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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH
CAROLINA WORKERS'
COMPENSATION COMMISSION

Case No. 2021-000517

Shelia Hutchins, Employee,

Appellant,

v.

Security Group, Inc.,
Employer, and Hartford
Accident and Indemnity Co.,
Carrier,

Respondents.

[INITIAL] BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE APPELLATE PANEL OF THE SOUTH CAROLINA WORKERS COMPENSATION COMMISSION CORRECTLY FIND THAT THE SETTLEMENTS IN THIS MATTER SHOULD BE ENFORCED?

STATEMENT OF THE CASE

On April 29, 2020, Appellant and Respondents participated in a mediation of both of her workers' compensation claims. Appellant was represented by counsel at mediation. At the conclusion of the mediation, the parties agreed to resolve both claims via settlement. Also on April 29, 2020, the parties fully executed settlement agreements or "clinchers" in both claims which were signed by Appellant, her then attorney, and counsel for Respondents. (See settlement agreements in WCC File Nos. 1421297 and 1717574). On April 30, 2020, the mediator, Derrick Williams, filed a Form 70 with the South Carolina Workers Compensation Commission (hereinafter "Commission") advising the Commission that both cases had settled. (See Form 70). Respondents issued a filing fee check and mailed the documents to the Commission, along with the filing fee.

The Commission received correspondence from the Appellant on May 7, 2020 (which was dated May 1, 2020) indicating she "changed her mind and don't wish for this settlement to be processed." (Correspondence from Appellant stamped received May 7, 2020). Also on that day, the Commission made the decision to return the settlement documents to Respondents since they received the above-referenced communication from the Appellant. (See documentation from Commission file dated May 7, 2020).

On May 11, 2020, Respondents filed a Notice of Motion and Motion to Compel enforcement of the settlement agreements. (See Notice of Motion and Motion to Compel dated May 11, 2020).

In separate orders dated May 22 and May 28, 2020, Appellant's counsel was relieved in both claims at his request. (Orders dated May 22 & 28, 2020, relieving counsel). On June 5, 2020, Commissioner Melody James issued an order allowing the Appellant 30 days from June 16, 2020 to obtain other counsel. (Order of Commissioner James dated June 5, 2020). On September 8, 2020, more than 90 days after Appellant was allowed additional time to obtain counsel, Commissioner Mike Campbell issued an order granting Respondents' Motion to Compel the settlements. (Order of Commissioner Campbell dated September 8, 2020).

On September 23, 2020, Appellant filed a Form 30 appeal of Commissioner Campbell's order. Oral arguments were held before an appellate panel of the S.C. Workers' Compensation Commission on January 25, 2021. On April 14, 2021, the appellate panel issued a decision and order in which it found, in pertinent part, that pursuant to S.C. Code Ann. § 42-9-390, (1) Commission approval of settlements between represented parties is not required; and (2) the amount of compensation and the time and manner of payment in the previously executed clincher agreements were in accordance with the provisions of the South Carolina Workers' Compensation Act and should be enforced. (Order of Appellate Panel dated April 14, 2021). On May 12, 2021, Appellant filed a Notice of Appeal with this Court.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard for judicial review by decisions of an appellate panel of the South Carolina Workers' Compensation Commission. See Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E. 2d 304, 306 (1981). Specifically, the Appellate Court may reverse or modify a decision of the Commission when the decision (1) is affected by an error of law; (2) is clearly erroneous in view of the reliable, probative,

and substantial evidence; or (3) is arbitrary or capricious or characterized by an abuse of discretion. S.C. Code Ann. § 1-23-380(5); Shealy v. Aiken County, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000).

FACTS

Appellant, a manager of a loan office, originally injured her right knee on November 20, 2014, approximately seven years ago. The claim was admitted, and extensive treatment has been provided. (WCC File No. 1421297). Appellant has been treated for her knee by Dr. Walter Grady, Dr. Michael Hoenig, Dr. Anthony Sanchez, Dr. Thomas Leong, Dr. Stephen Kana, and Dr. Gregory Colbath, among others. She has been placed at maximum medical improvement (MMI) for her knee on several occasions. The claim has been settled twice on consent orders which compensated Appellant for permanent partial disability to her right knee. (See consent orders dated June 16, 2017 and January 17, 2020). On both occasions, Appellant delayed the settlement and attempted to withdraw from the agreements, but eventually signed the paperwork in question after long delays. In accordance with the previous orders, Appellant was paid a total of 25% to the knee on a 10% rating.

Appellant was previously represented by attorney Charlie Hodge in the knee claim who secured a permanent partial disability settlement for her and prevailed in a claim for a change of condition for the worse and the selection of the doctor of her choice, Dr. Thomas Leong. Mr. Hodge eventually withdrew as counsel when Appellant declined to sign the second Consent Order settlement she had agreed to under oath and on the record before Commissioner Avery Wilkerson. (See Order releasing Mr. Hodge as Counsel dated July 26, 2019).

The second claim in dispute involves a claim for sexual harassment apparently culminating around May of 2017, now more than four years ago. (WCC File No. 1717574). Appellant contends

that her supervisor sent her suggestive text messages, arranged to meet her for wine and cheese in the office conference room, and touched her on one occasion. An investigation revealed improper conduct on the part of the supervisor and the claim was accepted and treatment was provided.

After Mr. Hodge petitioned to be relieved, Appellant retained attorney Thomas Phillips with Smith Jordan, P.A. to represent her in both claims.

Both cases were pending for hearing before the S.C. Workers' Compensation Commission, the knee claim on Appellant's request that she be able to see another physician of her choosing (Dr. Leong declined to see her further), and the psychological claim on the issue of additional medical treatment. Given that WCC File No. 1717574 is a mental/mental claim, it is subject to mandatory mediation. 34 S.C. Code Regs. 67-1802 (Supp. 2013).

Due to the multiple pending claims and Ms. Appellant's history of claiming she did not understand the terms of prior settlements, the parties carefully selected Derrick Williams, a well-respected claimant's lawyer and former workers' compensation commissioner, to mediate this case to ensure Appellant would have all of her questions answered and concerns addressed. The mediation was held on April 29, 2020 and Mr. Williams spent nearly eight hours with the parties (including Appellant's common law husband) to reach a carefully crafted and fair resolution to both claims. Settlement documents in both claims were prepared and fully executed by the parties on the day of the mediation (see settlement agreements in WCC File Nos. 1421297 & 1717574). The Form 70 Mediator's report was filed with the Commission on April 30. (See Form 70). A filing fee check was issued and the documents were forwarded to and received by the Commission. (See documentation from Commission file dated May 7, 2020). As indicated above, Appellant apparently

decided on May 1 that she had changed her mind and no longer wanted to proceed with the settlement. (Correspondence from Claimant stamped received May 7, 2020).

ARGUMENT

- I. THE APPELLATE PANEL OF THE S.C. WORKERS' COMPENSATION COMMISSION CORRECTLY FOUND THAT THE SETTLEMENTS IN THIS MATTER SHOULD BE ENFORCED AND CLAIMANT HAS FAILED TO ESTABLISH THAT THE COMMISSION'S DECISION IS BASED ON AN ERROR OF LAW OR AN ABUSE OF DISCRETION.

The South Carolina Workers' Compensation Act encourages parties to come to resolution and settle claims prior to hearing because settlement of claims promotes the efficiency of the process and reduces costs for all parties involved in the system. The statute governing workers' compensation settlements specifically provides, "[n]othing contained in this chapter may be construed so as to prevent settlements made by and between an employee and employer as long as the amount of compensation and time and manner of payment are in accordance with the provisions of this title." S.C. Code Ann. § 42-9-390 (2007). That statute further provides that only when a claimant is unrepresented must the settlement agreement be approved by the Commission. If a claimant is represented, the executed documents are merely to be filed with the Commission's claims department. *Id.*; 34 S.C. Code Ann. Regs. 67-803 (Supp. 2010).

As noted above, the Appellant was represented by competent counsel and all parties and counsel fully executed the settlement documents on the day of the mediation and promptly forwarded the same to the Commission for filing.

While Commission approval is not required or even available where the parties are represented by counsel, it is clear that the terms of the settlements in the case at bar are in accordance with the provisions of Title 42 of the South Carolina Code and provided Appellant with fair consideration for both the indemnity and medical portions of her workers compensation claims.

In WCC # 1421297, Appellant was ultimately assigned a 10% total rating to her knee from Dr. Thomas Leong, the doctor of her choosing. Appellant was previously paid indemnity settlements totaling 25% to her right knee. (See consent orders dated June 16, 2017 & January 17, 2020). On the date of the mediation, Appellant, with advice of counsel, agreed to clincher the indemnity aspects of her claim for an additional 40% to the knee or \$30,000. In addition, Respondents agreed to leave medical treatment open for her right knee. (See settlement agreement in WCC File No. 1421297, dated April 29, 2020). Considering the previous indemnity settlements, the agreement at mediation compensated Appellant for a total of 65% to her right knee. (See consent orders dated June 16, 2017 & January 17, 2020). Clearly the settlement on the knee claim (WCC # 1421297) was advantageous to Appellant.

In addition, in WCC #1717574, the psychological claim, the parties agreed to settle the matter on a full and final basis for \$50,000 (\$45,000 for indemnity and \$5,000 for possible future medical). (See settlement agreement in WCC File No. 1717574, dated April 29, 2020).

Not only are both settlements in accordance with the provisions of the South Carolina Workers Compensation Act, they are abundantly fair to Appellant.

While Respondents contend filing is merely a ministerial function where the Commission does not require or provide for “approval” of workers compensation settlements between represented parties, it is clear that the settlement documents were sent to and received by the Commission pursuant to S.C. Code Ann. §42-9-390. The Commission’s file documents that the settlement agreements were in their possession on May 7, 2020, when they received the letter from Claimant evidencing her intent to withdraw from the same (Letter from Appellant to Commission, stamped “Received” on May 7, 2020). Specifically, the Commission staff attorney Keith Roberts

directed Amy Bracy, the judicial director, to “return them [the two settlement agreements] to the defense attorney.” (Commission file documentation dated May 7, 2020).

This Court addressed the enforceability of a workers’ compensation settlement in Mackey v. Kerr-McGee Chemical Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). In that case, the attorneys appeared before the commissioner and advised the case had settled; but significantly, the Claimant was not present when the agreement was presented to the Commissioner and did not voice her consent. She later declined to sign the paperwork. The Mackey court concluded that it could not enforce the settlement based on those facts, but relied on the language of S.C. Code Ann. §42-9-390, which at that time required approval of the Commission. Mackey v. Kerr-McGee Chemical Co., 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984). The Court specifically noted that while no case had expressly answered the question of whether a settlement is binding prior to Commission approval, the S.C. Supreme Court had indicated in earlier decisions that because the approval of the Commission was required by statute at that time, it followed that a settlement agreement was not binding until approved. Mackey, citing Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960).

Obviously, the settlements here are distinguishable from those in Mackey. First, while Mackey was not present when her counsel orally agreed to the settlement, the Appellant in this matter, who is college-educated, reviewed and signed the paperwork, along with her attorney, at a mediation conducted by a respected former commissioner. Perhaps more importantly, the law has changed since Mackey was decided. In 1960, the statute required Commission approval of a settlement between represented parties which, as pointed out by this Court, implied that the settlement was not final until it had been reduced to writing and was stamped “approved.” In 2007, the legislature amended S.C. Code Ann. §42-9-390 to eliminate the prior requirement that

settlements between represented parties must be approved by the Commission, endorsing the idea that where a claimant is represented by competent counsel and clearly evidences an understanding of the terms of a settlement, it should be recognized as binding by the Commission.

Though there is no case law on point in South Carolina since the statute was amended in 2007, other jurisdictions have enforced workers' compensation settlements for the sake of public interest. In B. Frank Joy Co. v. Isaac, 636 A.2d 1016 (Md. 1993), an employee and employer entered into a settlement agreement and submitted that agreement to the Maryland Workers Compensation Commission for approval. The claimant died eight days before the hearing. At the hearing, the employer sought to rescind the agreement, arguing they had that right at any time before the settlement was approved by the Commission. The Commission nevertheless approved and enforced the agreement. In affirming this decision, the court noted that the Maryland statute required approval of an agreement in order to be enforceable but stated:

That does not mean, however, that the parties have total freedom to renege a valid bilateral agreement . . . in compliance with the Act. When they present a duly executed settlement agreement . . . the parties thereby relinquish control of the matter to the supervisory powers, authority, and discretion bestowed upon the Commission. Then a party, acting unilaterally, does not have unfettered license to withdraw what that party has submitted in good faith. Isaac, 636 A2d at 1025.

In order to preserve the sanctity of a voluntary, good faith settlement, the Commission and this Court should honor duly executed agreements between represented parties which have been submitted for filing.

Defendants would draw this Court's attention to the fact that while a Motion to Strike Appellant's prior brief and portions of the designation of the matter to be included in the Record on Appeal was granted by this Court on November 17, 2021, Appellant's amended brief is replete with references to information outside the record including statements reportedly made by her counsel, physicians, and the nurse case manager. She also refers to conversations she reportedly

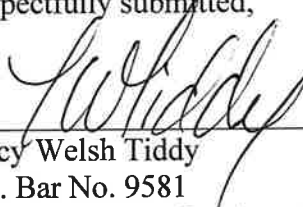
had with Commission personnel. Again, such statements are outside the record and irrelevant to the issue before this Court and should not be considered.

Again, the proposed settlements are fair and followed a lengthy mediation in which Appellant had the opportunity to address any concerns with her attorney and Derrick Williams, the mediator. Her significant other was present and offered his input, as well. Both parties were represented, the settlement terms were reduced to writing, and the Appellant signed the agreements, evidencing her agreement and consent. There can be no question as to whether the parties understood each other and whether agreements were reached. The Appellant has presented no evidence the Commission committed an error of law or acted in an arbitrary or capricious manner in enforcing these settlement agreements. Therefore, to preserve the integrity of the settlement process, mediation, respect for the Commission, judicial economy, and the public interest, this Court should enforce the settlements.

CONCLUSION

For the reasons stated, this Court should affirm the decision of the South Carolina Workers' Compensation Commission that the settlements should be enforced.

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that I served the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal on Shelia Hutchins by depositing a copy of it in the United States Mail, Certified, postage prepaid, on February 16, 2022 addressed to 1391 Wilcox Avenue, Gaffney, SC 29341 and via electronic mail to sheliahutchins4@gmail.com.



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February 16, 2022

The Honorable Jenny Abbott Kitchings
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SC Court of Appeals

Re: Shelia Hutchins vs. Security Group, Inc.
Case No.: 2021-000517
WCC File No.: 1421297 DOI: 11/20/2014
Carrier: Hartford Accident and Indemnity Co - Claim No.: YKT78329C
WJCB File No.: 0100.02739

Dear Ms. Kitchings:

Pursuant to Rules 208 and 209 I enclose for filing one copy of the Initial Brief of Respondents and one copy of the Designation of Matter to be Included in the Record on Appeal with Proof of Service.

By copy of this letter I am also serving a copy of the Initial Brief and Designation of Matter to be Included in the Record on Appeal on Shelia Hutchins, the Appellant.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

Tracy Welsh Tiddy

TWT/jcw
Enclosures

cc: Ms. Shelia Hutchins (via certified mail and electronic mail)
Ms. Danielle Bruehl