

NO. 201472

IN THE SUPREME COURT OF THE UNITED STATES

SHIRLENE BAILEY

Petitioner, Pro se

v.

SUFFOLK PUBLIC SCHOOL

Respondent's

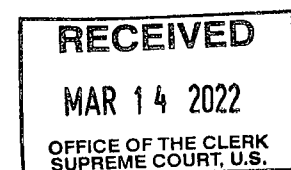
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATE SUPREME COURT OF APPEALS
FOR THE CIRCUIT COURT

PETITION FOR A REHEARING

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Signature

03/09/2022



N0. 201472

IN THE SUPREME COURT OF THE UNITED STATES

SHIRLENE BAILEY, PRO SE, PETITIONER

v.

SUFFOLK PUBLIC SCHOOL, RESPONDANT'S

REASON FOR GRANTING A REHEARING

Dear Justices,

If it pleases the Court, in the civil case of Shirlene Bailey v. Suffolk Public Schools. Suffolk School Board I am requesting the Justices of this Court grant a rehearing that I may have a fair chance of treatment without implied biases, prejudiced, or retaliatory actions. To right the wrongs of this case that has violated my civil rights, to timely fair medical treatment and my rights of due process. Justices I have gone through this pain-staking process for approximately five years, for one reason only, my health and the necessity of on-going treatment that has been proven by all of the x-rays, MRIs, test, medical procedure of Spinal Epidural Injection, medications and attempts of other modalities. Justices only you can reverse and correct the errors of the Lower Court grant me my civil rights.

Medical Evidence relied upon of test, x-rays, MRI's shows proof of progression of diagnosis. No significant time out from work (SPSK) No prior medications (diclofenac, baclofen, gabapentin, topiramate), treatments before the onset of this injury. Sedentary Order 4/7/17 - 6/2017, MRI 5/22/17 Dr. Talbot recommended surgery 5/23/17 severe diffused disc bulge, Lumbar Radiculopathy 8/30/17 Spinal Epidural, OOW Dr. Mitchell 9/14/17 - 10/2/17 recommend decompressive surgery. Oct 2, 2017 Dr. Fox discusses surgery recommend by colleague Dr. Mitchell. Takes OOW 10/2/17 - 10/30/17. MRI 10/7/17, Doctor patient abandonment 10/17/17, with No FCE, Impairment rating or examination of any kind. Dr. Wardell took OOW 2/9/18 - continuing. Recommend Neurosurgeon consult for permanently aggravated components and other conditions that threatened being a good candidate and possible irreversible nerve damage.

Justices, I sustained a compensable injury back on March 30, 2017. I reported injury to school nurse Mrs. Fitzwater at Creekside Elementary School. Information/forms were not made available until the following day. First report of injury was submitted to the Commission on April 2, 2017. I was interviewed by Sedgwick Ins. Claims Adjuster, Loretta Lawrence on April 17, 2017. However, the Employer failed to notify the Court of Employers' intent which resulted in several contempt orders. From onset of injury 03/30/17 until 11/2018 the Employer's pattern of contempt continued. No specific reason was given to the Court for failure or any specifications of what was being investigated? Employer tolled over a year without notifying employee or Court of intent. Medical records relied upon showed proof of progression of medically noted diagnosis from initial Lumbar Sprain opined without medical evidence of x-ray to Lumbar strain, severe diffused disc bulge, sciatica, lumbar radiculopathy, cervical radiculopathy, permanently aggravated components, awarded SSI Disability after review of all medical records. Employer failed to Report change in condition report by Dr. Talbot 4/7/17. Employer, counsel Attorney Waller refused to answer former counsel for the petitioner, Attorney Lori D'Angelo's request for Interrogatories and Request for Production served to Attorney Waller, and Sedgwick insurance Claims Adjuster Loretta Lawrence which was very crucial and of intervening circumstances to my case.

Contempt Sept. 8, 2017, Contempt Oct. 2017, Contempt Nov. 2017, also contempt for Quarterly EROS, SROI Reports – incomplete, missing data, incorrect wage amount entered. Awarded SSI Disability Dec. 2018. Attorney for the Respondent or insurer did not answer Attorney Lori D'Angelo's request for Interrogatories and Request for Productions certificate of service Dec. 20, 2017. It was very crucial to proving my case and would support the willful misconduct, implied biases, prejudices and retaliatory actions.

Shirlene Bailey v. Suffolk Public Schools case – 201472

March 9, 2022

Justices, I believe there was error in both Opinions given by

Commissioner Wilder in his Opinion on 01/06/2020

Case VA00001323920,

Claim Administrator File No. B785301331100010185

Deputy Commissioner Newman his Opinion given on April 21, 202

Case VA00001323920,

Claim Administrator File No. B785301331100010185

The errors in both decisions would include “abuse of discretion” clearly erroneous, reversible errors, informational error, allowing of erroneous evidence of change of condition, false allegations of refusals, incorrect wage amount. Not enforcing sanctions upon the Employer for failure to comply in a timely manner to the rules of the Court.

I received notification from Claims Adjuster Loretta Lawrence on 4/2/17 that a compensation claim had been filed by Sedgwick Insurance on my behalf by Suffolk Public Schools. However, respondent failed to give their intent from 03.31.2017 - 10/2017 prompted me write to the Commission my concerns, and my belief that my civil rights were being violated.

Possible willful misconduct of the Respondent was to restart time line by acting as though Oct. 2017 letter to the Commission was the first Report, when fact is the First Report of Injury was April 2, 2017. Incidences like that continued throughout these five years, I believe to blur timelines, restart times and to possibly mislead the Court of factual accounts given. Note: The Employer is responsible for first report given after injury has been reported by injured worker – Reported to Nurse - Mrs. Fitzwater, Supervisor - Principal Katrina Rountree, Bookkeeper Mrs. Topping, and HR Staff Comp Tech Elizabeth Simpkins, Claims Adjuster Loretta Lawrence, Sedgwick Insurance.

Without counsel the implied biases, prejudices and retaliatory actions faced has caused so much duress and has damaged my credibility. Commissioner Wilder stated in a letter that he felt, Mrs. Bailey demonstrates a profound misunderstanding of the procedure followed in our hearings. Justices, this is true I have struggled to understand, follow the rules of this Court and present truthful facts of all accounts of this case.

- **The Court erred by not imposing sanction after 30 days, 90, 1 year and 2 months of Employer's failure to give intent.**
- **The Court erred by not requiring Employer/Insurer to Specify reason for investigation following repeated contempt orders**
- **The Court erred by heavily relying on the testimony of the abandoning doctor (Dr Fox) over ALL medical records relied upon, test, treatments, x-rays, MRI's, medications prescribed, and treating Physician Dr. Wardell. Claimant had no physically or verbal contact with Dr. Fox for over 3 years at time of decision on (April 21, 2020)**

Justices, with careful review you will see the Judges Erred by failing to see what I believe was intentional, willful misconduct. How the timing of each event is manipulated by the Respondent's to imply non-compliance

1. Abandonment 10/16/17 (Still a necessity for treatment)

2. On 10/17/17 and 11/7/17 Two denials received for a new treating doctor from Sedgwick Claims Adjuster, Ms. Lawrence.
3. I met with HR Director Rodney Brown for SPSK on October 23, 2017 with my concerns and grievances.
4. Received ultimatum from Dr. Brown to take leave or face job abatement and loose job. Signed documents (January 12, 2018) was voided. I received stipulation that “job abatement” would only be approved if “Backdated” to Oct. 17, 2017?
6. Dr Brown testified claimant “Refusal of Selective work” was on October 17, 2017?
7. HR Director Rodney Brown Approved Leave October 17, 2017 – October 18, 2018?
8. HR Policy is you cannot be employed with any other employer during leave.
9. HR Policy claimant must have a doctor’s release to return to work, Dr Wardell has not released me to work of any kind. OOW 2/9/18 - continuing.
 - Court Erred when they relied on the erroneous testimony, evidence, timelines manipulated by the Respondent’s.
 - Due process was violated when my pre-hearing request for production of 1. approved leave paperwork 2. of alleged “signed” documents of refusal of treatment and Refusal of selective work? Respondents testified all would be provided to both employee and Commission.
 - Due process was violated when counsel gave misleading information that Dr. Wardell had released me to work; but for those false implications I would not have reinjured myself and needed emergency care.
 - Erred by not taking in to account all medical records relied upon, both Dr. Wardell’s, Dr. Tolkensen recommend for surgery. medical test, treatments and request for a neurosurgical consult following the abandonment.

While the Employer paid for some treatments others were denied? My civil rights of treatment were violated.

Justices yes, my lack of knowledge has made it difficult for me however, it does not negate the facts of my current health condition and the permanently aggravated issues I suffer daily. I was taken out of work for (Severe diffused disc bulge, Lumbar and Cervical Radiculopathy, Stenosis, Sciatica) for the period of September 14, 2017 – October 2, 2017, and Oct 2, 2017 – October 30, 2017 by Dr. Michael Mitchell and Dr. Bryant Fox with discussion of decompression surgery.

A Mediation Hearing case VA00001323920 - held on October 29, 2018 @ 10:30 via phone with Attorney Charlene Morring counsel for Petitioner, Attorney Wendall Waller, counsel for the Respondent and Judge Andrea Lee; it was established I suffered a compensable injury; after Attorney Morring presented documentation from the medical records of Dr. Bryant Fox's stating, "I can fix your legs but, not your back." 18VAC 85-20-28 section B (1), (2) law.lis.virginia.gov, (PTD) Benefits are paid to workers unable to work because of a work-related injury. (PPD), (TTD), 38.2-119,

The Employer still exceeded the Courts required 30, and or 90 days with informing the Court of Employer's intent; their patterns of contempt with the Commission continued with both the Employer's intent and the quarterly EROI/SROI reports which, the insurer; Sedgwick has recently gone through a manual audited (August 2021). I suffered doctor patient abandonment on October 16, 2017 while there was still a necessity for on-going treatment.

Justices, As required by the VWC I treated over the required 90 days. As instructed giving proper notice, informing my Employer in December 2017 of the upcoming appointment with Dr. Arthur Wardell on February 9, 2018 still no panel was provided.

My civil right to treatment were denied over three (3) months. I argue that Attorney for the Respondents only offered a Panel three days before the schedule appointment to continue the implied bias that I was not compliant, or credible and to deliberately mislead the Court that I had reached MMI (by examination, FCE, Impairment rating, refusal of treatment and other false allegations). To mislead the Court of

1. change in condition, 2. full recovery; 3. to distract the Court attention from the abandonment. 4. To also distract the Court from Employer backdating leave/forcing leave and not presenting me, the employee with any of the following documentation, which is my civil right as an employee.

Dr. Arthur Wardell's latter opinion of "permanently aggravated component," of the work-related injury. Also, that there was a necessity for on-going treatment following the abandonment on October 16, 2017

Court erred with not accepting claimant's calculated wage chart amount, or claimants' testimony of "summer pay" that Employer omitted to present a smaller wage amount.

In granting this rehearing I ask the Justices to consider the following as my burden of proof. As Pro se litigant the implied biases and prejudices negatively affected all eyes looking into this case, not to exclude my inexperience. I followed all of the guidelines given by VWC with seeking a new treating doctor as advised by Sedgwick Claims Adjuster Loretta Lawrence both verbally and by email communication. I was fully within my civil rights in seeking a new treating physician. (Dr Arthur Wardell)

Prior to the on-set of the injury on March 30, 2017. I have never had or needed any of the treatments, medications or procedures that were administered. Nor, any of the conditions diagnosed, or surgery opined by five different doctors, to include three doctors approved/selected by the employer.

In fact, there was no significant time taken off prior to the onset of injury during my five-year work span with Suffolk Public Schools and each year My supervisor graded me highly every year for my work ethic. Information I provided I swore if truthful to all parties, however, the Respondents has blurred time lines, facts and withheld documents repeatedly requested, misleading the Court and continuing the biased narrative that I was non-compliant and no longer in need of on-going treatment.

On January 6, 2020 I was entered on my behalf against Suffolk Public School, employer and Suffolk City School Board, insurer, for the payment of compensation in the amount of \$264.15 per week which I dispute to be correct. My weekly average rate was 762.30, the bi-weekly amount was 343.32. The Court erred stating I did not get paid for summer months. I had a pre-tax deductible of \$127.00 that accrued payments for summer months of July (2 pay checks) and August (2 pay checks) I argue my employer calculation and amount given was incorrect.

The awarded compensation for four days. I was awarded medical benefits pursuant to 65.2-603 are awarded as long as necessary for the injury the claimant suffered to her lower back as a result of her march 30, 2017 industrial accident. It's is my argument that there is necessity for on-going treatment relating to the permanently aggravated components of the work-related injury as diagnosed by Dr. Wardell following the abandonment on October 16, 2017. Dr Fox also abandoned his contradictory plan of action while there was still a necessity of treatment.

Justices, even if Dr. Wardell was not approved it does not negate the fact that Dr. Fox's actions were negligent. And the approval of Disability by review of all medical records to include those of the abandoning doctor for my legs, support that Dr. Wardell's findings of permanently aggravated components to be valid.

I was denied for over 3 months of a new physician, NO TREATMENT by Sedgwick claims adjuster Loretta Lawrence. (All Parties) and was told to contact VWC as to my rights. I did so and following protocol I was within my rights to seek treatment. I gave my employer notification 12/17 of upcoming appointment. No Panel Offered. I started treatment on 2/9/18 with Dr. Wardell while awaiting schedule hearing docket to seek approval. Counsel misled the Court by suggesting I refused a panel on 2/15/19 also, again I was within my rights and had been treating with Dr. Wardell for over a year at time of hearing. I requested the Employer to provide relevant documents crucial with supporting my burden of proof, but I have not received (approved leave paperwork, documents filed by employer to support their application for change of condition, documents to support their allegations of refusals, all refusal must be signed, all documentation erased from my Alio file for all of 2017.

I am requesting this rehearing that I may have the opportunity to present documentation to support all claims I have made. I submitted several documents on February 18, 2022 for exhibit. I hope to have the chance to present documentation of proof. It's hard trying to compile 5 years of information to give a factual account of events.

If the decision is reverse and in my favor I am asking the Court for a lumpsum payout of all medical expenses and future expenses up to 5 years' I'm Asking reimbursement of total loss of wages owed, vacation pay and summer pay, to include all accrued time that was depleted during Unpaid leave Oct. 17, 2017 – Oct. 2018. Reimbursement of out-of-pocket medical expenses, co-pay and over the counter medications. Travel expenses .

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AUTHORITIES

Section 1904.5(a) provides that injuries and illnesses must be considered work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition. OSHA's recordkeeping regulation 66 Federal Register 5929-32, 5946 and 5948, 66 Federal Register 5929.

90 DAY RULE: In all cases, after the first 90 days following an employee's work injury, he or she has the right to choose any licensed medical provider who seems appropriate.

VWC - workers' compensation law general rule is that an insurance carrier is not obligated to pre-approve treatment. However, the carrier cannot unreasonably deny an employee treatment by simply failing to pre-approve treatment when it is reasonable and necessary. In clarifying these obligations, our Commonwealth Court, in *McLaughlin v. W.C.A.B. (St. Francis Country House)*, 808 A. 2d. 285 (Pa. Commonwealth., 2002),

Jennifer Manion v. Northwestern Regional Adult Detention Virginia Association of Counties Group S,
Insurance carrier Risk Management Program, Inc.,

Virginia Code 65.2-900, 65.2-600, 65.2-603, 65.2-902 (3) (4)