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**SC Court of Appeals**

APPELLATE PANEL  
DECISION AND ORDER  
OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1906764

Helen Brown,

CLAIMANT/ APPELLANT,

vs.

Walmart Inc.,

EMPLOYER,

AND

New Hampshire Insurance Company,

CARRIER,  
DEFENDANTS/RESPONDENTS

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Appellate Panel Review held via Videoconference  
on April 19, 2022 per notices timely and properly served  
upon all parties of interest.

Appellate Panel Decision and Order filed

June 24, 2022 \_\_\_\_\_, 2022

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APPEARANCES:

Claimant/Appellant, Helen Brown, represented by George A. Taylor, Esquire of Chappell Smith & Arden in Columbia, South Carolina.

Defendants/Respondents represented by Johnnie W. Baxley, III, Esquire of Willson Jones Carter & Baxley, P.A. in North Charleston, South Carolina.

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## STATEMENT OF THE CASE

Claimant/Appellant (hereinafter "Claimant") sustained an admitted accident arising out of the course and scope of her employment on May 30, 2019, when she was cleaning the fryer and slipped on some of the tools used to open the drain. Defendants/Respondents (hereinafter "Defendants") admitted injury only to the left knee as a result of the work accident. Defendants denied all other alleged injuries. A hearing was set on the parties' Forms 50 and 51.

At the hearing, Claimant sought an adjudication on whether Claimant sustained compensable injuries to her left shoulder and left arm, whether Claimant was entitled to benefits under the Act for the left shoulder and left arm, whether Claimant was entitled to temporary compensation from April 13, 2020 to the present, and Claimant's entitlement to a cervical MRI scan and additional treatment for the left knee.

It was Defendants' position that Claimant could not satisfy her burden of proof with regard to the compensability of the left shoulder and left arm. Specifically, Defendants asserted that medical causation for the left shoulder and/or left arm could not be established by any medical report or deposition proffered. Consequently, Defendants contended that Claimant was not entitled to a cervical MRI because that was recommended treatment for the shoulder which is not compensable. Defendants further asserted that Claimant was not entitled to temporary total disability benefits as Dr. Rush wrote Claimant out of work for non-compensable body parts and clarified his position about being out of work in his deposition. Lastly, Defendants asserted Claimant did not need additional medical treatment as relates to her left knee given that she had not sought treatment for her knee since March 2020 and did not attend the final knee evaluation in November 2020.

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The parties were heard by Commissioner R. Michael Campbell, II, on November 17, 2021, in Rock Hill, South Carolina. On February 7, 2022, he issued the following Order:

**FINDINGS OF FACT**

**IT IS FOUND AS A FACT:**

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Helen Brown as Employee-Claimant and Walmart Inc. as Employer and New Hampshire Insurance Company as Carrier, Defendants.

2. That the average weekly wage of Employee at the time of the above-described accident was \$334.63, and his compensation rate was \$223.10.

3. Claimant sustained an admitted injury by accident to her left knee arising out of and in the course and scope of her employment on May 30, 2019.

4. Claimant alleges a causally related injury to her left shoulder.

5. Claimant underwent various evaluations and treatment for her admitted and alleged work-related injuries.

6. On 01/24/2020, in an addendum to his medical report, Dr. Gregory R. Palutsis of MUSC Florence Orthopaedics opined: "I, Dr. Gregory R. Palutsis, evaluated Ms. Helen Brown on January 16, 2020 for her left shoulder pain. At this visit, Ms. Brown related to me that she had fallen on her left arm and left knee at work and is having left shoulder complaints since that time. I did not include this in the original history of my report dated January 16, 2020, which was left out inadvertently. It is my opinion, to a reasonable degree of medical certainty, that Ms. Helen Brown's complaints regarding her left shoulder were from the fall she sustained at work on May 30, 2019 and that she will require medical treatment for the same."

7. On 11/11/2020, in his medical notes, Dr. Paul F. Rush of OrthoCarolina opined: "Persistent left shoulder pain with abnormal MRI as noted above. Most of these findings probably chronic which certainly could be aggravated by her injury." In addition, Dr. Rush wrote Claimant out of work for her left shoulder pain for an unknown length of time.

8. On 11/16/2020, on a Form 14B, authorized treating physician Dr. John Smid of OrthoCarolina opined to a reasonable degree of medical certainty that Claimant was at MMI as of 11/16/2020, assigned a 2% medical impairment to the left knee, assigned no permanent physical limitations and did not recommend future medical treatment.

9. On 01/06/2021, in an amendment to his IME for the claimant, Dr. Carl D Geier, Jr. opined: "Based on the available information, to a reasonable degree of medical certainty, there is a causal relationship between the examinee's ongoing left knee and left shoulder pain secondary to the work-related injury on May 30, 2019. The diagnosis and need for treatment are the direct result of the work accident as a direct injury and/or an aggravation of a pre-existing condition. She has not reached maximum medical improvement as of the date of this examination regarding her left knee and left shoulder pain. Given her left knee difficulties, she is limited to desk duties only. Regarding the left knee, Ms. Brown needs an MRI to determine the source of her medical knee pain and follow-up with a knee specialist to plan surgical treatment, including total knee replacement. Regarding the left shoulder, she needs continued physical therapy and follow-up with a shoulder specialist to determine other treatment including shoulder arthroscopic and rotator cuff repair. The treatment recommendations as

outlined are reasonable, medically necessary, and intended to lessen the period of disability to a reasonable degree of medical certainty."

10. On 03/23/2021, in deposition testimony, Dr. Rush testified Claimant's work related injury could have possibly aggravated her pre-existing left shoulder problems, that he would have expected the symptoms for her left shoulder to have presented by the time of her June 17, 2019 appointment, that he would expect the symptoms of an aggravation of an underlying condition to manifest themselves much sooner than approximately seven months and that Claimant could have gone back to work for the issues he was seeing her for with restrictions for anything strenuous using the upper extremities such as pulling, pushing, lifting and overhead work.

11. On 05/07/2021, in deposition testimony, Dr. Palutis testified, with regard to the addendum to his medical report, that he didn't have any specific recollection of what the claimant did or did not say on January 16, 2020, and that would have been brought to his attention afterwards by the patient or patient's attorney. In addition, Dr. Palutis testified that he would not think that claimant's left shoulder complaints are related to her work accident if the first time she complained to a physician about her shoulder was about seven months later. Dr. Palutis also testified he had a hard time saying that Claimant's upper arm complaints were related to her left shoulder because he wasn't the one examining her and didn't have confirmation there actually was an injury to the shoulder.

12. On 11/17/2021, at the hearing before the undersigned Commissioner, Claimant testified regarding her work-related accident, the medical treatment and evaluations she has had for her admitted left knee, alleged left arm and alleged left shoulder injuries. In addition, Claimant testified regarding the reporting to medical providers about her alleged left arm and left shoulder issues, the issues she continues to have and her ability to work.

13. While I am certainly sympathetic to the issues that Claimant has had with her left shoulder and left arm, based on a preponderance of the evidence, I simply cannot find that Claimant has met her burden of proof that she sustained a compensable injury/aggravation to her left shoulder or left arm, causally-related to her admitted May 30, 2019 work-related accident.

14. After reviewing the medical records, the deposition transcripts, and Claimant's testimony, I find that Claimant specifically denied shoulder pain or symptoms for months after her work accident. The first medical note to contain a specific mention of the shoulder was December 26, 2019. Based upon her testimony, Claimant stated that her shoulder and arm were injured from the date of accident forward, that she knew where those body parts were located, and that she reported to the medical providers through both words and indication that she was having problems specifically with her shoulder; however, the medical records simply do not support that testimony. This finding is based upon the greater weight of the evidence.

15. Both Dr. Rush and Dr. Palutis testified that it was unlikely that Claimant's problems with her left shoulder and left arm were related to the work accident if her symptoms did not surface for months after the accident. Neither doctor was able to state to a reasonable degree of medical certainty that Claimant's left shoulder or left arm problems were causally related to a work accident based upon the specific circumstances presented to them (namely that Claimant did not complain about shoulder complaints until December 2019). I therefore find that Claimant did not prove by a preponderance of the evidence that her left shoulder and left arm problems are causally related to her work accident

16. Therefore, Claimant's request for benefits under the Act for the left shoulder and left arm is hereby denied.

17. Claimant's request for an MRI of the cervical spine, which was recommended solely to diagnose problems with the left shoulder and left arm, is hereby denied since those body parts are not compensable.

18. Furthermore, Claimant's request for temporary total disability compensation benefits is hereby denied. First, Dr. Rush broke her out of work based upon his treatment for a body part that is not compensable. Second, Dr. Rush clarified in his deposition that he would have allowed Claimant to go back to work and the only reason he wrote her out of work was due to her myriad of problems, including problems that are not compensable.

19. Claimant's only compensable body part from this admitted accident is her left knee/left lower extremity.

20. I find Claimant is entitled to a second opinion for her admitted left knee injury, by a physician of the Defendants' choosing and who is a knee specialist.

21. Defendants' chosen specialist shall not be with a practice that has previously treated Claimant.

22. Therefore, I hereby find Claimant has not yet reached maximum medical improvement for her compensable left knee injury.

23. A determination of permanency to the left knee/left lower extremity is premature at this time.

#### CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant sustain a compensable injury to her left knee by accident arising out of and in the course and scope of her employment on May 30, 2019.

3. Under § 42-1-160, Claimant failed to prove by a preponderance of evidence in the record that her left shoulder and left arm injuries are causally related to her work accident of May 30, 2019.

4. Claimant's left shoulder and left arm claim for benefits under the South Carolina Workers' Compensation Act is hereby denied and dismissed with prejudice.

5. Under § 42-9-10, Claimant is not entitled to temporary total disability compensation.

6. Under § 42-15-60, Claimant has not yet reached maximum medical improvement with regard to her compensable left knee injury and is entitled to a second opinion on the left knee injury from a knee specialist chosen by Defendants.

#### ORDER/AWARD

~~IT IS HEREBY ORDERED that Claimant failed to prove compensable injuries to her left shoulder and left arm by accident arising out of and in course and scope of her employment on May 30, 2019.~~

IT IS FURTHER ORDERED that Claimant's left shoulder and left arm claim for benefits under the South Carolina Workers' Compensation Act is hereby denied and dismissed with prejudice.

**IT IS FURTHER ORDERED** that Claimant's request for temporary total disability compensation benefits is hereby denied.

**IT IS FURTHER ORDERED** that Claimant is entitled to a second opinion for her admitted left knee injury, by a knee specialist of the Defendants choosing.

**IT IS FURTHER ORDERED** that Claimant has not yet reached maximum medical improvement with regard to her left knee and a determination of permanency for the left knee is premature at this time.

**IT IS SO ORDERED.**

Within the statutory period, Claimant filed an Application for Review in this case, setting forth her reasons, copies of which were furnished to all interested parties. All parties appeared at oral arguments on April 19, 2022 and presented their case on appeal. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has been under study and consideration.

By Form 30 Appeal, Claimant appealed the following particulars listed below:

1. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact No. 11 that Dr. Palutis testified he did not think Claimant's left shoulder complaints were causally related to her work accident and that he had a "hard time saying" Claimant's upper left arm complaints were unrelated to her left shoulder when such a finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
2. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 13 that Claimant failed to meet her burden of proof that she sustained a compensable injury or aggravation of a preexisting condition as a result of her admitted work injury when such a finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
3. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 14 that Claimant specifically denied shoulder pain or symptoms for months after the accident when such a finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
4. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 15 that Claimant specifically denied shoulder pain or symptoms for months after her work accident and that the medical records failed to support Claimant's testimony that her left shoulder and arm were injured from the date of*

- accident forward when such a finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
5. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 16 that Dr. Rush and Dr. Palutis testified it was unlikely the Claimant's problems with her left shoulder were related to the work accident if her symptoms did not surface for months after the accident and that neither doctor was able to state to a reasonable degree of medical certainty that Claimant's left shoulder or left arm problems are causally related to a work accident when such a finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
  6. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 17 denying Claimant's request for an MRI of the cervical spine when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
  7. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 18 denying Claimant's request for TTD from April 13, 2020 ongoing based upon Dr. Rush's out of work note when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
  8. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Finding of Fact. No. 19 finding Claimant's only compensable body part from her admitted work accident is her left knee/lower extremity when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
  9. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Conclusion of Law No. 3 that Claimant failed to prove by a preponderance of the evidence in the records that her left shoulder and left arm injuries were not causally related to her work accident of May 30, 2019, when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
  10. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Conclusion of Law No. 4 that Claimant's left shoulder and left arm claim for benefits under the South Carolina Workers' compensation Act are denied and dismissed with prejudice when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*

11. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in Conclusion of Law No. 5 that Claimant is not entitled to TTD from April 13, 2020 ongoing when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*
12. *Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law in failing to find that Claimant did suffer a compensable aggravation of a preexisting condition in her left shoulder and left arm when such finding was either arbitrary and capricious or clearly erroneous in light of the evidence presented; against the greater weight of the evidence or unsupported by the evidence in the record, and/or contrary to South Carolina law?*

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50, review the award, weigh the evidence as presented at the initial hearing, and if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner. The Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). In this case, the preponderance of the evidence supports an affirmation of the Hearing Commissioner's Decision and Order in full.

#### **DISCUSSIONS OF ISSUES ON APPEAL**

**I. The Hearing Commissioner correctly found that the left shoulder and left arm injuries are not compensable.**

**A. Claimant did not complain about a shoulder injury for almost seven months after her work accident.**

Claimant suffered an injury by accident on May 30, 2019, when she was cleaning the fryer and slipped on some of the tools used to open the drain, resulting in an injury to her left knee. Initially, Claimant treated with McLeod Health Cheraw on the day of the accident and the report states that there "no injury except to her left knee" (APA, p. 1). Claimant testified she didn't realize her shoulder and arm was hurting until she tried to take her blouse off at the hospital on the date of the accident. (Hrg. Tr. p. 31). She testified she needed help from the nurse to take off her

blouse. *Id.* She testified that she felt pain from her shoulder all the way down to her wrist. (Hrg. Tr. p. 32; 57). This testimony is not supported by the medical record.

Claimant then presented to Palmetto Family Medicine on May 31, 2019. (APA p. 23). Claimant had tenderness over the area under the patella in the upper lower leg over the bone. *Id.* Additionally, Claimant had some tenderness in the left forearm and upper arm but had no swelling and specifically denied any shoulder pain. *Id.* When asked whether the Palmetto Family Medicine report was wrong about her denying shoulder pain, Claimant testified the report was wrong. (Hrg. Tr. p. 59). Claimant testified when the doctor asked her what was wrong, she pointed to the body parts that were affecting her. *Id.* She testified that she touched the top of her shoulder and pointed all the way down to her elbow. (Hrg. Tr. p. 60). Again, this testimony is not supported by the medical records.

In a follow-up appointment with Palmetto Family Medicine on June 3, 2019, Claimant only reported pain in her left knee and right wrist according to the notes. (APA p. 25). Claimant testified that she saw Dr. Kinzie at Palmetto Family Medicine on June 3, 2019. *Id.* When asked whether the medical report was wrong about Claimant only complaining of left knee and right wrist pain, Claimant testified that she never mentioned her wrist and she showed the doctor that she felt pain in her shoulder down to her elbow. (Hrg. Tr. p. 61). She testified the pain starts at the top of her shoulder and goes down to her elbow through her bicep. *Id.* She testified that this is the way she described it to Dr. Kinzie. *Id.* Again, this testimony is not supported by the medical records.

Claimant returned to Palmetto Family Medicine on June 10, 2019. (APA p. 27). Claimant reported pain in her left knee and mentioned she was unable to stand for long periods of time. Claimant did not mention her left shoulder or arm according to the note. (APA p. 2). Claimant testified that the June 10, 2019 medical report was not accurate when it stated she only complained

about her left knee. (Hrg. Tr. p. 62). Again, this testimony is not supported by the medical records.

Claimant presented to MUSC Florence, on June 12, 2019, complaining only of left knee pain. X-rays of the left knee indicated arthritic changes and degenerative joint disease. Claimant was prescribed Hydrocodone and a knee brace. (APA p. 36). Claimant testified that she remembers going to the emergency room in Florence two weeks after her accident. *Id.* Claimant testified that the part of the medical report that states Claimant presented with chief complaint of left knee pain is accurate. *Id.* Claimant admitted that she did not mention her left arm or shoulder to that doctor two weeks after the accident. *Id.* However, she testified that she did mention her left arm and shoulder the day of the accident. (Hrg. Tr. p. 63). Claimant testified that she only mentioned her knee at the emergency room two weeks after accident because she only wanted help for her knee at that time. (Hrg. Tr. p. 64). She testified she was still experiencing pain in her shoulder at that time though. *Id.* Claimant could not offer an explanation as to why she went to an emergency room but did not report her alleged severe left shoulder symptoms that she was still having.

In a follow-up appointment on June 17, 2019 at Palmetto Family Medicine, Claimant denied shoulder pain but continued to complain about her left knee pain. (APA p. 29). An MRI of the left knee was ordered. Claimant testified that on her June 17, 2019, visit to Palmetto Family Practice, she did not deny shoulder pain even though the medical report indicated she did. (Hrg. Tr. p. 64). Again, this testimony is not supported by the medical records.

On June 24, 2019, the report of Palmetto Family Medicine indicates that Claimant was still having pain the knee but there is no mention in the report about any shoulder problems. (APA p. 31). Claimant testified that she complained about her left shoulder pain at her June 24, 2019, visit to Palmetto Family Practice. (Hrg. Tr. p. 65). Again, this testimony is not supported by the medical records.

On July 25, 2019, Claimant presented to OrthoCarolina for left knee pain. The note mentions that she landed on the anterior aspect of the left arm, but the report contains no mention of arm/shoulder complaints or problems. Dr. Smid recommended treatment for the left knee which eventually culminated in a surgery on November 12, 2019. (APA p. 79).

Claimant testified that she went to Dr. Donato at MUSC to establish primary care on July 9, 2019. *Id.* She admitted that she did not mention her left knee, left shoulder, or left arm pain to Dr. Donato. (Hrg. Tr. p. 66). She testified that she saw Dr. Donato again in October 2019, and did not mention her left knee, left shoulder, or left arm problems because Dr. Smid was handling those issues. (Hrg. Tr. p. 67).

On December 26, 2019, for the very first time, Claimant presented to MUSC Health complaining of left shoulder pain. (APA p. 83). Claimant reported she was not able to maintain her shoulder in the upwards position. Dr. Donato prescribed her medications and referred her to Dr. Refvem. (APA p. 83). When asked why she waited until the third visit with Dr. Donato to mention the shoulder problems she was purportedly having since the work accident, Claimant testified she had no reason to tell him of her shoulder because he was not going to treat it. (Hrg. Tr. p. 68).

On a visit to MUSC Florence Orthopaedics on January 16, 2020, Claimant reported she was experiencing pain and weakness in her left shoulder pain but reported there was no injury to the left shoulder. (APA p. 88). Claimant denied telling Dr. Palutsis on her January 16, 2020 visit that there was no injury to her left shoulder. (Hrg. Tr. p. 71). Again, her testimony is inconsistent with the medical records.

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Claimant returned to Palmetto Family Medicine on February 5, 2020, reporting left shoulder and left arm pain. (APA p. 33). X-rays of her shoulder came back unremarkable, and she

was referred to physical therapy. *Id.*

On April 13, 2020, Claimant presented to OrthoCarolina with left shoulder pain. *Id.* X-rays of the left shoulder revealed degenerative changes over the AC joint. Dr. Rush referred Claimant for an MRI of her left shoulder and an EMG/NCS of the left upper extremity. *Id.* The MRI of Claimant's left shoulder revealed moderate to severe supraspinatus and infraspinatus tendinosis with partial articular surface tearing of the supraspinatus tendon, moderate degenerative changes of the AC joint, small joint effusion, synovitis, subacromial subdeltoid bursitis, and degeneration and fraying of the labrum and interarticular long head of the bicep tendinosis. *Id.*

The record is absent of any shoulder complaints from the date of the accident until December 26, 2019. However, the shoulder is specifically mentioned at every visit after that date, although Claimant denied any injury to the shoulder when she saw the orthopedic. The preponderance of evidence supports the Commissioner's finding that Claimant specifically denied shoulder pain or symptoms for months after her work accident. The first medical note to contain a specific mention of the shoulder was December 26, 2019. Based upon her testimony, Claimant stated that her shoulder and arm were injured from the date of accident forward, that she knew where those body parts were located, and that she reported to the medical providers through both words and indication that she was having problems specifically with her shoulder; however, the medical records simply do not support that testimony.

**B. There is no evidence in the record to support Claimant's argument that she doesn't know where her shoulder is located.**

Claimant argues in her Brief that she does not know precise medical terms, that she is fragile, and that she is not a medical expert in order to justify the lack of shoulder complaints for seven months after this accident. In order to believe this argument, this Appellate Panel would have to suspend logical thought.

First, Claimant understands where her shoulder is located. When asked at the hearing about her shoulder and where it is located, she touched the top of her shoulder. (Hrg. Tr. pp. 57-58). Claimant may not understand medical anatomy, but she knows where her shoulder is located.

Second, Claimant testified that she showed every doctor where exactly her shoulder/arm was hurting. When asked to touch the area where she has purportedly been having pain since the day she fell, she touched and indicated the top of the shoulder down past her elbow. (Hrg. Tr. p. 58). She testified that the pain has been present since the fall, that the pain has not changed locations, and that she pointed to this area to her physicians. (Hrg. Tr. pp. 58-59). To believe Claimant's argument about imprecise anatomical terms, this Appellate Panel would also have to believe that all of her doctors could not correctly describe and record the location of her pain when she was pointing to the affected area.

The simple fact is that Claimant's testimony is not supported by the medical records of four medical practitioners over a period of almost seven months. The preponderance of the evidence shows that Claimant did not complain about her shoulder until seven months after the accident, and then complained about the shoulder at every single visit. Claimant stated that her shoulder and arm were injured from the date of accident forward, that she knew where those body parts were located, and that she reported to the medical providers through both words and physical indication that she was having problems specifically with her shoulder; however, the medical records simply do not support that testimony.

**C. The preponderance of medical evidence does not support that Claimant has a compensable left shoulder or left arm injury related to her accident at work.**

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The deposition of Dr. Paul Rush was taken on March 23, 2021. Dr. Rush testified Claimant's work-related injury could have possibly aggravated her pre-existing left shoulder

problems, that he would have expected the symptoms for her left shoulder to have presented by the time of her June 17, 2019 appointment, that he would expect the symptoms of an aggravation of an underlying condition to manifest themselves much sooner than approximately seven months.

Dr. Rush testified that the MRI findings showed degenerative changes that would not have been caused by an accident at work but could have been aggravated by an accident at work. Dr. Rush testified that if the fall at work aggravated those underlying conditions, he would have expected symptoms to occur maybe not immediately but certainly within a few weeks. He was then presented with the medical records immediately after Claimant's accident. When asked about the first report to mention shoulder pain dated December 26, 2019, Dr. Rush testified that he would have expected symptoms from an accident to appear much sooner. He further testified if her symptoms were related to the accident, they would have manifested sooner. Dr. Rush testified that the type of chronic findings that Claimant has in her shoulder most often do not present following an injury but occur as more of a gradual onset with symptoms that are progressive. Dr. Rush testified that these types of symptoms are not at all uncommon for a 79-year-old individual. Dr. Rush stated that if it was true that Claimant went six or seven months without any specific complaints of shoulder pain, it really put into question whether her complaints were coming from the work accident.

The deposition of Dr. Palutis was taken on May 7, 2021. Dr. Palutis testified that he would not think that Claimant's left shoulder complaints are related to her work accident if the first time she complained to a physician about her shoulder was about seven months later. Dr. Palutis also testified he had a hard time saying that Claimant's upper arm complaints were related to her left shoulder because he wasn't the one examining her and didn't have confirmation there actually was an injury to the shoulder.

Dr. Palutsis testified that he took a history from the patient and entered into his initial report that "there was no injury to the left shoulder" based upon what Claimant told him in the initial visit. Dr. Palutsis then authored an amended statement dated January 24, 2020, which indicated that Claimant gave a history of a work accident, but Dr. Palutsis admitted that he had no recollection of that but was simply going along with Claimant telling him that she got hurt at work and that his note to the contrary was incorrect. He simply did that report at Claimant's request after the fact. He further testified that if she hurt her shoulder at work in a traumatic injury, there would have been pain reasonably soon, usually within a few days. He indicated that he would normally expect symptoms to appear within a week or two of the accident, but that it was certainly possible for symptoms to appear within one month after the accident; however, two months would be too long, and any period longer would be less likely to be related to the trauma. Dr. Palutsis testified that his opinion as to causation of the left shoulder was based solely on Claimant's statement that she had an injury at work and immediately had symptoms thereafter. He was then shown a number of medical notes, which are specifically detailed above, which do not mention left shoulder complaints until December 26, 2019. Dr. Palutsis then gave the following testimony:

Q Okay. If, in fact, it is true that the first time she complained to a physician about her shoulder was December 26, 2019, from an accident on May 30, 2019, which is about seven months, if that is true and that's accurate, would you think that her left shoulder complaints related to the work accident?

A No.

Q If on the other hand she had symptoms in her left shoulder within a week or two of the fall, it would be your opinion that that very well could be related?

A Yes.

Q Okay. Doctor, have your answers to my questions today been stated to a reasonable degree of medical certainty?

A Yes.

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Both Dr. Rush and Dr. Palutsis testified that it was unlikely that Claimant's problems with her left shoulder and left arm were related to the work accident if her symptoms did not surface for months

after the accident. Neither doctor was able to state to a reasonable degree of medical certainty that Claimant's left shoulder or left arm problems were causally related to a work accident based upon the specific circumstances presented to them (namely, that Claimant did not voice any shoulder complaints until December 2019). The preponderance of the medical evidence also supports that Claimant's left shoulder and left arm problems are not causally related to her work accident.

Therefore, because Claimant's left knee is the only compensable body part, she would not be entitled to benefits – temporary, medical, or otherwise – for, or related to, her left shoulder and/or left arm.

#### **FINDINGS OF FACT**

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Helen Brown as Employee-Claimant and Walmart Inc. as Employer and New Hampshire Insurance Company as Carrier, Defendants.

2. The average weekly wage of Employee at the time of the above-described accident was \$334.63, and his compensation rate was \$223.10.

3. Claimant sustained an admitted injury by accident to her left knee arising out of and in the course and scope of her employment on May 30, 2019.

4. Claimant alleges a causally related injury to her left shoulder and left arm.

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5. Claimant underwent various evaluations and treatment for her admitted and alleged work-related injuries.

6. On January 24, 2020, in an addendum to his medical report, Dr. Gregory R. Palutis of MUSC Florence Orthopaedics opined: "I, Dr. Gregory R. Palutis, evaluated Ms. Helen Brown on January 16, 2020 for her left shoulder pain. At this visit, Ms. Brown related to me that she had fallen on her left arm and left knee at work and is having left shoulder complaints since that time. I did not include this in the original history of my report dated January 16, 2020, which was left out inadvertently. It is my opinion, to a reasonable degree of medical certainty, that Ms. Helen Brown's complaints regarding her left shoulder were from the fall she sustained at work on May 30, 2019 and that she will require medical treatment for the same."

7. On November 11, 2020, in his medical notes, Dr. Paul F. Rush of OrthoCarolina opined: "Persistent left shoulder pain with abnormal MRI as noted above. Most of these findings probably chronic which certainly *could* have been aggravated by her injury" (emphasis added). Dr. Rush wrote Claimant out of work for her left shoulder pain for an unknown length of time.

8. On January 6, 2021, in an amendment to his IME for Claimant, Dr. Carl D Geier, Jr. opined: "Based on the available information, to a reasonable degree of medical certainty, there is a causal relationship between the examinee's ongoing left knee and left shoulder pain secondary to the work-related injury on May 30, 2019. The diagnosis and need for treatment are the direct result of the work accident as a direct injury and/or an aggravation of a pre-existing condition. She has not reached maximum medical improvement as of the date of this examination regarding her left knee and left shoulder pain . . . Regarding the left shoulder, she needs continued physical therapy and follow-up with a shoulder specialist to determine other treatment including shoulder arthroscopic and rotator cuff repair. The treatment recommendations as outlined are reasonable, medically necessary, and intended to lessen the period of disability to a reasonable degree of medical certainty."

9. On March 23, 2021, Dr. Rush testified during his deposition that Claimant's work-

related injury could have possibly aggravated her pre-existing left shoulder problems, but that he would have expected the left shoulder symptoms to have presented by her June 17, 2019 appointment. Moreover, Dr. Rush testified that he would expect the symptoms of an aggravation of an underlying condition to manifest themselves much sooner than approximately seven months and that Claimant could have gone back to work for the issues he was seeing her for with restrictions for anything strenuous using the upper extremities such as pulling, pushing, lifting and overhead work.

10. On May 7, 2021, Dr. Palutis testified during his deposition with regard to the addendum to his medical report, that he didn't have any specific recollection of what Claimant did or did not say on January 16, 2020, and that those details would have been brought to his attention afterwards by Claimant or her attorney. In addition, Dr. Palutis testified that he would not think that Claimant's left shoulder complaints are related to her work accident if the first time she complained to a physician about her shoulder was approximately seven months later. Dr. Palutis also testified that he had a hard time saying that Claimant's upper arm complaints were related to her left shoulder because he was not the one examining her and did not have confirmation that there was actually an injury to the shoulder.

11. On November 17, 2021, Claimant testified before the Hearing Commissioner regarding her work-related accident and the medical treatment and evaluations she has had for her admitted left knee, alleged left arm, and alleged left shoulder injuries. In addition, Claimant testified regarding her purported reports medical providers regarding her alleged left arm and left shoulder issues, as well as the issues she continues to experience and her ability to work.

12. We find that Claimant specifically denied shoulder pain or symptoms for months after her work accident. The first medical note to contain a specific mention of the shoulder was December 26, 2019. During her hearing testimony, Claimant stated that her shoulder and arm were

injured from the date of accident forward, that she knew where those body parts were located, and that she reported to the medical providers through both words and physical indication that she was having problems specifically with her shoulder; however, the medical records simply do not support that testimony. This finding is based upon the greater weight of the evidence.

13. We find that Claimant failed to prove that she had a shoulder injury or shoulder complaints from the date of the accident until December 26, 2019. We do not find convincing or credible any of her excuses or arguments for the failure of these complaints to appear in any medical reports for that period of time. The preponderance of the evidence in the record establishes that Claimant did not have shoulder complaints from the date of her accident through December 26, 2019.

14. Both Drs. Rush and Palutsis testified that it was unlikely that Claimant's left shoulder and left arm problems were related to the work accident if her symptoms did not surface for months after the accident. Neither doctor was able to state to a reasonable degree of medical certainty that Claimant's left shoulder or left arm problems were causally related to a work accident given that Claimant did not voice any shoulder complaints until December 2019. As such, we agree with the Hearing Commissioner that Claimant failed to prove by a preponderance of the evidence that her left shoulder and left arm problems are causally related to her work accident.

15. We afford greater weight to the opinions and testimony of Drs. Rush and Palutsis, Claimant's treating physicians. We do not afford a great deal of weight to the opinions of Dr. Geier.

15. Based on a preponderance of the evidence, Claimant has not satisfied her burden of proving that she sustained a compensable injury or aggravation to her left shoulder or left arm, causally related to her admitted May 30, 2019 work-related accident.

15. Therefore, we hereby deny Claimant's request for benefits under the Act as relates to

the left shoulder and left arm.

16. We agree with the Hearing Commissioner that Claimant is not entitled to an MRI of the cervical spine as it was recommended solely to diagnose problems with the left shoulder and left arm, which are not compensable body parts.

17. We agree with the Hearing Commissioner that Claimant is not entitled to temporary total disability benefits given that Dr. Rush wrote her out of work for a body part that is not compensable. Moreover, Dr. Rush clarified in his deposition that he would have allowed Claimant to go back to work and the only reason he wrote her out of work was due to her myriad of problems, including problems that are not compensable.

18. We agree with the Hearing Commissioner that Claimant's only compensable body part as relates to this admitted accident is her left knee/left lower extremity.

19. We find that Findings of Fact #19-23 of the Hearing Commissioner were not appealed and remain in full force and effect.

### **CONCLUSIONS OF LAW**

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Per S.C. Code Ann. § 42-1-160, Claimant sustained a compensable injury to her left knee by accident that arose out of and in the course and scope of her employment on May 30, 2019.

3. Under § 42-1-160, Claimant failed to prove by a preponderance of the evidence in the record that her left shoulder and left arm injuries are causally related to her May 30, 2019 work accident, and as such, Claimant's claim for benefits under the South Carolina Workers' Compensation

Act as relates to the left shoulder and left arm is hereby denied and dismissed with prejudice.

4. Under 42-15-60, Claimant is not entitled to additional medical treatment for her left shoulder and/or left arm, including, but not limited to, the cervical MRI, as Claimant has failed to satisfy her burden of proving the compensability of her left shoulder and left arm injuries.

5. Under § 42-9-10, Claimant's request for temporary benefits is hereby denied, and Defendants are not liable for the same.

6. Hearing Commissioner's Conclusion of Law #6 was not appealed and remains in full force and effect.

**ORDER/AWARD**

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** that Claimant failed to prove compensable injuries to her left shoulder and left arm by accident arising out of and in course and scope of her employment on May 30, 2019.

**IT IS FUTHER ORDERED** that Claimant's claim for benefits under the South Carolina Workers' Compensation Act as relates to her left shoulder and left arm is hereby denied and dismissed with prejudice.

**IT IS FUTHER ORDERED** that Claimant's request for temporary total disability benefits is hereby denied.

**IT IS FURTHER ORDERED** that Claimant is entitled to a second opinion for her admitted left knee injury, by a knee specialist of the Defendants' choosing.


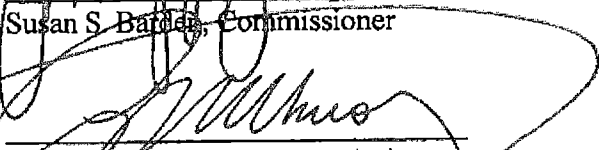
**IT IS FURTHER ORDERED** that Claimant has not yet reached maximum medical improvement with regard to her left knee and a determination of permanency for the left knee is premature at this time.

**IT IS SO ORDERED.**

**AFFIRMED IN FULL**

**CONCUR:**

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

  
\_\_\_\_\_  
Aisha Taylor, Commissioner, Chair  
\_\_\_\_\_  
Susan S. Barde, Commissioner  
\_\_\_\_\_  
Avery B. Wilkerson, Commissioner

**Order Served via E-Mail:**

Johnnie W. Baxley, III Wilson Jones Carter & Baxley <a href="mailto:jwbaxley@wjcbllaw.com">jwbaxley@wjcbllaw.com</a>	George A. Taylor Chappell, Smith, & Arden <a href="mailto:gtaylor@csa-law.com">gtaylor@csa-law.com</a>
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Eugenia Hollmon on June 24, 2022***