

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the South Carolina
Workers Compensation Commission
Trial Court Case No. 1423028

Cassandra D. Stallings, Employee, Respondent,

vs.

Hubbell Power Systems, Employer and Liberty Mutual Insurance Co., Carrier, Appellants.

Appellate Case No. 2021-000965

FINAL BRIEF OF APPELLANTS

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SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities..... ii

Statement of Issue on Appeal1

Statement of the Case.....1

Arguments

1. THE COMMISSION PANEL ERRED IN FINDING AS A FACT AND IN CONCLUDING AS A MATTER OF LAW THAT THE RESPONDENT SUSTAINED INJURIES BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT WITH THE EMPLOYER2

Conclusion.....8

TABLE OF AUTHORITIES

Cases

Bright v. Orr-Lyons Mill, 285 S.C. 58, 328 S.E.2d 68 (1995)4

Creech v. Ducane Company, 320 S.C. 559, 467 S.E.2d 114 (S.C. App. 1995).....3

Doe v. South Carolina State Hosp., 285 S.C. 183, 328 S.E.2d 652 (S.C. App. 1985)..... 3

Douglas v. Spartan Mills, Startax Division, 245 S.C. 865, 140 S.E.2d 173 (1965).....3

Fowler v. Abbott Motor Company, 236 S.C. 226, 113S.E.2d 737(1960).....3

Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999).4

Landford v. Clinton Cotton Mills, 204 S.C. 423, 30 S.E.2d 36 (1994).....3

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)3

Osteen v. Greenville County School District, 333 S.C. 43, 508 S.E.2d 21 (1998).....4

Statutes

S.C. Code Ann. § 1-23-380(g) (1976).....2

S.C. Code Ann. § 42-1-10, et seq. (1976)..... 1

S.C. Code Ann. § 42-1-160 (1976).....3

S.C. Code Ann. § 42-1-172 (1976)5

STATEMENT OF ISSUE ON APPEAL

1. DID THE FULL COMMISSION PANEL ERR IN FINDING AS A FACT AND IN CONCLUDING AS A MATTER OF LAW THAT THE RESPONDENT SUSTAINED INJURIES BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT WITH THE EMPLOYER?

STATEMENT OF THE CASE

This is a workers' compensation case. The Respondent Cassandra D. Stallings alleges that she sustained injuries to both of her wrists and hands on March 1, 2014 as a result of repetitive trauma to which she was exposed while working for her employer, Hubbell Power Systems ("Hubbell") in Aiken, South Carolina. (R. p. 16). She contends that such injuries constitute injuries arising out of and in the course of her work with Hubbell, and she is entitled to receive compensation and benefits under the South Carolina Workers Compensation Law, S.C. Code Ann. 42-1-10, et seq. (1976) ("the Act"). She has received certain medical treatment to date for her alleged work-related injuries and seeks additional medical treatment for those injuries. (Id.). She also seeks compensation for permanent disability under the Act. (Id.).

Hubbell and its workers' compensation insurer, Liberty Mutual Insurance Company ("Liberty Mutual"), deny that Ms. Stallings sustained injuries to her wrists and hands as a result of an accident arising out of and in the course of her work. (R. p. 17). In that regard they respectfully contend that she is not entitled to compensation under the Act. (Id.).

A hearing to consider the issues presented by the Parties' Forms 50 and 51 was conducted before Commissioner Avery B. Wilkerson, Jr., on June 10, 2020 in Columbia, South Carolina. Following that hearing Commissioner Wilkerson issued his Decision and Order for this matter and by which he denied Ms. Stallings' claim for compensation and other benefits. (R. pp. 2 - 8).

Ms. Stallings then requested that the Full Commission review Commissioner Wilkerson's decision for this case. (R. p. 140). The Parties submitted written briefs to the Commission as part of that review. (R. pp. 161 – 193; pp. 194 - 200). An Appellate Panel of the Commission then conducted a hearing for this matter, following which it issued its Decision and Order reversing Commissioner Wilkerson's decision (R. pp. 9 - 15).

The Appellants then timely filed a Notice of Appeal of the Commission's decision for this case. (R. p. 201). For the reasons set forth below Hubbell and Liberty Mutual respectfully submit that the decision of the Commission Panel should be reversed.

ARGUMENT

I. THE COMMISSION PANEL ERRED IN FINDING AS A FACT AND IN CONCLUDING AS A MATTER OF LAW THAT THE RESPONDENT SUSTAINED INJURIES BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF HER EMPLOYMENT WITH THE EMPLOYER.

An appeal from a decision of the South Carolina Workers' Compensation Commission is, of course, governed by the Administrative Procedures Act, S.C. Code Ann. §1-23-380(g) (1976), which provides:

(g) the Court shall not substitute its judgment for that of the agency as to the weight of the evidence on a question of fact. The Court may affirm the decision of the agency or remand the case for further proceedings. The Court may reverse or modify the decision as substantial rights of the Appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;

- (4) Affected by other area of law:
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious are characterized by abuse and discretion are clearly unwarranted exercise of discretion.

Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E. 2d 304 (1981).

The Appellants recognize that this Court does not typically disturb findings of fact made by the Commission. The Appellants here, however, contend that the Commission Panel's decision is affected by errors of law.

In order to be entitled to workers' compensation benefits in South Carolina, a worker must show he or she sustained an "injury by accident arising out of and in the course of the employment." S.C. Code Ann. § 42-1-160 (1976); Doe v. South Carolina State Hosp., 285 S.C. 183, 328 S.E.2d 652 (S.C. App. 1985). The three elements of a compensable injury are: (1) an accident; (2) arising out of employment; and (3) arising in the course of employment. The determination whether an employee sustained a compensable injury by accident is a mixed question of law and fact. Creech v. Ducane Company, 320 S.C. 559, 467 S.E.2d 114 (S.C. App. 1995). The accident is defined as an unlooked for or toward event which is not expected or designed by the person who suffers the injury. Landford v. Clinton Cotton Mills, 204 S.C. 423, 30 S.E.2d 36 (1994). An accident arises "out of the employment" when the employment is a contributing proximate cause. Fowler v. Abbott Motor Company, 236 S.C. 226, 113 S.E.2d 737 (1960). In Douglas v. Spartan Mills, Startax Division, 245 S.C. 865, 140 S.E.2d 173 (1965) the Court defined the phrase "arising out of" as follows:

it (the injury) arises "out of" the employment, when there is apparent to the rational

mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.

245 S.C. 865, 140 S.E.2d 173 (1965).

Likewise, the phrase, "in the course of the employment" refers to the time, place, and circumstances under which the accident occurs. The time, place and circumstances of the accident determine whether the accident occurred "in the course of employment." Bright v. Orr-Lyons Mill, 285 S.C. 58, 328 S.E.2d.68 (1995). An injury occurs "in the course of" employment if it happens within a period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties. Jennings v. Chambers Development Co., 335 S.C. 249, 516 S.E.2d 453 (S.C. App. 1999). Both prongs of this test must be met in order for an injury to be considered compensable under the Act. Osteen v. Greenville County School District, 333 S.C. 43, 508 S.E.2d 21 (1998).

In addition, and perhaps most importantly for purposes of this case, repetitive trauma cases are specifically addressed under the Act as follows:

(A) "Repetitive trauma injury" means an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events. Compensability of a repetitive trauma injury must be determined only under the provisions of this statute.

(B) An injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of the evidence of a causal connection that is established by medical evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.

(C) As used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed and qualified medical physician.

(D) A "repetitive trauma injury" is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between

the condition under which the work is performed and the injury.

(E) Upon reaching maximum medical improvement, the employee may be entitled to benefits pursuant to Section 42-9-10, 42-9-20, or 42-9-30. Medical benefits for compensable repetitive trauma injuries shall be as provided elsewhere in this title.

S.C. Code Ann. § 42-1-172 (1976).

In order, therefore, to be entitled to receive workers' compensation and benefits for a repetitive trauma injury the Act not only requires a worker to establish, through expert medical evidence, that there is a direct causal relationship between their work activities and a repetitive trauma injury, but also requires that the Commission make a specific finding of fact in that regard. Neither has been done in this case.

At the time of the alleged accident involved in this case Ms. Stallings was employed by Hubbell as a parts assembly worker. (R. p. 212, line 24 – p. 213, line 6). Her duties included assembling components used in the manufacturing of high-voltage electrical insulation systems. (Id.).

At the hearing held before Commissioner Wilkerson Ms. Stallings testified that she first noticed pain in both of her wrists in March of 2014. (R. p. 213, line 7 – p. 218, line 2). She stated that she experienced that she began having problems when new equipment was installed in the Hubbell facility in Aiken, but could not recall the date when that equipment was installed. (R. p.218, line 8 – p. 219, line 20).

Ms. Stallings sought medical treatment at Rural Health Services in Aiken on April 16, 2014. (R. pp. 137 - 139). At that time she complained only of right wrist pain and related

that it began one week earlier. (Id.). She further stated to providers at Rural Health Services that “she does repetitive pulling and lifting of electrical equipment at work.” (Id.). She made no mention of having pain in her left wrist or hand. (Id.).

Ronald Youmans, M.D. saw Ms. Stallings on November 15, 2015 and related that she reported that she was experiencing pain in her upper right arm and right hand, which began two months previously. (R. pp. 25 - 34). On a form prepared by Dr. Youmans he listed the “date of accident” as September 13, 2013. (R. pp. 28 - 29). In another report dated April 11, 2016 Ms. Stallings related that she was experiencing right wrist pain for one week and denied that she had sustained any injury. (R. p. 22).

Simeon M. Fulcher, M.D. in Augusta, Georgia performed surgery on Ms. Stallings’ left wrist in August 2017. (R. pp. 48 - 64). In a statement he prepared and dated September 11, 2018 he indicated that Ms. Stallings related that she was experiencing pain in her right wrist due to having to compensate for the loss of use to her left wrist. (R. p. 69). He further stated that she “may” have to undergo surgery to her right wrist. (R. p. 70).

Upon cross examination the Claimant denied that she told Dr. Fulcher that the problems she experienced with her right wrist and hand started due to having to compensate for the loss of use to her left wrist and hand. (R. p. 225, line 18 – p. 226, line 15). In that regard she testified that Dr. Fulcher was wrong with respect to his opinion and statement. (R. p. 226, lines 16 - 18). She disagreed with the proposition that if the problems with her right wrist and hand were due to having to compensate for the loss of use of her left wrist and hand, then she could not have sustained an injury to her right wrist and hand, or could not have begun to have problems with her right wrist and hand, in March of 2014. (R. p. 225, line 18 – p. 226, line 15).

On Page 5 of his Decision and Order for this case Commissioner Wilkerson made the following specific finding of fact:

3. The medical evidence submitted by the Parties fails to establish by a preponderance of the evidence that there is a causal connection between the work activity performed by the Claimant for the Employer and the alleged injuries she sustained to both of her wrist.

(R. p. 6).

In reversing Commissioner Wilkerson the Commission Panel made the following findings of fact on Page 4 of its Order:

2. The Hearing Commission found the alleged date of accident in this matter is not supported or established by the medical evidence submitted by the Parties in this case, nor the testimony of the Claimant. The Full Commission Panel reverses this Finding by stating the injury is compensable bilateral repetitive trauma and they give more weight to progression of injuries over the specific dates of injury alleged.

3. The Hearing Commissioner found as a fact the medical evidence submitted by the Parties fails to Establish by a preponderance of the evidence that there is a causal connection between the work activity performed by the Claimant for the Employer and the alleged injuries she sustained to both her wrist (sic). The Full Commission Panel reverses this finding by stating the injury is compensable bilateral repetitive trauma and they give more weight to progression of injuries over the specific dates of injury alleged.

(R. pp. 12 -13).

No where in these findings of fact made by the Commission Panel, as well as any other findings of fact made by the Panel, are there words to the effect that there is a causal connection, established by a preponderance of expert medical evidence, between Ms. Stallings' bilateral wrist and hand problems, and any alleged repetitive physical activities in which she was engaged as part of her regular work duties with Hubbell.

The Appellants respectfully submit that the reason the Commission Panel did not make the specific findings of fact in this case, as required by Section 42-1-172 of the Act, is that no such facts or evidence exist in the record for this case. There is no medical evidence which supports the Commission Panel's findings. Ms. Stallings testimony, which at times is at odds with the information contained in the medical reports for this case, is also contrary to the Panel's findings. She contends that the problems with her wrists and hands were so painful from the start that they woke her up early in the morning and she could not work.

The South Carolina Legislature set forth very specific requirements with regard to establishing the compensability of repetitive trauma cases in this State. By ignoring such requirements the Commission Panel in this case has established new standards to use when evaluating such claims. Hubbell and Liberty Mutual should be entitled to rely on lawful legislative and existing standards when responding to those claims, and not those created anew for a given case.

CONCLUSION

For the reasons stated above the Appellants respectfully submit that the Commissioner Panel Order for this matter should be reversed and this matter should be dismissed as set forth in the Single Commissioner's Decision and Order.

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CERTIFICATE OF COUNSEL

I hereby certify that the Appellants' Final Brief and Final Reply Brief comply with Rule 211(b), SCACR,

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