

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO. 0707459

BARBARA O'CAIN, CLAIMANT/APPELLANT,

VERSUS

SOUTH CAROLINA DEPARTMENT OF DISABILITY AND SPECIAL NEEDS AND  
SC STATE ACCIDENT FUND, DEFENDANTS/RESPONDENTS.

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Appellate Panel Review held in Columbia, South  
Carolina on per notices timely and  
properly served on all parties of interest.

Appellate Panel Decision and Order filed:

4-22-13

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APPEARANCES:

Claimant was represented by Scott A. Elliott,  
Esquire, of Elliott and Elliott, 1508 Lady Street,  
Columbia, SC 29201.

RECEIVED

MAY 21 2013

ATTORNEY GENERAL

Defendants were represented by Ellen H. Goodwin  
of The South Carolina State Accident Fund, P.O.  
Box 102100, Columbia, South Carolina 29221-  
5000.

## STATEMENT OF THE CASE

This was an admitted claim in which claimant suffered an injury by accident on 5/30/07, when a bench she was sitting on collapsed, causing her to fall to the floor. Defendants requested a hearing, asserting that claimant is at MMI and requesting permission to stop payment, a determination of permanent impairment and credit for overpayment. Claimant asserted that she is not at MMI and needs additional medical treatment. A hearing was held March 7, 2012. The Hearing Commissioner found the claim compensable and awarded benefits by Order filed 9/29/12, in which he made the following Findings of Fact:

### FINDINGS OF FACT

1. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.
2. The South Carolina Workers' Compensation Commission has subject matter and personal jurisdiction over all the parties and matters before this Commissioner; all parties having received proper notice of the hearing held set for March 7, 2012.
3. Venue is proper set in Richland County, South Carolina.
4. On 5/30/07, the claimant, Barbara O'Cain, suffered an admitted accident in which she incurred admitted injuries to her low back.
5. Claimant has received medical treatment from numerous providers, including Dr. Storick, Dr. Griggs, Dr. Parrott, Dr. Carnes, Dr. Redmond and Dr. Izzard.

6. Claimant was released by Dr. Storick on 12/04/07 with a 5% impairment rating to the spine. (Defs. APAs, p. 16.)
7. After spinal surgery in June of 2010, Claimant reported to Dr. Talley Parrott that her back was somewhat better. (Defs. APAs, p. 33.)
8. Claimant reached MMI on 5/03/11 and received an impairment rating of 28% to the back by Dr. Redmond. (Defs. APAs, p. 147.)
9. Upon releasing claimant on 5/03/11, Dr. Redmond prescribed ongoing pain management for claimant, which was provided by Defendants through Palmetto Baptist Pain and Orthopaedic Care Center. (Defs. APAs, p. 147.)
10. Unfortunately, claimant, through her own actions, failed to take advantage of this treatment. According to the records, "...she has not been very compliant with doing the program. She is not meeting her goals, etc. and not being consistently present." Additionally, she was reported to sit and text on/use her phone during some sessions. (Defs.' APAs, pp. 115, 117, 124, 134, 142, 145, 148, 150, 151.)
11. The Manager of Palmetto Baptist Pain and Orthopaedic Care Center, Dr. Tillman "Bud" Clack, M.A., says in his letter of dismissal from the program to claimant, "...you are in violation of your narcotics agreement with us as you have not been taking your medications as prescribed and failing to follow through with physician recommendations, specifically your failure to participate in physical therapy and to follow through with the order to see a neurologist." (Def's.' APAs, p. 153.)

12. Whether or not claimant will need on-going pain management and the associated medications is a decision for her family physician, who has expressed some reluctance to oversee such a program himself.
13. It is clear that the Defendants are not financially responsible for on-going pain management or the associated medications, since they provided such, and it was the claimant who forfeited that treatment.
14. The Defendants may stop payment and are entitled to credit for overpayment of temporary total benefits from 01/19/12, when they filed their request for hearing.
15. Claimant is not permanently and totally disabled. Her FCE indicates she gave inconsistent effort and had 3/5 Waddell signs. The FCE concluded that claimant could do light/sedentary work, which is consistent with her previous employment at the Department of Disabilities and Special Needs. She is also able to perform such jobs as Machine Tender, Assembler, Inspector, System Monitor, Order Clerk, File Clerk, and Record Clerk. (Defendants' APAs, p. 36 – 43; Defendants' Vocational Assessment, p. 7, 8.)
16. Claimant had been prescribed Ambien, Lexapro, Klonopin, Valium, Imitrex, Bupap, Tylox, Percocet, Ultracet and Midrin due to her history of headaches, anxiety and insomnia prior to the date of accident. There is no evidence that any those medications are due to her accident. In fact, Dr. Griggs' opined that there was nothing in his dictation that indicated visits to him for stress and anxiety were related to claimant's work accident. (Depo. Dr. Griggs, p. 5, line 11 - p. 6. line 1; p. 20, line 23 - p. 21, line 1.)

17. Claimant's headaches pre-existed the accident and are not causally related to it. (Depo. Dr. Griggs, p. 4, lines 5-8.)
18. Claimant's psychological problems are not due to her accident but due to personal problems, primarily involving her family, including the fact that her son suffered a traumatic brain injury. Upon her completion of the Full Pain Program, no psychological follow up was recommended. (Defendants' APAs, p. 135, 146, 148; Defendants' Vocational Evaluation; Depo. Dr. Griggs, p. 24, lines 12-20.)
19. Per Dr. Redmond, Dr. Drummond noted that claimant's depression was mild initially and had decreased as of 4/27/11. (Claimant's APAs, p. 362.)

The hearing Commissioner further made Conclusions of Law as follows:

#### CONCLUSIONS OF LAW

Accordingly, as provided by the South Carolina Code Section 42-17-40, it is the determination and finding of this Commissioner:

1. Pursuant to Section 42-1-130, the Claimant was a covered employee at the time in question and under Section 42-1-140, the Defendant employer was a covered employer under the Act.
2. Pursuant to Section 42-1-160, claimant suffered injury by compensable accident in the course and scope of her employment.
3. Pursuant to Section 42-9-30 and the evidence and testimony presented, claimant has suffered a 40% permanent partial impairment to her back as a result of her work-related accident.
4. Claimant's headaches and psyche/stress are not a part of her work-related injury, according to the medical records and deposition testimony of Dr. Griggs, the

records of Dr. Redmond and Defendants' vocational assessment. From these records, it is clear that claimant's headaches pre-existed her accident and that she has other major stressors in her life.

5. Pursuant to Section 42-9-260 and associated regulations, Defendants may stop payment and are entitled to credit for overpayment from the date they requested a hearing: 1/19/12.

Appellant then filed a timely Form 30 Application for Review stating the following grounds for appeal:

1. Whether the hearing Commissioner erred in relying upon evidence of a witness not the Claimant's authorized treating physician to disqualify the Claimant from the treatment prescribed by her authorized treating physician, the error being that only the authorized treating physician is competent to prescribe or terminate treatment for his patient, the Claimant.
2. Whether the hearing Commissioner erred in relying upon evidence of a witness not the Claimant's authorized treating physician to disqualify the Claimant from the treatment prescribed by her authorized treating physician, the error being that the evidence of record is devoid of any evidence that the Palmetto Health Baptist clinic manager had the authority to prescribe treatment or to modify or terminate the treatment prescribed by the Claimant's authorized treating physician.
3. Whether the Commissioner erred in finding that the Claimant, through her own actions, failed to take advantage of the treatment prescribed by her

authorized treating physician, the error being that such finding is not supported by the evidence of record.

4. Whether the Commissioner erred in finding that the Claimant, through her own actions, failed to take advantage of the treatment prescribed by her authorized treating physician, the error being that the substantial evidence of record supports only the finding that the Claimant engaged in no conduct that would disqualify her from receiving treatment prescribed by her authorized treating physician.
5. Whether the Commissioner erred in finding that the Claimant was dismissed from the Palmetto Health Baptist Pain and Orthopedic Care Center by a physician, the error being that such finding is not supported by the evidence of record.
6. Whether the Commissioner erred in finding that the Claimant's family physician had expressed reluctance to oversee the Claimant's medications associated with her pain management, the error being that such finding is not supported by the evidence of record.
7. Whether the Commissioner erred in finding that the Claimant's family physician had expressed reluctance to oversee the Claimant's medications associated with her pain management, the error being that the substantial evidence of record supports a finding that the Claimant's family physician was prepared to oversee the Claimant's medications.
8. Whether the Commissioner erred in finding that the Defendants are not financially responsible for ongoing pain management or the associated

mediations, the error being that such finding is not supported by the evidence of record.

9. Whether the Commissioner erred in finding that the Claimant forfeited the benefit of treatment prescribed by her authorized treating physician, the error being that such finding is not supported by the evidence of record.
10. Whether the Commissioner erred in finding that the Claimant, through her own actions, forfeited the benefit of the treatment prescribed by her authorized treating physician, the error being that the substantial evidence of record supports only the finding that Claimant engaged in no conduct that would disqualify her from receiving treatment prescribed by her authorized treating physician.
11. Whether the Commissioner erred in finding that the Defendants are not financially responsible for ongoing pain management or the associated medications, the error being that the substantial evidence of record supports only the finding that the authorized treating physician prescribed such treatment to lessen the Claimant's period of disability.
12. Whether the hearing Commission erred in failing to find that the Defendants are financially responsible for ongoing pain management or the associated medications, the error being that the substantial evidence of record supports only the finding that the authorized treating physician prescribed such treatment to lessen the Claimant's period of disability.

13. Whether the Commissioner erred in finding that the Claimant is not permanently and totally disabled, the error being such finding is not supported by the evidence of record.
14. Whether the Commissioner erred in finding that the Claimant is not permanently and totally disabled, the error being that the substantial evidence of the record supports only the finding that the Claimant is totally and permanently disabled by virtue of her admitted injury to her back.
15. Whether the Commissioner erred in failing to find that the Claimant is not permanently and totally disabled, the error being that the substantial evidence of the record supports only the finding that the Claimant is totally and permanently disabled by virtue of her admitted injury to her back.
16. Whether the Commissioner erred in finding that the Claimant's own stress and anxiety did not contribute to her total and permanent disability, the error being that the substantial evidence of record supports only the finding that the Claimant's stress and anxiety aggravated Claimant's admitted injury to her back.
17. Whether the Commissioner erred in finding that the Claimant's psychological problems did not contribute to her total and permanent disability, the error being that the substantial evidence of record supports only the finding that the Claimant's psychological problems aggravated Claimant's admitted injury to her back.
18. Whether the Commissioner erred in finding that the Claimant's depression did not contribute to her total and permanent disability, the error being that the

substantial evidence of record supports only the finding that the Claimant's depression aggravated Claimant's admitted injury to her back.

19. Whether the Commissioner erred in finding that the Defendants were entitled to credit for overpayment from the date they requested a hearing, the error being that the Defendants are estopped from receiving any credit by their failure to provide treatment to the Claimant as prescribed by her authorized treating physician.
20. Whether the Commissioner erred in concluding that the evidence of record demonstrated by substantial evidence that the Claimant had suffered only a forty percent (40%) permanent partial impairment to her back as a result of her work-related injury, the error being that the substantial evidence of record and applicable law support only the conclusion that the Claimant was totally and permanent disabled.
21. Whether the Commissioner erred in failing to conclude that the Claimant was totally and permanently disabled, the error being that the substantial evidence of record and applicable law supported only the conclusion that the Claimant is totally and permanently disabled by virtue of her admitted injury to her back.
22. Whether the Commissioner erred in failing to conclude that the Claimant was entitled to continuing medical pain management and associated medication as prescribed by her treating physician, the error being that the substantial evidence of record and applicable law support only the conclusion that the

authorized treating physician prescribed such treatment to lessen the Claimant's period of disability.

23. Whether the Commissioner erred in failing to conclude that the Claimant was entitled to continuing medical pain management and associated medication as prescribed by her treating physician, the error being that the substantial evidence of record and applicable law support only the conclusion that the Claimant engaged in no conduct that would disqualify her from receiving treatment prescribed by her authorized treating physician which would lessen the Claimant's period of disability.
24. Whether the hearing Commissioner erred in concluding that the Claimant's headaches and psyche and stress did not aggravate her total and permanent disability the error being that the substantial evidence of record and applicable law support only the conclusion that the Claimant's headaches and psyche and stress aggravated the Claimant's admitted injury to her back.
25. Whether the hearing Commissioner erred in concluding that the Defendants were entitled to credit for overpayment from the date they requested a hearing, the error being that the Defendants are estopped from receiving any credit by their failure to provide treatment to the Claimant as prescribed by her authorized treating physician.

26. Whether the hearing Commissioner erred in ordering that the Claimant is not entitled to continuing medical treatment, the error being that the substantial evidence of record and applicable law support an order requiring the Defendants to be financially responsible for ongoing pain

management and continuing medical treatment as prescribed by her authorized treating physician to lessen Claimant's period of disability.

27. Whether the hearing Commissioner erred in failing to order that the Claimant is not entitled to continuing medical treatment, the error being that the substantial evidence of record and applicable law support an order requiring the Defendants to be financially responsible for ongoing pain management and continuing medical treatment as prescribed by her authorized treating physician to lessen Claimant's period of disability.

28. Whether the hearing Commissioner erred in failing to order that the Claimant is totally and permanently disabled, the error being the substantial evidence of record and applicable law support only the finding of fact and conclusion of law that the Claimant is totally and permanently disabled by virtue of her admitted injury.

29. Whether the hearing Commissioner erred in ordering that the Claimant is entitled to an award of only forty percent (40%) permanent partial disability to her back, the error being that the substantial evidence of record and applicable law support only the finding of fact and conclusion of law that the Claimant is totally and permanently disabled by virtue of her admitted injury.

30. Whether the hearing Commissioner erred in ordering that the Defendants were entitled to credit for overpayment from the date they requested a hearing, the error being that the Defendants are estopped from

receiving any credit by their failure to provide treatment to the Claimant as prescribed by her authorized treating physician.

Oral arguments were delivered by the parties on 01/23/13. All proffered testimony has been taken. Such, together with all documentary evidence and legal briefs, has been delivered to the individual members of the Full Commission and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1976, as amended), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Scott A. Elliott for the Claimant and Ellen H. Goodwin for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties. Having heard oral arguments on behalf of the parties, considered their briefs and viewed the record as a whole, the Appellate Panel hereby makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

It is found by a preponderance of the substantial evidence as a fact:

1. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.
2. The South Carolina Workers' Compensation Commission has subject matter and personal jurisdiction over all the parties and matters before this Commissioner; all

parties having received proper notice of the hearing held 3/07/12 and oral arguments held 1/23/13.

3. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.
4. Venue is proper set in Richland County, South Carolina.
5. On 5/30/07, the claimant, Barbara O'Cain, suffered an admitted accident in which she incurred admitted injuries to her low back.
6. Claimant has received medical treatment from numerous providers, including Dr. Storick, Dr. Griggs, Dr. Parrott, Dr. Carnes, Dr. Redmond and Dr. Izard.
7. Claimant was released by Dr. Storick on 12/04/07 with a 5% impairment rating to the spine. (Defs. APAs, p. 16.)
8. After spinal surgery in June of 2010, Claimant reported to Dr. Talley Parrott that her back was somewhat better. (Defs. APAs, p. 33.)
9. Claimant reached MMI on 5/03/11 and received an impairment rating of 28% to the back by Dr. Redmond. (Defs. APAs, p. 147.)
10. Upon releasing claimant on 5/03/11, Dr. Redmond prescribed ongoing pain management for claimant, which was provided by Defendants through Palmetto Baptist Pain and Orthopaedic Care Center. (Defs. APAs, p. 147.)
11. Unfortunately, claimant, through her own actions, failed to take advantage of this treatment. According to the records, "...she has not been very compliant with doing the program. She is not meeting her goals, etc. and not being consistently

present.” Additionally, she was reported to sit and text on/use her phone during some sessions. (Def’s APAs, pp. 115, 117, 124, 134, 142, 145, 148, 150, 151.)

12. The Manager of Palmetto Baptist Pain and Orthopaedic Care Center, Tillman “Bud” Clack, M.A., says in the practice’s letter of dismissal from the program to claimant, “...you are in violation of your narcotics agreement with us as you have not been taking your medications as prescribed and failing to follow through with physician recommendations, specifically your failure to participate in physical therapy and to follow through with the order to see a neurologist.” (Def’s APAs, p. 153.)
13. Whether or not claimant will need on-going pain management and the associated medications is a decision for her family physician, who has expressed some reluctance to oversee such a program himself.
14. It is clear that the Defendants are not financially responsible for on-going pain management or the associated medications, since they provided such, and it was the claimant who forfeited that treatment.
15. The Defendants may stop payment and are entitled to credit for overpayment of temporary total benefits from 01/19/12, when they filed their request for hearing.
16. Claimant is not permanently and totally disabled. Her FCE indicates she gave inconsistent effort and had 3/5 Waddell signs. The FCE concluded that claimant could do light/sedentary work, which is consistent with her previous employment at the Department of Disabilities and Special Needs. She is also able to perform such jobs as Machine Tender, Assembler, Inspector, System Monitor, Order

Clerk, File Clerk, and Record Clerk. (Defendants' APAs, p. 36 – 43; Defendants' Vocational Assessment, p. 7, 8.)

17. Claimant had been prescribed Ambien, Lexapro, Klonopin, Valium, Imitrex, Bupap, Tylox, Percocet, Ultracet and Midrin due to her history of headaches, anxiety and insomnia prior to the date of accident. There is no evidence that any of those medications are due to her accident. In fact, Dr. Griggs' opined that there was nothing in his dictation that indicated visits to him for stress and anxiety were related to claimant's work accident. (Depo. Dr. Griggs, p. 5, line 11 – p. 6, line 1; p. 20, line 23 – p. 21, line 1.)
18. Claimant's headaches pre-existed the accident and are not causally related to it. (Depo. Dr. Griggs, p. 4, lines 5-8.)
19. Claimant's psychological problems are not due to her accident but due to personal problems, primarily involving her family, including the fact that her son suffered a traumatic brain injury. Upon her completion of the Full Pain Program, no psychological follow up was recommended. (Defendants' APAs, p. 135, 146, 148; Defendants' Vocational Evaluation; Depo. Dr. Griggs, p. 24, lines 12-20.)
20. Per Dr. Redmond, Dr. Drummond noted that claimant's depression was mild initially and had decreased as of 4/27/11. (Claimant's APAs, p. 362.)

#### **CONCLUSIONS OF LAW**

Accordingly, as provided by the South Carolina Code Section 42-17-50, it is the determination and finding of this Appellate Panel:

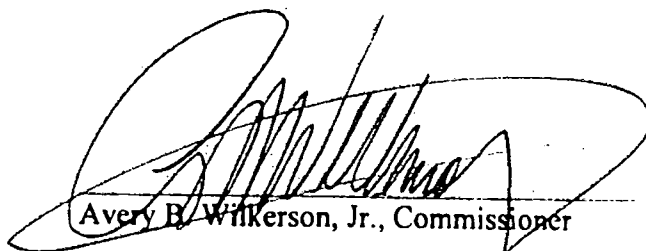
1. Pursuant to Section 42-1-130, the Claimant was a covered employee at the time in question and under Section 42-1-140, the Defendant employer was a covered employer under the Act.
2. Pursuant to Section 42-1-160, claimant bears the burden of proving an injury by accident in the course and scope of employment.
3. Pursuant to Section 42-1-130, the Claimant was a covered employee at the time in question and under Section 42-1-140, the Defendant employer was a covered employer under the Act.
4. Pursuant to Section 42-1-160, claimant suffered injury by compensable accident in the course and scope of her employment.
5. Pursuant to Section 42-9-30 and the evidence and testimony presented, claimant has suffered a 40% permanent partial impairment to her back as a result of her work-related accident.
6. Claimant's headaches and psyche/stress are not a part of her work-related injury, according to the medical records and deposition testimony of Dr. Griggs, the records of Dr. Redmond and Defendants' vocational assessment. From these records, it is clear that claimant's headaches pre-existed her accident and that she has other major stressors in her life.
7. Pursuant to Section 42-9-260 and associated regulations, Defendants may stop payment and are entitled to credit for overpayment from the date they requested a hearing: 1/19/12.

ORDER

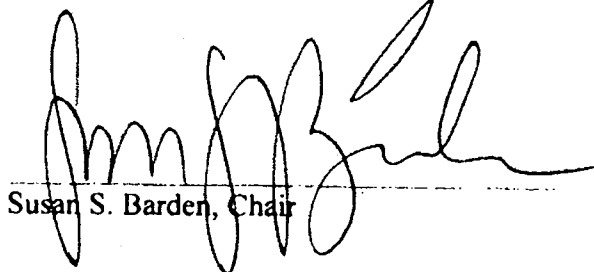
IT IS, THEREFORE, ORDERED: The Order of the hearing Commissioner is  
AFFIRMED AS MODIFIED.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION



Avery B. Wilkerson, Jr., Commissioner



Susan S. Barden, Chair



Melody L. James, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

***By Valerie Deller on April 22, 2013***