

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Appellate Case No: 2012-205569

Loretta Springs,Petitioner,
Clemson University and State Accident Fund.....Respondent.

PETITION FOR A WRIT OF CERTIORARI

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S.C. SUPREME COURT

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1. The Court of Appeals erroneously affirmed the Workers' Compensation Commission decision because it overlooked or misapprehended the standard used by the hearing Commissioner in denying the compensability of the mental injury and its symptoms as "more related" to the childhood abuse 5

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on March 27, 2013.

QUESTIONS PRESENTED

1. **Did the Court of Appeals err in failing to address and follow the precedence and established law found in Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E. 2d 526 (2001).**
2. **Did the he Workers' Compensation Commission misapply South Carolina law when it found the Appellant's mental injury was aggravated by the work injury but still found it not compensable because it was "more related" to childhood abuse.**

STATEMENT OF THE CASE

On March 27, 2013, the Court of Appeals issued an opinion affirming the decision of the Workers' Compensation Commission which affirmed the Decision and Order of the Single Commissioner.

The Appellate Panel cited Bartley v. Allendale Cnty. Sch. Dist., 392 S.C. 300, 306, 709 W.E.2d 619, 622 (2011) for the preposition that the Court of Appeals must affirm the findings of fact made by the Petitioner Panel if they are supported by substantial evidence. The Court of Appeals did not address the arguments made in the appeal by the Petitioner.

The Petitioner maintains she suffered work related injuries from an accident occurring on October 12, 2007 when the she fell from a golf cart hitting her head and injuring her neck, back, and hip. The Petitioner contends she sustained a physical brain injury and injures to her head, her back, her coccyx, her left lower extremity related to nerve damage, her ears, her nose, her

tongue, her olfactory nerve, anxiety, depression, and psychological overlay. These mental injuries are severe and manifest as dissociative identity disorder.

The Respondents admitted injuries to the coccyx, hip, and head. The Respondents maintained the Petitioner suffered a minor closed head injury (concussion) which subsequently healed. The Respondents specifically denied physical brain damage. The Respondents contended the Petitioner's current psychological condition and need for counseling is primarily related to her past post-traumatic stress disorder as a result of childhood abuse resulting in dissociative identity disorder (multiple personalities).

A hearing in this matter was held before Commissioner Avery B. Wilkerson, Jr. The hearing was set on the Form 50. Commissioner Wilkerson took evidence on the claim and issued a Decision and Order filed April 11, 2011. Both sides subsequently and timely filed Requests for Review by the Appellate Panel of the South Carolina Workers' Compensation Commission asserting numerous errors on the part of Commissioner Wilkerson. (Form 30 of Claimant, pp. 32-34), Form 30 of Defendants.)

The issues heard by the Commission on August 15, 2011. (Claimant/Petitioner's Brief, pp. 35-46), Defendants'/Respondents' Brief). The Appellate Panel Decision and Order dated November 16, 2011 affirmed the decision of the Hearing with the following Award:

The Claimant is entitled to 10 weeks of permanent disability to her coccyx and 15 weeks of permanent disability to her back, representing five (5%) percent disability to her back, totaling 25 weeks. Based on the Claimant's compensation rate of \$289.95, this totals \$7,248.75.

The Claimant sustained a minor closed head injury which subsequently healed and has not suffered permanent physical brain damage as contemplated under S.C. Code Ann. §42-9-10.

The Claimant currently suffers from at least five (5) different personalities as a result of her dissociative identity disorder stemming from post-traumatic stress disorder from childhood abuse. The Claimant's memory problems and other psychological conditions are more related to her childhood abuse than as a direct result of her work injury. Accordingly, the Claimant is not entitled to any permanent disability for the closed head injury.

The Claimant is entitled to additional medical care and treatment which would tend to lessen her period of disability. At the current time, this would include the counseling by Dr. Kriegel as his counseling is for both pain and her PTSD.

The Claimant is to be referred to vocational rehabilitation, and the Defendants will be responsible for the cost.

The Claimant timely filed a Notice of Appeal from this Order.

ARGUMENT

This case presents a novel issue in as much as the hearing commissioner seems to have relied on a standard not found in the SC Workers' Compensation Act or in South Carolina case law.

The issue of a new standard of compensability is of considerable importance to the workers' compensation bar. This new standard used by the Commissioner and affirmed without discussion by both the full commission and the S.C. Court of Appeals is whether an aggravation of a pre-existing condition can still be held not compensable if it is "more related" to the pre-existing cause and not the work injury.

Certiorari should be granted because this is a novel question of law. Furthermore, the decision of the Commissioner, as affirmed, directly conflicts with this Court's prior decision in Anderson v. Baptist Medical Ctr., 343 S.C. 487, 541 S.E. 2d 526 (2001).

Current state of the Law

The Act addresses the standard for the compensability of the aggravation of mental injuries in S.C. Code Ann. §42-1-160 (D):

(D) Stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury may not be found compensable unless the aggravation is:

(1) admitted by the employer/carrier;

(2) noted in a medical record of an authorized physician that, in the physician's opinion, the condition is at least in part causally-related or connected to the injury or accident, whether or not the physician refers the employee for treatment of the condition;

(3) found to be causally-related or connected to the accident or injury after evaluation by an authorized psychologist or psychiatrist; or

(4) noted in a medical record or report of the employee's physician as causally-related or connected to the injury or accident.

In the Anderson opinion, this Court definitely explained the compensability of an aggravation of a pre-existing mental injury and held, while reversing the workers compensation Commission, that the psychological treatment was compensable after a work injury aggravated a pre-existing psychological problem even where the Claimant was already treating for the problem before the work injury in question. The Court found that the only substantial evidence was that the work injury made her condition worse.

1. The Court of Appeals erroneously affirmed the Workers' Compensation Commission decision because it overlooked or misapprehended the standard used by the hearing Commissioner in denying the compensability of the mental injury and its symptoms as "more related" to the childhood abuse.

The Petitioner concedes that there is substantial evidence for the findings of fact of the Commission except where they are in complete contradiction with another finding. There is substantial evidence that the PTSD suffered by the Claimant stems from childhood abuse. There is substantial evidence for the finding that the work injury aggravated that condition.

The Commission found that Claimant's PTSD was aggravated by the work injury. That finding was not appealed and is the law of the case (See finding of Fact #5, R. p. 26).

There is substantial evidence that the Claimant's condition has deteriorated to the point that she suffers from five separate personalities. The Commissioner accordingly found that "the evidence establishes that the five (5) different personalities associated with the personality dissociative identity disorder were suppressed and unknown prior to the accident. This disorder was diagnosed during her counseling sessions". (Finding of Fact #7, R. p. 26).

Despite the above concessions, the finding that the aggravation of the Claimant's PTSD is not compensable was an error in the application of South Carolina law and is not a question of the sufficiency of evidence.

A claimant is entitled to benefits for aggravation of a pre-existing condition of depression. Bentley v. Allen Cnty. Sch. Dist., 392 S.C. 300, 310, 709 S.E.2d 619, 624 (2011) *citing* Anderson v. Baptist Med. Cntr., 343 S.C. 487, 541 S.E.2d 526 (2001). Pre-existing depression does not preclude workers' compensation benefits for a mental injury. *See* "Doe v. S.C.

Dept of Disabilities & Special Needs, 377 S.C. 346, 351, 660 S.E.2d 260, 263 (2008). However, the right of a claimant to compensation for aggravation of a pre-existing condition arises only when the claimant has a dormant condition that has produced no disability but becomes disabling because of the aggravating injury. Anderson, 343 S.C. at 493, 541 S.E.2d at 528.

The Anderson decision is directly analogous to Mrs. Springs' claim. Here we certainly have the same situation with all the evidence showing Mrs. Springs' condition is much worse after the work accident. But in this case we also have the Commission finding the aggravation occurred. The question of compensability should have been resolved there except for the legally unsupported balancing test regarding which contributing factor, the childhood abuse or the work injury, the current psychological condition is more related.

The aggravation occurred, as found by the Commission and there is no evidence, no medical or psychological opinion, and no testimony that Mrs. Springs' mental condition ever returned to its pre-work accident state. All of the opinions and testimony state exactly the opposite, that the her mental condition deteriorated because of the aggravation from the work injury, she became increasingly worse until reaching the point of, as noted in the records and in the Commission's Order, of suffering from dissociative identity disorder. Under the South Carolina Workers' Compensation Act as interpreted by the Court in Anderson v. Baptist Medical Cntr, 343 S.C. 487, 541 S.E.2d 526 (2001), the Petitioner's condition should be found compensable and the "more related" standard espoused in the Order of the Commission should be rejected as directly contradicting established law.

CONCLUSION

For the foregoing reasons and the reasons previously raised in the Briefs and petition for Rehearing, this Court should grant this petition for Writ of Certiorari on all issues raised before the Court of Appeals. This case presents more than just errors of law on the essential legal elements of the case.

Respectfully submitted,



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April 25, 2013

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PROOF OF SERVICE

I certify that I have served the Petition for a Writ of Certiorari and Appendix on Clemson University and State Accident Fund by depositing a copy of it in the United States Mail, postage prepaid, on April 25, 2013, addressed to their attorney of record, Reginald M. Gay, McNair Law Firm, P.O. Box 4086, Anderson, SC 29622.

April 25, 2013



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