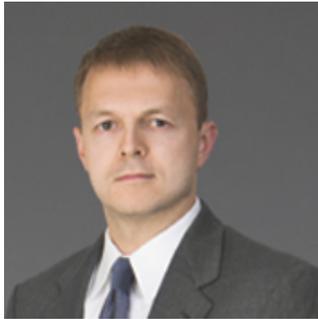


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Workers' Compensation S.C. Supreme Court Case Reversal

Sandra Bartley v. Allendale County School District, Employer, and
South Carolina School Board Insurance Trust, Carrier,
Respondents

Hearing Date – March 1, 2011
Filed April 11, 2011

A recent South Carolina Supreme Court case has emphasized the need for carriers, employers and their respective counsel to be vigilant in examining claims involving aggravation of a preexisting condition that was not a result of a work-related accident but still leads to a greater disability. The case was an opportunity to clarify the reversal of Ellison I decision and shed light on the interpretation of the obsolete Ellison II decision.

On April 11, 2011 the South Carolina Supreme Court reversed the South Carolina Court of Appeals, Circuit Court, Workers' Compensation Appellate Panel and the original hearing Commissioner in the case of Sandra Bartley v. Allendale County School District. The South Carolina Supreme Court remanded the case back to the South Carolina Workers' Compensation Commission for further findings.

In Bartley, Claimant alleges she originally injured her neck, right arm, right hand and left knee on September 26, 2002 when a student fell on her. At the time of the accident, she was a teacher in Allendale County School District. The accident resulted in a cervical fusion. Claimant filed a Form 50 noting the injuries. Shortly after her cervical fusion, she started a second job with a new employer, Richland County School District One in Columbia, South Carolina. She then allegedly suffered a second injury when a student picked up a desk and threatened to throw it on her.

Claimant filed a second Form 50 seeking a hearing for injuries to the neck, shoulder, arm, hand, buttocks, legs, along with the new injuries including dizziness, ringing in the ears and emotional/mental problems (post traumatic stress disorder). Prior to the hearing, Claimant submitted a psychological report outlining a diagnosis of pain disorder and post traumatic stress disorder with chronic intractable pain and cognitive degradation. The expert found the combination of Claimant's physical and emotional difficulties precluded her from doing any type of meaningful work, and her disorders were either caused by or exacerbated by her work accidents. Claimant also submitted a vocational report indicting she was unable to be gainfully employed as a result of a combination of her physio-vocational and psycho-vocational status.

At the hearing, the Commissioner found Claimant had a 30% loss of use of her neck, but failed to prove she suffered from an injury to any part of her body other than her neck. The Commissioner also found Claimant had failed to prove her psychological condition had worsened as a result of the injury. The Commissioner denied the claim for benefits to the buttocks, low back, right leg, dizziness, ringing in the ears and psychological disorder because the claims were barred by the statute of limitations, and the conditions were not caused by Claimant's injury at work. The Commissioner further opined Claimant was not "allowed to stack her personal ailments with her work injury to make a finding of disability," citing *Ellison v. Frigidaire Products*, 360 S.C. 236, 600 S.E.2d 120 (Ct. App. 2004) (*Ellison I*).

The Appellate Panel affirmed the findings of fact and conclusions of law. The Appellate Panel declined to agree with the Commissioner with respect to the statute of limitations and indicated Claimant's injuries for buttocks, low back, right leg, dizziness, ringing in the ears and psychological overlay were not barred by the statute of limitations; however, they agreed with the single Commissioner's determinations that these conditions were not caused by Claimant's work injury. Finally, the Appellate Panel held Claimant was not disabled from work because of her neck injury since she began work with the second school district. The Circuit Court and Court of Appeals affirmed the decision of the Appellate Panel.

On appeal to the Supreme Court, Claimant contended the Court of Appeals erred in failing to reverse and remand the case in light of the decision of *Ellison v. Frigidaire Home Products*, 371 S.C. 159 638 S.E.2d 664 (2006) (*Ellison II*), which reversed the *Ellison I* case relied upon by the Single Commissioner and Appellate Panel. Claimant alleges the Court of Appeals was wrong to find *Ellison II* inapplicable.

Ellison II states the employer/insurance carrier shall pay all awards of compensation for the aggravation or combined effects resulting from a claimant who has a permanent physical impairment from any cause or origin and incurs a subsequent disability from an injury by accident leading to a disability that is substantially greater by reason of the combined effects of the pre-existing impairment and subsequent injury or by reason of the aggravation of the pre-existing impairment than that which would have resulted from the subsequent injury alone. The Supreme Court clarified there was no requirement the pre-existing condition aggravate the work injury or that the work injury aggravated the pre-existing condition, rather the question to be considered was whether the combined effects of the condition and the work place injury resulted in greater disability than would have otherwise existed.

The Supreme Court found the Orders of both the Commissioner and the Appellate Panel were affected by an error of law. The Commissioner had ruled "he [was] not allowed to stack her [Claimant's] personal ailments with her work related injury to make a finding of disability." The Appellate Panel incorporated this finding into its Order, and as such, the Commission failed to consider Bartley's claim applying the proper legal standard of combining both her pre-existing and work related injuries under *Ellison II*. Furthermore, the Commission failed to make specific factual findings as to Bartley's other conditions because it made an initial determination they could not be considered.

The Supreme Court held the Court of Appeals made an error of law in failing to remand the case to the Commission to consider a combination of the effects of the injury. Rather the Court of Appeals "arguably made findings of fact" that were not made by the Commission and also did not properly apply the legal standard in *Ellison II*. The Supreme Court determined that if the Commission had properly considered the application of *Ellison II*, it would have made additional findings of fact pertinent to this analysis, which are missing from the record.

Although the Supreme Court has remanded this pre July 1, 2007 claim for a determination under the *Ellison II* reasoning, it is important to note that the legislature effectively modified the holding in *Ellison I* and *Ellison II*. The amendments of July 2007 to the Workers' Compensation Act eliminates the previous standard of "combining effects" of the pre-existing impairment and subsequent injury found in S.C. Code 42-9-400. Rather, the amendment provides that disability that is greater as a result of the pre-existing impairment, and the work-related injury must result in disability that is substantially greater and "caused by aggravation of the pre-existing impairment."

Practice Pointer: This recent Supreme Court case and the Act highlight the need for carriers, employers and their respective counsel to be vigilant in examining claims with an eye for potential litigation under the theory of an aggravation of a pre-existing condition that was not a result of a work-related accident but still leads to a greater disability. If there is only a combination, not an aggravation, the carrier and employers are not responsible for the "combined effects" of the preexisting impairment and subsequent injury.