

23-7800 **ORIGINAL**

SUPREME COURT OF THE UNITED STATES

Cleon Belgrave
Petitioner

Supreme Court, U.S.
FILED

JUN 17 2024

OFFICE OF THE CLERK

v.

Publix Supermarket Inc.
Respondent

On Petition for a Writ of Certiorari to the United States Court Supreme Court from
the Court of appeals of the State Of Georgia

A23A1721

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. The Appellate inquires whether the Administrative law Judge made correct judgment that the claimant did not sustain compensable injuries to his head, neck, back, and legs in the scope of his employment with the Employer.
2. The Appellate inquires whether the Administrative law Judge made correct judgment in failing to commence TTD benefits for the period of time that the claimant was unable to work, or alternatively, for a closed period of benefits from the day of the injury.
3. The Appellate inquires whether the Administrative law Judge made correct judgment in finding claimant's testimony unreliable based on preponderance of the evidence presented.
4. The Appellate inquires whether the Administrative law Judge made correct judgment in adopting the opinions of the Employer/Insurer IME doctors, whose opinions are not as credible as those provided by other medical treatment providers.
5. The Appellate contends whether the findings of fact made by the Administrative Law Judge supports the award denying compensability of this claim and the request for TTD benefits.
6. The appellate inquires whether the findings made by the Administrative Law Judge addresses certain evidence that shows that the claimant suffered a compensable injury.
7. The Appellate requests that the award of the Administrative Law Judge dated December 20, 2021 be reversed.
8. Appellate inquires whether the Superior Law Judge made correct judgment in law when ruling that Appellate's case was filed beyond the 20-day period. The Superior law judge failed to include the date that the Claimant's appeal was clearly filed (June 7, 2022) in the State Workers Compensation Court. The Judge's misinterpretation of Law may have caused major confusion within the courts.
9. The Appellate inquires whether the Appeal court made correct judgment when stating that Claimant wrongfully filed a Discretionary appeal, and needed to file an appeal to the Georgia Supreme Court from a Georgia Court of Appeals decision.

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WORKER'S COMPENSATION

Comes Now, Cleon Belgrave, hereby referred to as the Appellate from the Appellate Court of Georgia, files this appeal for the Award of the Honorable Kimberly Boehm dated December 20, 2020 and seeks consideration of all issues presented as well as consideration of the following errors.

PETITION FOR WRIT OF CERTIORARI

In God I place my trust, Appellate Cleon Belgrave filing Pro Se, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals of the State of Georgia.

OPINIONS BELOW

The decision by the Court Of Appeal of the State of Georgia granting Respondent Public Supermarket Inc Award and denying Mr. Belgrave direct appeal. The Court of Appeal for the State of Georgia denied Mr. Belgrave' petition for hearing on August 15, 2023. That order and Justice's dissent is attached at Appendix B.

JURISDICTION

Appellate files his motion in a timely manner on this day June 16. 2024. Appellate received decision on August 15, 2023. Moreover, Mr. Belgrave invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Georgia Supreme Court of Georgia ruling. Appellate received a decision on August 15, 2023 from the Appeal Court of Georgia Moreover, Mr. Belgrave invoked this Court's jurisdiction for Appeal of the Georgia Court of Appeal ruling in which the Court stated that it didn't have jurisdiction from an appeal of Superior Court. Mr Belgrave filed an appeal with the Supreme Court of the United States which he received on November 15. 2023 to file with the Georgia Supreme Court of the United States. Mr. Belgrave hereby files this appeal and brief to the Supreme Court of Georgia on this date November 25, 2023. Hereby, Mr Belgrave received a decision from the Supreme Court of Georgia on March 27, 2024 and filed a timely Writ Of Certiorari on June 15. 2024.

STATEMENT OF THE CASE

Evidence provided should be construed in favor of the claimant. (*Cash v American Sur. Co., 1960*) The workers' compensation law should be interpreted liberally so as to support the intentions of the code, extending it to every employee that can be reasonably brought within its provision. (*Gaither v Fulton-Dekalb Hosp, Auth.. 1977*). A central purpose of the workers compensation Act is to "alleviate human suffering and to contribute to human need when accidental injury is suffered in the manner . prescribed thereby." (*Lumbermens Mut. Cas. Co. v Griggs, 1940*). The rights and benefits contained within the workers' Compensation Act should be extended to every class of workman and employee that can fairly be brought within the provisions of the act. (*Gulf American Fire Casualty Co. v Taylor, 1979*).

Pursuant to O.C.G.A ; 34-9-103, "[t]he findings of fact made by the administrative law judge in the trial division shall be accepted by the appellate division where such findings are supported by a preponderance of competent and credible evidence contained within the record" O.C.G.A ; 34-9-103(a). Claimant respectfully asserts that the findings of fact made by the Administrative Law Judge ("ALJ") are not supported by a preponderance of competent and credible evidence and the Award should be reversed in all aspects. Based on proper assessment of the evidence, the ALJ's Award does not meet evidentiary standards of O.C.G.A ; 34-9- 103(a) and as such, this Honorable Court may substitute its own alternative findings for those of the ALJ and enter an award accordingly. (*Bankhead Enterprise v Beavers, 1997*)

Respectfully, the ALJ's award and denial of benefits is based on multiple factors including the accident on May 25, 2019 is not clearly observed on the video footage introduced into evidence. The video evidence does not have a clear view of Claimant and it is not conclusive as to whether Mr. Belgrave was or was not injured at work on May 25, 2019. However, claimant clearly testified that he was injured while working at Publix on May 25, 2019. Furthermore, the ALJ's decision relies on the fact that Mr. Gbedjevi stated that the Employee never reported that he was injured or needed treatment. However, the parties stipulated that an accident did occur on May 25, 2019 and that timely notice was given. Therefore, the ALJ's award failed to correctly consider the other competent and credible evidence in the record and the ALJ's award is not supported by a preponderance of evidence.

The preponderance of the evidence submitted at the hearing and stipulation of the parties proves claimant was involved in a work related incident on May 25, 2019 and that he gave timely and adequate notice to his Employer. The Employer never accepted the claim despite

admitting there was a work related incident and timely notice. Claimant filed a request for hearing seeking TTD benefits and designation of George P. Delgado, M.D as the authorized treating physician. Dr Delgado conducted multiple physical exams and actually laid hands on the claimant over the course of months. However, Dr. Delgado 's opinions were essentially ignored and given no weight or credibility and the ALJ failed to state the basis for that. Instead, the ALJ concluded that two independent medical evaluations performed by their doctors had more credibility than Dr. Delgado despite the fact that they never treated Mr. Belgrave. Claimant respectfully asserts that making credibility determinations and findings of fact based on independent medical evaluations, where the preponderance of the evidence dictates a different result fails to meet the standard within O.C.G.A ; 34-9-103(a).

STATEMENTS OF FACTS THAT MERIT WRIT OF CERTIORARI

A. Circumstances of Injury

On all three dates of injury, Mr. Belgrave was employed by Publix Supermarket, Inc. (hereinafter sometimes referred to as “Employer”). (T 13). At the time of all three injuries, Mr. Belgrave was only working for Publix Supermarket, Inc and no other employer. (T 13). He began working for Employer in 2010 in various positions, kettle room helper, pie line helper, packing helper, roll line helper and dough room operator (T13-14). These tasks required him to push, pull, walk, stand, and lift fifty pounds items forty times per hour. (T 15).

Mr. Belgrave was first injured on July 29, 2015 (T 16). He was using an electric jack to place dough into a cooler. (T 16). While exiting the cooler, he was struck in the head by a rolling door. (T 16) and immediately felt pain in head, neck, back and shoulders.(T 17). Soon after. He provided notice to Yused Jones, his supervisor and to his night manager(T 18). His Employer told him to visit Nova Medical Center for his injuries. (T 20). Nova evaluated Mr. Belgrave and placed him on work restrictions. (T21). Mr Belgrave missed two or three days of work due to this incident, but returned to work at the same job without restrictions.(T 22).

Mr. Belgrave was injured a second time on March 27, 2018. (T 23). Mr. Belgrave was packing boxes when he was struck by a pallet jack being used by a fellow employee. (T 24). Mr. Belgrave immediately felt pain in his legs, back and neck. (T 25). He immediately provided notice to Mr. Thomas, his supervisor.(T25). Moreover, he initially treated on his own with Southern Regional Medical Center (T27-28) but was then told by employer to go to Nova Medical Center for treatment(T 28). Both July 29, 2015 and March 27, 2018 injuries were accepted claims for medical treatment only, and claimants returned to full duty work after each injury and worked until May 25, 2019.

On May 25, 2019, Mr Belgrave was completing his normal job duties working on the pie line.(T 30). On the day of the incident, he was putting papers on the pie line and was struck in the head by a metal pipe hanging over the line.(T30) and immediately felt pain in head, neck, back, hand and feet. (T 31). After being struck in the head, Mr Belgrave called over one of his associates to relieve him in order to talk to his supervisor. (T 31). Mr. Belgrave attempted to talk

to his supervisor, but was ignored. (T 31). He then spoke with his night manager, Steve Guthrie. (T 31-32).

Following the conversation with Mr. Guthrie, Mr. Belgrave went to the locker room to put ice on his head(T 32) where he remained until he left work for the day(T 32). Mr. Belgrave waited to see if Publix would send him for medical treatment but was told by employer to come back the next day to determine where he would be sent for treatment (T 32).

On June 7, 2019, Mr. Belgrave met with Joshua Farnsworth, a Publix manager, where they discussed his May 25, 2019 accident and injuries. (T 38-39), C-12). Mr. Farnsworth presented Mr. Belgrave with a panel document where he was supposed to select his treating physician. (T-39, C-6, pg. 16, C-12). The section where Mr. Belgrave was supposed to write to his treating physician was left blank, and had an asterisk that indicated he would “choose his provider soon.” (T-40, c-6, pg 16, C-12, 20:47). At no time during or after the June 7, 2019 meeting Mr. Belgrave was given the opportunity to select a treating physician. In fact, he was instead terminated on June 7, 2019.

B. Claimant's Medical Treatment

Mr. Belgrave provided credible testimony about his injuries that reflects what he told his medical providers. To date, the plaintiffs have not formally approved any medical treatment for Mr Belgrave for his injuries suffered during the May 25, 2019 accident (T 38, 41). As the Employer failed to allow Mr. Belgrave to select a physician from a panel or otherwise provide for treatment, he selected Dr. Delgado as his authorized treating physician. Following the May 25, 2019 incident, Mr. Belgrave was treated with his primary care physician, Dr. Obiekwe, on June 3, 2019. (T -33, C-3). He next visited Dr. George P. Delgado on July 8, 2020 to be evaluated for his injuries from May 25, 2019. (T-42, C-2). Dr Delgado evaluated Mr. Belgrave and referred him for a CT of his brain and a cervical MRI (T-42, C-2). Additionally, Dr. Delgado referred Mr. Belgrave to be evaluated by a spine specialist (T 42-43, C-2).

On November 10, 2020, Mr. Belgrave went to Barbour Orthopedics for an evaluation (T-43, C-1). They treated him for neck, mid-back, and lower back injuries that he suffered on May 25, 2019. (T 43, C1, pg 1). He reported radicular pain to bilateral shoulders, numbness/ tingling sensations radiating down arms and frequent headaches. (C1 pg. 1). Mr. Belgrave reported his neck pain as 9 out of 10 in severity, and mid and low back pain as 7 out of 10. (C-1, pg 1). Dr. Barbour opined that the injuries were directly related to the work-related injury. (C-1, pg 1). He recommended a cervical selective root block, a visit to a neurologist for evaluation of his post-concussive symptoms, physical therapy, and MRIs of the thoracic and lumbar spine. (T 43, C-1, pg 2).

Mr. Belgrave was evaluated for his head injuries at Hope Neurology on January 12, 2021. (T 3, C-3). He explained the mechanism of injury, as he consistently did to all his providers, relaying symptoms such as tenderness to the top of the head, dizziness and headaches. (C-3, pg 1). Hope Neurology agreed with Dr. Barbour that Mr. Belgrave's injuries were the direct result of work related incident that occurred on May 25, 2019. (C-3, pg 1). Additionally, Hope reported Mr. Belgrave's complaints were consistent with the mechanism of injury. (C-3, pg 1). Hope Neurology referred him for an MRI of the brain and VNG and BrainCheck Testing. (T43-44, C-3, pg 3). Mr. Belgrave has not received the brain MRI or VNG and BrainCheck testing.(T45).

Based on Barbour Orthopaedics referral, Mr. Belgrave began physical therapy at Benchmark Physical Therapy on February 16, 2021 and continued through March 19, 2021, completing 13 sessions (C-5).He again reported neck, mid back, and low back pain as caused by the May 25, 2019 work incident. (C-5, pg.4) Despite his compliance with the treatment plan, he still rated his pain as 8 out of 10 severity scale during his final visit. (C -5, pg. 47).

Mr. Belgrave currently needs medical treatment for his injuries. (C-1). As Mr. Belgrave testified, he currently has pain in his head, neck, arm, back, chest, hips and legs.(T 46). Mr. Belgrave does not believe that in his current condition he could return to work at Publix or any other employer. (T 47). Dr Douglas Linville from Barbour Orthopaedics recommends a series of injections for Mr. Belgrave's injuries, which Mr. Belgrave has not presently had. (C-1, ps. 12, T 43).

Mr. Belgrave testified credibly regarding the daily pain he tolerates (T 46), which limits his daily activities, including hobbies and activities with family (T 46 - 47). This pain is solely the result of the May 25, 2019 work incident, as Mr. Belgrave did not have any pre-existing head, neck, back, shoulder or leg pain or injuries prior to his work incidents, and has not done anything to aggravate or exacerbate his injuries since May 25, 2019. (T 48). Mr. Belgrave's injuries prevent him from working, despite a desire to return, and he has not worked for any employer since this injury occurred. (T 47). He has attempted to seek treatment on his own due to the Employer's failure to follow the Workers' Compensation Act, but his condition has not improved enough to allow him to safely return to work.

The facts establish Mr. Belgrave suffered a work- related injury that had not been resolved at the time of the hearing. Claimant submitted competent, credible and undisputed evidence to show he suffered an injury and had not been treated to a position of returning to suitable employment. Therefore, it was an error for the ALJ to conclude otherwise.

ARGUMENT AND CITATION OF AUTHORITY

I. The ALJ's award was based on independent medical evaluations and issues that were already stipulated to by the parties.

The ALJ improperly concluded that Claimant was not injured while working for Publix Supermarkets. In section 6 and 7 of the ALJ's discussion, it is stated that Claimant never told Mr. Gbedjevi and Mr. Gutherie that he was injured. This was troubling because it was stipulated that there was an occurrence of an accident on May 25, 2019, and it is inconsistent with the Employee's testimony that he did specifically report the event to the Employer. This finding should lead to reversal of the decision.

"Preponderance of evidence" means the superior weight of the evidence . O.C.G.A ; 24-1-1(5). "Competent evidence" means evidence which is "admissible." O.C.G.A ; 24-1-1(1). This Honorable court is authorized to ensure that the ALJ's findings are supported by credible evidence and to make determination concerning the credibility of the evidence. In weighing all of the evidence, the superior weight of the evidence leads to findings of compensability. The ALJ did not correctly weigh all the evidence or alternatively, failed to make sufficient findings of fact as to Claimant credibility to allow for meaningful review of the Award.

The ALJ's method of determining Claimant's credibility was not based on a preponderance of the other competent and credible testimony. Even assuming only for the sake of argument, that the video surveillance does not depict Claimant being injured, it is contrary to preponderance of the stipulation that an accident occurred on May 25, 2019 and the other competent and credible testimony to rule entirely against the Claimant based on what that video shows. This Honorable Court is not tasked with looking at this case through an "any evidence" standard, but the entirety of the evidence presented and what is proven by a preponderance of evidence. Singling out one piece of evidence at the exclusion of the other competent and credible evidence is not the correct way for a preponderance of the evidence to be determined.

In summary, it is not established by a preponderance of the evidence that Mr. Belgrave was not injured at work on May 25, 2019. The ALJ's determination that Mr. Belgrave is not credible and is not supported by competent and credible evidence was wrongfully made when considering the occurrence of an accident on May 25, 2019, claimant testimony as to the injuries he suffered, and the medical records submitted into evidence. Considering the limited factual

findings that can be gleaned from a surveillance video and Dr Delgado's medical treatment, this evidence does not destroy Claimant's credibility. The ALJ did not make any other factual findings as to credibility except relating to the video and that is insufficient to find the entirety of his testimony uncredible.

II. Claimant provided competent and credible testimony that he suffered a work-related injury in the course and scope of his employment and the Employer failed to prove otherwise.

Claimant credibly testified, without contradiction and in great detail about how the incident occurred. Claimant testified, without any evidence to prove otherwise, that he did not have neck, back, head, shoulder, or leg pain prior to the subject incidents. He provided credible testimony about the medical treatment he received, which was corroborated by medical evidence admitted into the record. (T 33 -43).Claimant provided competent and credible testimony that he suffered a work- related injury in the course and scope of his employment and the Employer failed to prove otherwise.

III. Superior law judge failed to include the dates that Claimants appeal was clearly filed on June 7, 2022 after he received his appeal order on May 19,2022 in the State Workers Compensation Court. The law Judge misinterpretation of Law sets, and raises an important question that leaves major confusion within the courts. After the appeal is filed, the State Board of Workers' Compensation has 30 days to transmit a certified copy of the file to the Superior Court.

CONCLUSION

The ALJ's award is not supported by a preponderance of competent and credible evidence. The ALJ improperly determined that the claimant did not carry his burden of proof to show an on-the-job injury occurred during the course and scope of employment. The ALJ's award was based primarily on independent medical evaluation treatment notes and inconclusive video evidence that purports to show the time of incident. Therefore the ALJ award should be reversed.

/s/Cleon Belgrave



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APPENDIX B

Table of Appendix B

State Board Workers Compensation Ruling Judge Kimberly Boehm

State Board Workers Compensation Ruling the Appellate Division; Judge Neera Bahl

Superior Court of Fulton County Final Order ; Judge Belinda E Edwards

Court of Appeals of Georgia

Supreme Court of Georgia