (Ct. App. 2009). A Circuit Court is prohibited from overturning findings of fact of the Commission "unless there is no reasonable probability the facts could be as related by a witness upon whose testimony the finding was based." *Etheredge v. Monsanto Co.*, 349 S.C. 451, 456, 562 S.E.2d 679, 681 (Ct. App. 2002).

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DISCUSSION

Claimant makes several arguments about her individual workers' compensation claims and also argues that the Commission erred in denying her Motion to Submit Additional Evidence. This Court finds that the Commission properly denied Claimant's Motion and reviewed the merits of the appeal without oral argument. While either party can make a motion to admit additional evidence, the admission or exclusion of evidence is within the sound discretion of the Commission. See S.C. Code of Regulations R. 67-707 (Supp. 2010); *Wilkinson v. Palmetto State Transp.*, 371 S.C. 365, 638 S.E.2d 109 (Ct. App. 2006). Pursuant to Regulation 67-707(C), a party that files a motion to admit additional evidence must establish that the new evidence is of the same nature and character for granting a new trial. The evidence sought to be introduced cannot be of a cumulative or impeaching character and the moving party must demonstrate that the evidence "would likely have produced a different result had the evidence been procurable at the first hearing." S.C. Code Reg. 67-707(C)(1).

Claimant has not met the requirements of Regulation 67-707 for the admission of additional evidence. Claimant's November 5, 2007 letter, in which she requests to submit additional evidence, acknowledges that she has included "attachments and addendums that are already in my files." The attachments and addendums discuss each claim in depth, but do not include any new evidence. Furthermore, Claimant had knowledge of the evidence prior to the hearing, and has failed to demonstrate or argue that the admission of the evidence would have resulted in a different outcome. Claimant submitted the evidence at the hearing before the Commissioner on October 23, 2007. Although the evidence was untimely, Respondents consented to the introduction of the evidence. Therefore, the evidence is already a part of the record and is cumulative.

In addition, Claimant argues that the Commission erred in ruling on the merits of her claims without oral argument. To request oral argument, a party must indicate this request on their Form 30. See S.C. Code Reg. 67-701. "If the space provided on the Form 30 requesting oral argument is not marked, oral argument is waived." *Id.* Claimant did not file a Form 30 requesting oral argument. Rather, she sent a letter addressing the merits of the Order. Under the circumstances, there is no requirement that the Commission hear oral arguments. Before the hearing, which was scheduled for February 24, 2011, Claimant wrote the Commission asking for

the hearing to be rescheduled because she had a cold. Instead, the Commission took all proffered testimony and evidence and considered the appeal without oral arguments. Claimant's contentions were well documented and argued in her thirty four page motion with supporting documents and her position regarding each workers' compensation claim was individually described. A review of the Commission on the record was not prejudicial or incomplete. Therefore, there is no error in regards to this matter.

Claimant has also appealed the Commission's findings on each of the seven workers' compensation claims. As discussed herein, there is substantial evidence to support to the Commission's findings as to each claim.

1. WCC No. 9503744 (DOA 1/23/1995)

This claim arose out of an alleged injury on January 23, 1995 when Claimant slipped and fell at work. Claimant received treatment from Dr. James McCoy of Lowcounty Orthopaedics, P.A. Dr. McCoy noted that Claimant's subjective complaints concerning her right shoulder and right ankle far outweighed the objective findings and there was nothing to lead him to believe that Claimant had any permanent impairment. On August 24, 1995, Claimant entered into a Consent Order in which she withdrew with prejudice any claims other than to her right shoulder and right foot. She further agreed that she was only entitled to temporary total disability from January 23, 1995 through February 12, 1995, when she returned to work. Permanent impairment to the right foot and right shoulder was not discussed in the Consent Order as it was determined to be a premature issue at the time.

On November 22, 1999, Claimant filed a Form 50 alleging that she sustained compensable injuries in the January 23, 1995 accident including injuries to both feet, her right shoulder, right arm, right chest area, both knees, right breast, sternum area, right elbow, both ankles, both wrists, pelvic area, and right scapula and clavicle. On April 12, 2000, prior to the scheduled hearing, Claimant withdrew her hearing request. Seven years later, on July 21, 2007, Claimant filed a second Form 50 alleging injuries to her "left side, left wrist, knees, feet, [and ankles]." Trident Regional Medical Center and Zurich American Insurance Company filed a Form 51 denying any and all benefits. Commissioner Huffstetler consolidated this claim with Claimant's six other pending workers' compensation claims.

Claimant argues that she should not be bound by the Consent Order because her former attorney forced her to sign it and she suffered from a mental deficiency or sickness at the time

she entered the agreement. Claimant further alleges that the Commissioner forced her to withdraw her hearing request prior to her April 2000 hearing.

In the October 23, 2007 Order, the Commissioner Huffstetler rejected Claimant's allegations that her attorney forced her to sign the Consent Order, she lacked the capacity to enter into the agreement, and the hearing Commissioner forced her to withdraw the hearing request. The Commissioner found that Claimant's claims were limited to the right foot and right shoulder and that no further benefits were due based on these injuries.

Claimant failed to present any evidence that she sustained permanent partial disability or that she was entitled to any additional temporary total disability benefits or medical benefits. Claimant admitted that she received all necessary medical treatment in regards to the injuries sustained in the 1995 accident. Trident Regional Medical Center submitted medical records for Claimant's treatment in subsequent matters from 1995 through 2003. In none of these records did Claimant ever complain of problems with her right shoulder or right ankle.

Based on the evidence presented, the decision of the Commission is affirmed.

2. WCC No. 0126962 (DOA 1/15/01):

On January 15, 2001, Claimant sustained an injury to her left Achilles tendon when a metal cart struck the back of her left heel while she was exiting an elevator at Palmetto Health Richland Hospital. Palmetto Health Richland and Palmetto Hospital Trust Services admitted the claim and provided all necessary medical treatment. Claimant filed a Form 50 requesting permanent partial disability.

There is substantial evidence to support Commissioner Huffstetler's finding that Claimant is not entitled to permanent partial disability. Following the January 15, 2001 accident, Claimant treated with Dr. Martin Durkin, a neurologist at Healthworks, who conducted a bilateral Electromyography (EMG), bilateral nerve conduction studies (NCS), and x-rays of the left lower extremity, each was returned with normal results. Dr. Durkin released Claimant on August 2, 2002, stating: "I really do not have anything more to offer [her]. I do not detect any definite permanent impairment." Claimant also saw two doctors, not authorized by the carrier, who prescribed an ankle brace and orthopedic shoes, but did not assign an impairment rating.

Dr. Angus McBryde of University Specialty Clinics provided a second opinion on September 4, 2003. Dr. McBryde recommended an MRI in order to assess any injury to Claimant's Achilles tendon. After reading the MRI on November 10, 2003, Dr. McBryde noted

that "it is clear that this is not a surgical situation, that this is not a posttraumatic problem, and that there is no further diagnostic or procedural study or treatment that needs to be done. My previous notes related to her final diagnosis and lack of permanent impairment stand." Claimant also saw another physician, Dr. Belding at Midlands Orthopaedics. He agreed with the prior opinions finding no permanent physical impairment and stated that "no other treatment is needed . . . and she can be at full activity."

Accordingly, the sum of the evidence supports the Commissioner's finding that Claimant failed to raise or prove the issue of temporary total disability and failed to establish a permanent impairment as a result of the minor heel contusion on January 15, 2001. The Commissioner's Order on this claim is affirmed.

3. WCC No. 0217755 (DOA 3/23/02)

On March 23, 2002, Claimant sustained a minor injury to her lower back when she leaned over a chair to reach a pen and the chair turned on top of her. Palmetto Health Richland and Palmetto Hospital Trust Services provided temporary total disability benefits from March 23, 2002 through April 8, 2002 and all necessary medical treatment. Claimant filed a Form 50 but failed to request permanent disability or additional medical treatment. Claimant testified at the October 2007 hearing that she continued to experience pain in her lower back and down her right hip and sciatica.

Dr. Timothy Zgleszewski of Charleston Spine and Physical Medicine, PA indicated that Claimant had low back pain from prior motor vehicle accidents in 1997 and 2000 and that "there is no aggravation of that preexisting condition with the most recent injury" On May 9, 2003, Dr. Gregory Jones of Charleston Spine noted that Claimant had reached her "baseline level" for both her back and leg/buttock symptoms, she had reached her maximum medical improvement (MMI), and suffered no impairment as a result of the work injury.

Accordingly, substantial evidence supports the Commissioner's finding that Claimant failed to establish any permanent impairment as a result of the March 23, 2002 accident or that any additional medical treatment was warranted. The Commissioner's Order on this claim is affirmed.

4. WCC No. 0227098 (DOA 10/24/02)

On October 24, 2002, Claimant sustained a minor injury to the left shoulder when a chart fell on her. Palmetto Health Richland and Palmetto Hospital Trust Services provided all

necessary medical treatment and Claimant did not miss any work as a result of the injury. Claimant filed a Form 50 requesting a hearing, but failed to file for temporary total disability, additional medical treatment, or permanent disability.

The medical evidence shows that when Claimant reported to the emergency room of Palmetto Health Richland on the date of the injury, Dr. Mike Wade noted that she had full range of motion of her neck and extremities without pain, including her left shoulder. Claimant followed up with Dr. Jones at Charleston Spine. Dr. Jones found the Claimant had reached MMI on July 1, 2003 with no permanent impairment or restrictions. Dr. Jones reported: "I can assess no additional impairment for this injury, as previous impairments have been assessed for both myofascial and cervical facet-generated pain, which was present in this patient to a great extent even prior to the 10/24/02 injury."

Accordingly, there is substantial evidence to support the Commissioner's finding that Claimant failed to establish any permanent impairment as a result of the left shoulder injury on October 24, 2002 and the Commissioner's Order is affirmed.

5. WCC No. 0322274 (DOA 1/20/03)

Claimant slipped and fell on January 20, 2003, which resulted in alleged injuries to her neck, back, side, left leg, both wrists, both feet, vaginal and perineum areas, and "all body." Claimant filed a Form 50 but failed to request temporary total benefits, additional medical treatment, or permanent disability. Claimant seeks payment for past medical treatment by her own physician, who was not authorized by her Employer.

At the October 2007 hearing, Claimant testified that she was told by a nurse practitioner at Healthworks to seek treatment from her own doctor. However, the note from Healthworks indicates that Claimant refused to be examined by Healthworks and requested instead that someone "call in" narcotics for her.

Claimant received treatment from Dr. Jeffrey Hook in the months following the January 2003 accident. Claimant reported the January 20, 2003 fall to Dr. Hook during a visit on February 12, 2003. Claimant complained of left-sided rib and abdominal discomfort and also an exacerbation of her neck and back pain. Dr. Hook's records indicate that Claimant was actually diagnosed with a urinary tract infection in the weeks following the alleged injury, explaining the Claimant's abdominal and perineum discomfort. At a visit on August 14, 2003, Jean Massey, ANP, Ph.D., noted that Claimant tripped over a chair at a hotel on August 13, 2003. Dr. Hook

noted that Claimant relayed to him during a visit on September 3, 2003 that she tripped over a chair at a hotel in August 2003. Claimant later denied this incident. Dr. Hook's notes indicate that Claimant told him that she "slipped on carpet at a conference and landed quite violently on her buttocks." Dr. Hook reported that since slipping on the carpet, she has had a "moderate amount of low back pain" and had "recently begun to feel a 'pop' in her back" and at times a "radiating pain down in her left leg." Dr. Hook further recites that Claimant has had disc problems in the past, and has had "numerous falls and various traumas" Dr. Hook performed a CT scan of Claimant's pelvic area on February 26, 2003 and the results were normal.

There is substantial evidence to support the Commissioner's findings that Palmetto Health Richland and Palmetto Hospital Trust Services were not responsible for unauthorized medical care, as medical care had been offered through Healthworks. In addition, Claimant presented no evidence to establish any permanent injury related to this claim. The Commissioner's Order as to this claim is affirmed.

6. WCC No. 0321756 (DOA 10/23/2003)

Claimant filed a Form 50 alleging injuries to her back, left side, and knees after tripping over a phone cord at work on October 23, 2003. Claimant reported to the emergency room on that date and sought treatment from unauthorized providers. Claimant's Form 50 did not request medical benefits, temporary disability, or partial disability. The Commissioner held that Claimant did not meet her burden of proof with regard to reimbursement of medical expenses. Substantial evidence supports this finding. First, Claimant did not request treatment from her employer or follow her employer's guidelines for obtaining treatment. Second, Claimant failed to prove that reimbursement was needed for the unauthorized medical treatment because she did not submit any bills or invoices documenting her claim of medical treatment. Claimant's only request for benefits was reimbursement for the cost of treatment which was unauthorized.

Further, substantial evidence supports the Commissioner's finding that there is no medical evidence of a causal relationship between Claimant's complaints of rib pain and the incident on October 23, 2003. Prior to the October 23 incident Claimant sought treatment from Dr. Hook for previous injury to these same body parts in other incidents. Claimant saw Nurse Massey at Dr. Hook's office on August 14, 2003. She complained about injuries to her buttocks, legs, and hands after she tripped over a chair at a conference in August 2003. On September 3,

2003 Dr. Hook reported that since slipping on the carpet, Claimant had worsening lower back pain and had "recently begun to feel a 'pop' in her back" and at times a "radiating pain down in her left leg." On November 25, 2003 Dr. Hook noted that Claimant had fallen over the phone cord at work and had left chest wall pain. Recent x-rays of the ribs were unremarkable. Claimant did not complain of rib pain again until August 16, 2004, although she returned to see Dr. Hook on several occasions. Dr. Hook noted on December 20, 2004 that Claimant's rib pain had worsened, but new x-rays were negative.

Claimant saw Dr. Jones on April 23, 2004 with continued flaring lower back pain. Claimant received epidural steroid injections and lumbar facet/SI joint blocks. Dr. Jones noted that Claimant reached MMI without additional impairment on July 7, 2004. On February 4, 2005, Claimant saw Dr. Thomas E. Brandt complaining of chest wall pain of an unknown origin. The MRIs and x-rays revealed nothing. Claimant was diagnosed with intercostal neuralgia and received Gabitril, Lyrica and nerve blocks for treatment of her chest wall pain.

Claimant has not provided any evidence to show that the rib pain was related to the October 23, 2003 incident. In addition, Claimant's only request for benefits was for reimbursement of the cost of treatment. Thus, the Commissioner's Order as to this claim is affirmed.

7. WCC No. 0616756 (DOA 7/16/2006)

Claimant alleges that she injured her right wrist after using a hole punch at work on July 16, 2006. Claimant did not pursue medical care through her employer, but sought treatment on her own. With regard to this claim, the Commissioner held that Claimant did not meet her burden of proof regarding the allegation of a right wrist injury due to repetitive trauma. Therefore, Claimant was not entitled to benefits. Palmetto Health Richland and its carrier, Key Risk Management Services, deny that benefits are due based on Claimant's lack of impairment.

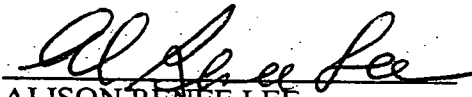
There is substantial evidence to support the Commissioner's finding as to this claim. Claimant testified that when she reported to the Coordinator at Healthworks as instructed, she told the Coordinator that she would not change doctors since she was currently seeing Dr. Noojin due to a fall at her church. On July 21, 2006 Claimant told Dr. Noojin that she fell on May 20, 2006, landing on both knees and both wrists. Dr. Noojin's impression was that Claimant had left wrist tendinitis and bilateral wrist sprains. He noted that Claimant had pain in both wrists after extension and placed her in wrist braces. However, Claimant did not mention the hole punch

injury to Dr. Noojin. At Claimant's request Dr. Noojin added an addendum in March 2010 that referenced the hole punch incident. There is no evidence in the medical records that Claimant's right wrist injury was due to a work-related injury. On October 12, 2006 Dr. Noojin examined Claimant and noted wrist tendinitis with possible mild carpal tunnel syndrome. By November 22, 2006, the bilateral wrist pain had improved and Claimant had a full range of motion in both wrists. Claimant was ultimately released by Dr. Noojin on January 17, 2007 with an impairment rating for each wrist related to the injury she sustained at church.

The evidence supports that Claimant did not meet her burden of proof regarding the allegation of a right wrist injury due to repetitive trauma. Therefore, the Commissioner's Order is affirmed.

ORDER

After careful review of the Commission's records and the submissions of the parties, it is clear that the Commission's findings are supported by substantial evidence. Therefore, the Commission's Order is **AFFIRMED**.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
March 25, 2013

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