

RECEIVED

Apr 11 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Case Number 2020-001668
Unpublished Opinion Number 2020-UP-266; Filed December 9, 2020

Johnnie Bias, Employee, Petitioner,

v.

SCANA Corporation, Self-Insured Employer, Respondent.

REPLY BRIEF OF PETITIONER

Jacob M. Smith, Esquire
SC Bar No.: 100757
Smith & Jones Law, LLC
949 E. Main St., Suite B
Lexington, SC 29072
(803) 996-3333
Attorney for Petitioner

INDEX

Table of Authorities ii

Argument 1

 I. Respondent Neglects the Commission’s findings that Bias’s symptomology did not exist prior to his work accident in asserting Bias’s condition was not dormant. 1

 II. Respondent mischaracterizes Dr. LaMotta’s testimony in an effort to support the Court of Appeals’ ruling that substantial evidence exists to support the Commission’s Findings that Bias’s symptoms naturally progressed from his pre-existing condition. 2

Conclusion 4

TABLE OF AUTHORITIES

CASES

Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995) 2

Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999) 2

STATUTES

S.C. Code §42-9-35 (2007) 1

ARGUMENT

I.

RESPONDENT NEGLECTS THE COMMISSION'S FINDINGS THAT BIAS'S SYMPTOMOLOGY DID NOT EXIST PRIOR TO HIS WORK ACCIDENT IN ASSERTING BIAS'S CONDITION WAS NOT DORMANT.

Respondents assert in their brief that Bias's underlying condition was not dormant as required for an award of compensation for an exacerbation of a pre-existing condition. (Brief of Respondent, p. 20). However, a Claimant need only establish the subsequent injury aggravates the pre-existing condition or permanent impairment. *See* S.C. Code §42-9-35 (2007). Respondents contend that due to Bias's prior treatment for back pain, left foot drop and impotence, that Bias's condition was not dormant prior to his work accident and thereby would preclude him from recovery for an aggravation of a pre-existing condition. However, the contention that Bias's current symptomology was not dormant at the time of his accident is in direct conflict with the Commission's findings and the medical evidence.

The Commission specifically found that **"not all of the claimant's issues pre-existed the date of injury."** (R. p. 45) (Emphasis Added). Specifically, with regard to Bias's urological symptomology, the Commission found that "his urological issues also naturally progressed from his pre-existing symptoms, **despite having never complained of urological issues prior to the work incident.**" (R. p. 46) (Emphasis Added). Dr. Rames's medical opinion that Bias's urological symptoms are a consequence of his fall at work is uncontradicted. (R. pp. 257-260).

Regarding Bias's right leg symptomology, Dr. Poletti testified that Bias's symptoms were only back pain and left-sided leg pain immediately prior to his work

accident. (R. p. 466, line 24 – p. 467, line 5-11). Dr. Poletti also noted that Bias had significant improvement with his back and left leg pain leading up to his work accident. *Id.* While Bias did have right leg symptoms four years before his work accident, those issues resolved after an injection and only returned after his fall at work on October 14, 2014. (R. pp. 305, 310, 352). Dr. Gunter, Respondent’s expert, also opined that Bias’s right leg condition was a newly developing symptom after his work accident. (R. p. 372).

For the foregoing reasons, Bias contends that when reviewing the medical evidence as a whole, it is clear that his condition was aggravated by his fall at work.

II.

RESPONDENT MISCHARACTERIZES DR. LAMOTTA’S TESTIMONY IN AN EFFORT TO SUPPORT THE COURT OF APPEALS’ RULING THAT SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE COMMISSION’S FINDINGS THAT BIAS’S SYMPTOMS NATURALLY PROGRESSED FROM HIS PRE-EXISTING CONDITION.

“Substantial evidence” required to support the factual findings of the Commission is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached in order to justify its action. See *Mullinax v. Winn-Dixie Stores, Inc.*, 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995); *Sharpe v. Case Produce, Inc.*, 336 S.C. 154, 519 S.E.2d 102 (1999). The decision of the Commission may be reversed if substantial rights of the claimant have been prejudiced because the administrative findings are so clearly erroneous in view of the substantial evidence on the record as a whole. *Id.*

In an effort to justify the Commission’s complete disregard of the medical evidence presented by every physician but Dr. LaMotta, (including, but not limited to, Respondents’ own expert and Dr. Poletti, who treated Bias before and after his work injury), Respondents contend throughout their brief that Dr. LaMotta testified that Bias’s symptomology was the natural progression of his pre-existing condition. (Brief of Respondent, pp. 17, 21). Respondents specifically state that Dr. LaMotta “opined to a reasonable degree of medical certainty that the Petitioner’s condition was the natural progression of a pre-existing condition.” (*Id.* at p. 21) This is a mischaracterization of Dr. LaMotta’s testimony. Dr. LaMotta’s opinion was only that Bias’s increasing symptomology could have been caused by the work accident or it could have been the natural progression of a pre-existing condition. (R. p. 715, line 22 – p. 716, line 7). It is important to note that no doctor who provided medical testimony affirmatively stated Bias’s symptomology was the natural progression of his pre-existing condition. However, Dr. Poletti, Dr. Hutcheson, Dr. Rames, Dr. Gunter and Dr. Lind all affirmatively indicated that Bias’s new and worsening symptomology was the result of his fall at work. (R. p. 352; p. 481, line 23 – p. 482, line 3; pp. 264-265; p. 543, lines 14-20; p. 577, lines 18-20; p. 581, line 22 – p. 582, line 5; pp. 369-372; pp. 271-275; p. 619, line 21 – p. 620, line 5; p. 622, lines 8-15; p. 629, lines 14-16; p. 631, lines 2-7; p. 636, lines 8-15; p. 637, lines 5-9; p. 640, lines 7-11; p. 643, lines 13-16; pp. 257-260).

When viewing the record as a whole, the conclusion that Bias’s current symptomology is the natural progression of his pre-existing condition is not supported by the medical evidence. Instead, the overwhelming evidence in the record, including expert

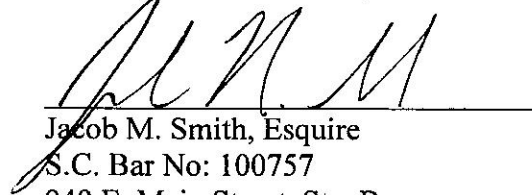
testimony, supports the conclusion that Bias sustained an aggravation of a pre-existing condition due to his fall at work.

CONCLUSION

Based on the foregoing, the only reasonable inference to be drawn from the substantial evidence in the record is that Bias sustained a compensable injury by accident arising out of and in the course of his employment on October 14, 2014. Accordingly, Petitioner Bias respectfully requests that this Court issue an Order reversing the Commission's decision that Bias did not sustain a compensable injury by accident arising out of and in the course of his employment on October 14, 2014, and remand the case back to the Commission for a determination of Bias's entitlement to benefits under the Act.

Respectfully Submitted,

SMITH & JONES LAW, LLC



Jacob M. Smith, Esquire

S.C. Bar No: 100757

949 E. Main Street, Ste. B

Lexington, SC 29072

Attorney for Petitioner

(803) 996-3333

April 11, 2022

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Apr 11 2022
SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Case Number 2020-001668

Johnnie Bias, Employee, Petitioner,

v.

SCANA Corporation, Self-Insured Employer, Respondent.

PROOF OF SERVICE

I certify that I have served the Petitioner's Reply Brief on Counsel for the Respondent and the South Carolina Court of Appeals electronically, to the email addresses listed below and served the Petitioner's Reply Brief on the S.C. Workers' Compensation Commission by U.S. Mail to the address listed below on April 11, 2022.

Grady L. Beard, Esq. - gbeard@robinsongray.com

Nicholas L. Haigler, Esq. - nhaigler@robinsongray.com

South Carolina Court of Appeals
ctappfilings@sccourts.org

Ms. Amy Bracy
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500

Post Office Box 1715
Columbia, SC 29202-1715

Respectfully Submitted,



April 11, 2022

Jacob M. Smith, Esq. (SC Bar #100757)
Smith & Jones Law, LLC
949 E. Main Street, Suite B
Lexington, South Carolina 29072
(803) 996-3333
jsmith@smithandjoneslaw.com
Attorney for Petitioner