



STATE BOARD OF WORKERS' COMPENSATION
270 Peachtree Street, NW
Atlanta, GA 30303
www.sbwc.georgia.gov
(404) 656-2978

REFERENCE ID: 20239103

DATE: December 20, 2021

CLAIM NUMBER: 2019-072848
2016-020605
2018-021248

CASE OF: CLEON BELGRAVE

DATE OF INJURY: 05/25/2019
07/29/2015
-03/27/2018

CLEON BELGRAVE
407 HAVERHILL LANE
JONESBORO, GA 30236

EMPLOYEE

PUBLIX SUPERMARKETS INC
5475 BUCKNELL DRIVE
ATLANTA, GA 30336

EMPLOYER

PUBLIX SUPER MARKETS INC
5475 BUCKNELL DRIVE SW
ATLANTA, GA 30336

EMPLOYER

HARTFORD FIRE INSURANCE COMPANY
ONE HARTFORD PLAZA
HARTFORD, CT 06155

INSURER

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COUNSEL FOR EMPLOYER/INSURER

STATEMENT OF THE CASE

A hearing was held on October 22, 2021 at the request of the Employee for a determination of the Employee's entitlement to: (1) temporary total disability benefits from May 25, 2019 to the present and continuing and late payment penalties; (2) ongoing medical treatment and designation of Dr. George Delgado as the authorized treating physician; (3) payment of medical bills from Barbour Orthopedics, American Health Imaging, Dr. Delgado, Hope Neurology, and Benchmark Physical Therapy; and (4) assessed attorney fees and costs of litigation with regard to his 2019 date of injury.

The Employer/Insurer contend the 2015 and 2018 claims are medical only. The Employer/Insurer acknowledge that there was an accident on the 2019 date but deny any injury or disability.

On behalf of the Employee/Claimant, exhibits C-1 through C-14 were admitted into evidence. (T. 9). On behalf of the Employer/Insurer, exhibits D-1 through D-4 were admitted into evidence. (T. 9-10). The record closed at the conclusion of the hearing and the transcript of the hearing was filed on November 4, 2021. Briefs were filed by counsel for the Employee and counsel for the Employer/Insurer and have been read and considered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After careful review and consideration of the record as a whole, including an assessment of the credibility of the witnesses and all of the documents admitted into evidence, whether specifically mentioned below or not, I find as fact and conclude as a matter of law the following:

1. As to the 2019 claim, the parties stipulate: the State Board of Workers' Compensation has jurisdiction to hear and determine the issues presently pending in this claim. The Employer is subject to the provisions of the Georgia Workers' Compensation Act. Workers' compensation insurance coverage was provided by the Insurer on the alleged date of injury. Venue is proper in Fulton County as the county of injury. The Employee was in the general employment of the Employer on May 25, 2019. The average weekly wage is \$552.90. There was an occurrence of an accident on May 25, 2019. Timely notice was given by the Employee to the Employer. (T. 8-9).
2. The Employee began working for the Employer in December 2010. (T. 13). He has worked a variety of jobs, including kettle room helper, pie line helper, roll line helper and

storeroom operator. (T. 13-14). He typically worked 5-6 days a week, Monday through Friday, 8 hours a day, from 10 p.m. to 6:30 a.m. or 9 p.m. to 5:30 a.m.

3. On the July 19, 2015 date of injury, the Employee was putting some dough in a cooler when the roll-up door to the cooler struck him on the head. (T. 15-16). He immediately reported it to his manager and was seen at Nova for medical treatment. (T. 20-21). He was out of work for a couple of days as a result of this injury but then returned to work without restrictions. (T. 22).
4. On the March 27, 2018 date of injury, another worker was moving some products on a pallet using an electric pallet jack when he struck the Employee in the legs. (T. 23). He felt immediate pain in his legs and through his body. (T. 25): He received treatment for this injury at Southern Regional hospital, where he treated on his own, and then returned to his full duty work. (T. 28).
5. On May 25, 2019, the Employee was working on the pie line when he struck his head on a metal pipe that was hanging over his work area. (T. 30). He testified that he initially felt pain in his head, down his neck and back and described that his hands and feet started to feel numb. (T. 31). Video footage, purportedly of the pie line where the Employee was working, is in evidence, but upon review, I do not observe an incident as described by the Employee. The Employee testified he reported the accident to his night manager, Mr. Gutherie, within minutes of it happening. (T. 31-32). He is not sure if he finished his shift that day but came to work the following day to see the nurse. (T. 32-33). The Employee testified that the Employer did not offer him medical treatment and his first treatment for this injury was with his primary care doctor, Dr. Obiekwe, on June 3, 2019. (T. 33). He was out of work for about five days and then Dr. Obiekwe did not keep him out of work. (T. 34). On June 7, 2019, the Employee had meetings with the general manager, Ryan Holly, and Koffi Gbedjevi, and later that day with Josh Farnsworth. (T. 35; C-11; C-12). The Employee testified he was not given an opportunity to choose a physician from the Employer's panel. (T. 38). June 7, 2019 was the Employee's last day worked with the Employer as he was terminated as of that day, but also testified that he was not able to continue working because of the pain he was in. (T. 38). The Employee testified he has not returned to work since the 2019 accident. (T. 47).
6. Mr. Koffi Gbedjevi, provisions department manager for the Employer, testified that the Employee came to him on May 25, 2019 and reported that there was an air pipe hanging over the pie line that he thought posed a hazard. (T. 75-76). In response, Mr. Gbedjevi went to see the area the Employee was referring to, called maintenance, and told the Employee to move to a different area to work. (T. 75; 77; 80-81). Mr. Gbedjevi stated

that the Employee never reported that he actually got injured or needed treatment. (T. 76-77).

7. Similarly, Mr. Steve Gutherie, department manager in shipping, pastry and warehouse, also testified that he worked the night of May 25, 2019 and that the Employee called him over to his work area where a E stop cord was hanging a little low. The Employee expressed concern with working in that area, so Mr. Gutherie gave him an opportunity to move to a different area to work. (T. 88). Mr. Gutherie checked on the Employee later during the shift several times and the Employee never told him he had gotten hurt. (T. 89). Mr. Gutherie was not aware that he struck his head or got injured. (T. 90-91).
8. Mr. Ryan Holly, general manager at the Publix Atlanta bakery plant, testified that he met with the Employee on June 7, 2019 because Mr. Gbedjevi was having issues with the Employee completing and turning in his safety and quality training paperwork. (T. 93). He also wanted to meet with the Employee because he had been out of work and the paperwork the Employee turned in did not reflect the reason, so Mr. Holly was trying to determine why the Employee was missing time from work. (T. 93-94). During the meeting, the Employee advised that he was out of work because he had bumped his head on an overhead airline pipe in the pie line. (T. 94). This was the first Mr. Holly heard of the Employee sustaining an injury on May 25, 2019. (T. 94). Mr. Holly and the Employee then went to the area so Mr. Holly could observe the pipe and they then went back to the office to complete a first report of injury and other paperwork. The Employee then indicated he needed to get his children or something to that effect, so he was told they would take care of the paperwork when he had time; Josh Farnsworth then completed the paperwork. (C-6, p. 16). Ultimately, Mr. Holly testified that he made the decision to terminate the Employee's employment given he was already at the highest level of the Employer's progressive discipline and the next step for discipline was termination. (T. 97-98).
9. For the 2015 injury wherein the cooler door struck him in the head, the Employee treated with Nova, Dr. Langenbeck at Peachtree Orthopedic Clinic, and Dr. Keith Osborn. The records from Nova and Peachtree Orthopedic Clinic reflect complaints as to his head, neck and shoulders. He received some medications and physical therapy and was placed on restrictions for a period of time. (C-7; C-8). By January 2016, Dr. Langenbeck found him to be at MMI with a 0% impairment rating and released him to full duty.
10. The Employee was involved in a motor vehicle accident on March 2, 2017 when a vehicle fleeing a police officer hit him in an intersection. (T. 52). He told Dr. Osborn about this accident. (T. 52). He received treatment at the emergency room following this accident but has had no other treatment. (T. 68).

11. For the March 27, 2018 injury to his knees, the Employee also treated at Nova and Dr. Obiekwe. A week prior to this 2018 incident, on March 20, 2018, the Employee complained of neck and back pain to Dr. Obiekwe. (C-10).
12. For the May 25, 2019 accident, the Employee's first treatment was with Dr. Obiekwe, on June 3, 2019. At that time, he complained of headaches and numbness extending to his fingers, neck pain extending down his arms and back pain extending to his legs. (C-10). He was also seen by Dr. George Delgado in July and November 2020. Dr. Delgado documented his symptoms of headaches, dizziness, blurred vision, short term memory loss, and neck pain. (C-2). Dr. Delgado ordered a cervical MRI and thereafter referred the Employee to a spine specialist. The Employee then saw Dr. Douglas Linville with Barbour Orthopedics on November 10, 2020, January 15, 2021, and March 26, 2021. Dr. Linville referred him to a neurologist and noted he had herniated discs at C3-4 and C4-5. Dr. Linville noted his complaints of neck, mid back and low back pain following multiple on-the-job injuries. (C-1). In his March 26, 2021 office visit note, Dr. Linville stated that the Employee reported experiencing complete body numbness with any movement. (C-1, p. 11). The Employee requested conservative treatment and Dr. Linville he could return to the office as needed.
13. At the request of the Employer/Insurer, on May 24, 2021, Dr. Michael Skaliy performed an independent medical examination. At the exam, the Employee complained of pain in his bilateral low, middle and upper back, neck, chest, buttock, thighs, calves, ankles, feet, head, hands, shoulders, and arms. Following his review of prior medical records and examination of the Employee, Dr. Skaliy concluded that he did not have "any objective signs of debility or pain associated with his cervical, thoracic or lumbar spine" and that his "subjective pain complaints are far out of proportion to any objective findings and suggest symptom magnification." He felt the Employee was at MMI and may return to regular duty. Dr. Skaliy also stated, I do not see any objective criteria that shows the patient's present complaints are in any way related to his previous work accidents. At this time, I cannot find any causality of the patient's present complaints to his previous work-related accidents and it is my opinion that the patient's present complaints are not related to the patient's past work-related accidents." (D-3, pp. 10-11).
14. Dr. Barry McCasland, neurologist, performed an independent medical examination on July 19, 2021. Similar to Dr. Skaliy's assessment, Dr. McCasland found that the Employee had no impairment and could return to regular duty work. (D-3, pp. 12-29). Dr. McCasland diagnosed the Employee with minor head injuries, 7/29/15 and 5/25/19, posttraumatic headaches and other subjective head injury complaints, and other injuries not considered in the neurological IME. He found no objective findings of dysfunction

with regard to the head injury complaints and no basis for permanent impairment, that he could work at regular duty, and that further testing or treatment of the head was not medically indicated. (D-3, p. 28).

15. In order to be entitled to benefits, the Claimant must prove by a preponderance of the evidence that he sustained an accidental injury arising out of and in the course of his employment with the alleged Employer. O.C.G.A. § 34-9-1. "In all claims for compensation under Georgia's Workers' Compensation Act, the employee must carry the burden of proof and show that he sustained a disabling injury arising out of and in the course of his employment entitling him to compensation. An employee is entitled to total disability benefits under OCGA § 34-9-261 if the employee can show by a preponderance of credible evidence that he or she has experienced a loss of earning capacity due to the injury." Dasher v. City of Valdosta, 217 Ga. App. 351; 457 S.E.2d 259 (1995).
16. Here, the Employee is seeking TTD benefits, as well as designation of Dr. Delgado as the authorized treating physician and payment of certain, specified medical bills. The Employer/Insurer argue that the Employee did not sustain injuries resulting in disability. I agree. I find that a preponderance of the evidence fails to establish that the Employee sustained a disabling accidental injury arising out of and in the course of his employment with the Employer on any of the three dates alleged. While it is unfortunate that the Employee complains of significant pain and symptoms, the evidence does not establish that his condition stems from the May 25, 2019 alleged injury, or the other two claims for that matter. Accordingly, the Employee's claim for benefits must be denied.

AWARD

WHEREFORE, based upon the above findings of fact and conclusions of law, because the Claimant has not established an accidental injury arising out of and in the course of employment with the alleged Employer, his request for benefits under the Workers' Compensation Act is denied. The Employer's request for assessed attorney fees and costs

of litigation is denied.

IT IS SO ORDERED, this the 20th day of December, 2021.

STATE BOARD OF WORKERS' COMPENSATION

This order has been electronically signed and approved

/s/ KIMBERLY S BOEHM

ADMINISTRATIVE LAW JUDGE

X

Notary



STATE BOARD OF WORKERS' COMPENSATION
270 Peachtree Street NW
Atlanta, Georgia 30303-1299
www.sbwcc.georgia.gov

REFERENCE ID: 20542979

DATE: May 19, 2022

CASE OF: CLEON BELGRAVE

CLAIM NUMBER: 2019-072816
2015-021246
2016-020098

DATE OF INJURY: 05/25/2019
03/27/2018
07/29/2015

CLEON BELGRAVE
407 HAVERHILL LANE
JONESBORO, GA 30236

EMPLOYEE

PUBLIX SUPER MARKETS, INC.
5475 BUCKNELL DRIVE SW
ATLANTA, GA 30336

EMPLOYER

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COUNSEL FOR EMPLOYER/INSURER

This appeal by the Employee is before the Appellate Division for review of an award by Judge Boehm, dated December 20, 2021. The Employee alleges that the administrative law judge erred in finding that the Employee failed to prove a disabling accidental injury arising out of and in the course of his employment with the Employer on any of the three dates alleged which would entitle him to benefits under the Workers' Compensation Act. No cross-appeal was filed in this case, and the appeal was considered by the Appellate Division without oral argument. After a review of the record as a whole, as well as the arguments presented, the Appellate Division now adopts the findings of fact, conclusions of law, and award of Judge Boehm as its own.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a review of the record as a whole, we find the administrative law judge was, in this case, in the best position to determine the credibility and weight of the evidence in the record. See Johnson v. Weyerhaeuser Company, 231 Ga. App. 627, 499 S.E.2d 916 (1998); Metro Interiors, Inc. v. Cox, 218 Ga. App. 396, 461 S.E.2d 570 (1995); Coats & Clark, Inc. v. Thompson, 166 Ga. App. 669, 305 S.E.2d 415 (1983). Consequently, as to the enumeration of errors and arguments presented by the Employee, we find no error with the administrative law judge's award.

Therefore, the findings of the administrative law judge in this matter are hereby accepted by the Appellate Division as such findings are supported by a preponderance of competent and credible evidence contained within the record on review. See O.C.G.A. § 34-9-103 (a). The Appellate Division adopts the conclusions of law of the administrative law judge as such reflect an appropriate application of the Act to the findings of fact.

AWARD

Based upon the foregoing, the Appellate Division adopts the award of Judge Boehm, dated December 20, 2021, as its award.

IT IS SO ORDERED, this the 19th day of May, 2022.

Concurring: Presiding Judge Benjamin J. Vinson and Judge Frank R. McKay.

STATE BOARD OF WORKERS' COMPENSATION

This award is electronically signed and approved.

Neera Bahl

Judge

Appellate Division

/ldt

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CLEON BELGRAVE	§	CIVIL ACTION FILE NO.:
<i>Petitioner</i>	§	2022CV366743
and	§	
PUBLIX SUPERMARKET INC;	§	
HARTFORD FIRE INSURANCE	§	
COMPANY	§	
<i>Respondent.</i>	§	

FINAL ORDER

This matter is before the Court on the Petitioner's *Claimant's Notice of Appeal to the Superior Court and Enumeration of Errors* and related pleadings. After a review of the evidence, the Court finds as follows:

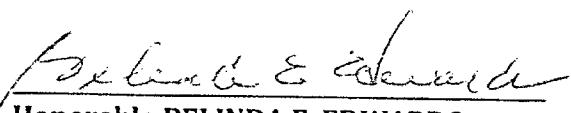
This matter presents an appeal of an Administrative Law Judge's final order denying an award of worker's compensation benefits to the Plaintiff. The decision by the Administrative Law Judge was entered on December 20, 2021. Pursuant to O.C.G.A. §34-9-105 (b) "Either party to the dispute may, within 20 days from the date of any such final award or within 20 days from the date of any other final order or judgment of the members of the board, but not thereafter, appeal from the decision in such final award or from any other final decision of the board to the superior court of the county in which the injury occurred...." The appeal in this matter was docketed in the Superior Court of Fulton County on June 30, 2022, beyond the 20-day period required by O.C.G.A. §34-9-105(b). As such, this Court is prohibited from ruling on an appeal that is not properly before it.

As such,

IT IS HEREBY ORDERED that the Petitioner's *Claimant's Notice of Appeal to the Superior Court and Enumeration of Errors* is DISMISSED.

IT IS FURTHER ORDERED that the Clerk shall mark this matter as closed.

SO ORDERED this 14th day of September, 2022.


Honorable BELINDA E. EDWARDS
Superior Court of Fulton County
Atlanta Judicial Circuit

Court of Appeals of the State of Georgia

ATLANTA, August 15, 2023

The Court of Appeals hereby passes the following order:

A23A1721. CLEON BELGRAVE v. PUBLIX SUPERMARKET INC., et al.

In 2019, Cleon Belgrave filed a claim seeking workers' compensation benefits for injuries suffered in a series of allegedly work-related accidents that occurred while Belgrave was employed by Publix Supermarket, Inc. Following a hearing, the State Board of Workers' Compensation denied Belgrave's claim, finding that he had failed to establish a work-related injury. Belgrave appealed that decision to the Superior Court of Fulton County, which dismissed his appeal as untimely. Belgrave then filed this direct appeal. We, however, lack jurisdiction.

An appeal from a decision of the superior court reviewing a decision of the State Board of Workers' Compensation must be brought by application for discretionary appeal. See OCGA § 5-6-35 (a) (1); *Advari v. Sears, Roebuck & Co.*, 221 Ga. App. 279, 279 (471 SE2d 59) (1996) (to obtain review of superior court order dismissing claimant's appeal from a decision of the State Board of Workers' Compensation, claimant was required to file an application for discretionary appeal). And where a discretionary application is required, failure to comply with that requirement deprives this Court of jurisdiction. See *Hair Restoration Specialists v. State of Ga.*, 360 Ga. App. 901, 903 (862 SE2d 564) (2021). Accordingly, because Belgrave failed to follow the proper appellate procedure, his appeal is hereby DISMISSED for lack of jurisdiction. See *Advari*, 221 Ga. App. at 279.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, 08/15/2023

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

Stephen E. Castor

, Clerk.





SUPREME COURT OF GEORGIA
Case No. S24C0401

March 27, 2024

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CLEON BELGRAVE v. PUBLIX SUPERMARKET, INC. et al.

On August 15, 2023, the Court of Appeals dismissed the petitioner's direct appeal of the superior court's dismissal of his appeal challenging the State Board of Workers' Compensation's denial of his workers'-compensation claim. The Court of Appeals dismissed the petitioner's appeal on the ground that an appeal from a decision of the superior court reviewing a decision of the State Board of Workers' Compensation must be brought by application for discretionary appeal. See OCGA § 5-6-35 (a) (1). The petitioner did not file a motion for extension of time to file his petition for writ of certiorari in this Court. Accordingly, the petition was required to be filed by September 5, 2023. See Supreme Ct. R. 38 (2); OCGA § 1-3-1 (d) (3). However, it was not filed until November 27, 2023. Accordingly, the petition is untimely and dismissed.

All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the
minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto
affixed the day and year last above written.


Thure S. Baumer, Clerk

SUPREME COURT of GEORGIA

Nathan Deal Judicial Center

330 Capitol Avenue S.E., Room 1100

Atlanta, Georgia 30334

(404) 656-3470

Business Hours: Monday - Friday, 8:30 a.m. to 4:30 p.m.

Docketing Date: November 27, 2023

Cleon Belgrave

P.O. Box 86

Jonesboro, Georgia 30237

Case No. S24C0401 CLEON BELGRAVE v. PUBlix SUPERMARKET INC. et al.

The above-styled petition for certiorari has been docketed in the Supreme Court of Georgia and has been assigned the docketing date and case number shown above.

A response to the petition for certiorari, due within 20 days of the docketing of the petition, is encouraged but is not mandatory. However, failure to file a response shall be deemed to be an acknowledgment by respondent that the requirements of the rules for the granting of the petition for certiorari have been met, provided, however, that such acknowledgment shall not be binding on the Court. See Supreme Court Rule 42.

Important Rule Requirements and Information

Notice of Amended Rules – Effective immediately, the Supreme Court of Georgia amended its Court Rules by revising Rule 4 (Requirements for Attorneys Practicing Before the Supreme Court), Rule 10 (Briefs of the Parties: Time of Filing), Rule 20 (Briefs: Page Limitations), Rule 23 (Amicus Briefs), Rule 24 (Supplemental Briefs), Rule 50 (Oral Argument), and Rule

51 (Requests for Oral Argument) and by adding new Rule 96 (Appearance and Argument before the Georgia Supreme Court). The amended rules are available on the Supreme Court of Georgia website: www.gasupreme.us.

Counsel – Unless exempted, all counsel are required to submit documents to the Court electronically. Submitting documents electronically is not a substitute for service on the opposing party. Counsel listed in this case may view the record through the e-file system.

Court of Appeals Case Number(s): A23A1721

Therese S. Barnes, Clerk