



Thomas Joyner v. Sumter County

2010 | Cited 0 times | Court of Appeals of South Carolina | December 16, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

Unpublished Opinion

Submitted December 1, 2010

AFFIRMED

Thomas Joyner appeals the order of the circuit court affirming the decision of the Appellate Panel of the Workers' Compensation Commission awarding Joyner thirty percent impairment to the back and fifteen percent to the leg. We affirm.

FACTS/PROCEDURAL HISTORY

On July 30, 2002, Joyner was working as a landfill attendant for Sumter County when he injured his back. He was diagnosed with lumbar stenosis. His treatment was complicated by his morbid obesity. He underwent gastric bypass surgery in December 2004 and lost over one hundred and fifty pounds at the time of the hearing. Joyner received five lumbar epidural steroid injections in his lower back/spine. Dr. Thomas Zgleszewski with the Center for Pain Management at Palmetto Health assigned Joyner thirteen percent impairment to the back/spine. Dr. Alfred Dawson of Florence Orthopedics Associates performed an independent medical evaluation of Joyner and assigned him an impairment rating of twenty percent to the lumbar spine and five percent to the lower right extremity.

The single commissioner ruled Joyner had suffered a thirty percent permanent partial disability to his back and a fifteen percent partial disability to the right lower extremity. The Appellate Panel and circuit court affirmed.

STANDARD OF REVIEW

The Administrative Procedures Act establishes our standard of review of decisions by the South Carolina Workers' Compensation Commission. *Shealy v. Aiken County*, 341 S.C. 448, 454, 535 S.E.2d 438, 442 (2000). Accordingly, this court can reverse or modify the Appellate Panel's decision only if the appellant's substantial rights have been prejudiced because the decision is affected by an error of



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law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Id.; S.C. Code Ann. § 1-23-380(5) (Supp. 2009). "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the [Appellate Panel] reached." Shealy, 341 S.C. at 455, 535 S.E.2d at 442. The possibility of drawing two inconsistent conclusions does not prevent the Appellate Panel's conclusions from being supported by substantial evidence. Tiller v. Nat'l Health Care Ctr., 334 S.C. 333, 338, 513 S.E.2d 843, 845 (1999). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy, 341 S.C. at 455, 535 S.E.2d at 442.

LAW/ANALYSIS

1. Disability rating

Joyner argues the Appellate Panel erred in holding he had only sustained a thirty percent permanent partial disability to his back and a fifteen percent partial disability to the right lower extremity. He asserts he sustained at least fifty percent loss of use of his back and thus should be presumed to have suffered total and permanent disability pursuant to Section 42-9-30(21) of the South Carolina Code, which provides:

The compensation for partial loss of use of the back shall be such proportions of the periods of payment herein provided for total loss as such partial loss bears to total loss, except that in cases where there is fifty percent or more loss of use of the back the injured employee shall be presumed to have suffered total and permanent disability and compensated under Section 42-9-10(B). The presumption set forth in this item is rebuttable. S.C. Code Ann. § 42-9-30(21) (Supp. 2009).

Joyner testified he was in pain all of the time. He stated the pain goes from his lower back down his right leg and the bottom of his right foot stays numb. Joyner related he cannot stand for a long time, walk very far, or bend. He claimed he could only sit or stand for an hour and a half at best. He testified he has to use a cane because of knee problems. He asserted that since being released by Dr. Dawson and Dr. Zgleszewski, he had become worse, but he cannot take pain medicine due to his gastric bypass surgery. Joyner opined he had suffered a fifty percent disability to his back and a fifty percent disability to his right leg.

Dr. Zgleszewski, however, assigned Joyner a thirteen impairment to the back/spine. Dr. Dawson assigned Joyner an impairment rating of twenty percent to the lumbar spine and five percent to the lower right extremity. We find substantial evidence supports the Appellate Panel's decision that Joyner sustained a thirty percent permanent partial disability to his back and a fifteen percent partial disability to the right lower extremity.

2. Total incapacity to work



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Joyner argues the Appellate Panel erred in not finding he was permanently and totally disabled when the evidence established that his incapacity for work resulting from injury was total.

Joyner has a tenth grade education. Before working at the landfill, he was a security guard, a long-distance truck driver, and worked at a warehouse driving and loading trucks.

Dr. William Stewart, a certified rehabilitation counselor, reported:

[W]hen Mr. Joyner's significant physical limitations are considered in light of his low educational levels, it is highly unlikely he would be able to find or sustain employment. And, based on his advanced age, work history, lack of transferable job skills, illiterate functional educational abilities and significant physical restrictions, he is not a reasonable vocational rehabilitation candidate. Consequently, I do not believe a reasonably stable market exists or will exist for the types of services that Mr. Joyner is physically, psychologically, educationally or vocationally capable of performing/sustaining.

Dr. Stewart noted Joyner was fortunate to have the job he was currently in, "albeit a rather benevolent job."

Dr. Zgleszewski provided Joyner could work with restrictions. Joyner could sit, stand, and walk four to six hours. In addition, he could occasionally lift one to ten pounds from floor to knuckle or shoulder to overhead and eleven to twenty pounds from knuckle to shoulder.

Joyner did not miss any time from work due to his injury. As a landfill attendant, he has to weigh and inspect trucks. He does not have to do any lifting. Although Joyner stated he could not drive a truck because he could not use his feet in a repetitive motion, he acknowledged he had driven himself to the hearing.

We find the record contains substantial evidence to support the Appellate Panel's ruling that Joyner is not totally incapacitated from work.

CONCLUSION

For the above stated reasons, the order of the circuit court is

AFFIRMED.

HUFF, KONDUROS, and LOCKEMY, JJ., concur.

