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SC Court of Appeals

**APPELLATE PANEL
DECISION AND ORDER**

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1422822

Connie Woods,

Employee / Claimant,

Vs.

Respondent,

NHC Palmettos of Parklane,

Employer,

and

Premier Group Insurance Co.,

Carrier,

Appellants.

Appellate Panel Decision and Order filed

June 28, 2022

APPEARANCES:

Employee / Respondent represented by
Adrienne L. Turner, Esquire
of Columbia, South Carolina

Defendants /Appellants represented by
Clarke W. McCants, III, Esquire and Clarke W. McCants, IV
of Aiken, South Carolina.

STATEMENT OF THE CASE

The Parties were heard by Commissioner Aisha Taylor on September 14, 2020 in Columbia, South Carolina. On November 8, 2021 she issued the following Order:

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Claimant is permanently and totally disabled and is entitled to lump-sum Total Disability Compensation in an amount equal to the commuted value of 500 weeks (455.6077 weeks) at Claimant's weekly compensation rate of \$190.30, or \$86,700.68.

IT IS FURTHER ORDERED that Employer is responsible for lifetime medical expenses related to treatment of Claimant's cervical spine injuries.

IT IS FURTHER ORDERED that Premier Insurance Group is and shall be the responsible carrier and shall provide coverage for the Employee with reference to this claim.

AND IT IS SO ORDERED.

Within the statutory period, Counsel for the Defendants filed and served an Application for Review in this case setting forth his reasons, a copy of which was furnished to all interested Parties prior to oral argument presented before an Appellate Panel on April 19, 2022 and comprised of Commissioner Susan S. Barden, Chair, Commissioner Gene McCaskill and Commissioner R. Michael Campbell, II. All proffered testimony had been taken. Such, together with all documentary evidence, was delivered by oral argument to the individual members of the Appellate Panel convened on the aforesaid date.

By appeal, the Defendants / Appellants respectfully submitted the following issues for review by the Appellate Panel:

1. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant sustained an injury to her neck as a result of an accident arising out of and in the course of her employment with the Employer?
2. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant sustained an injury to her lower back as a result of an accident arising out of and in the course of her employment with the

Employer?

3. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant sustained an injury to her psyche as a result of an accident arising out of and in the course of her employment with the Employer?
4. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that Dr. Gabr's opinions are not flawed despite his reliance upon an inaccurate history of the Claimant's medical history?
5. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the the medical records and reports submitted as part of this matter are sufficiently reliable to support Dr. Gabr's findings and conclusions as part of this matter?
6. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the record for this matter is "void" of evidence of the Claimant's prior cervical problems?
7. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Defendants did not present any medical evidence or opinions to contradict the medical evidence and opinions offered by the Claimant's treating physicians?
8. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant has been unable to work following the alleged accident in this case?
9. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant was temporarily and totally disabled as part of this matter?
10. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant is permanently and totally disabled?
11. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Defendants are responsible for the cost of medical treatment provided to the Claimant to date, as well as the cost of ongoing medical treatment?

In an Appellate Review, the Appellate Panel shall, pursuant to S. C. Code Ann. §

42-17-50 (1976), 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 with or inconsistent with those of the Hearing Commissioner.

After careful review of the record for this matter, and listening to and considering the statements and arguments of Counsel, a majority of the Appellate Panel hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant alleges that she sustained multiple injuries as a result of her exposure to repetitive trauma while performing her work for the Employer.
2. The South Carolina Workers' Compensation Commission has jurisdiction over this matter.
3. The Claimant's compensation rate is \$190.30 based upon an average weekly wage of \$285.43.
4. Given the nature of the Claimant's allegations in this matter, the Single Commissioner's Decision and Order does not set forth findings of fact or conclusions of law to support an award of compensation and benefits to her under the South Carolina Workers' Compensation Law, and specifically those required by S.C. Code Ann. § 42-1-172 (1976).
5. In particular, the Single Commissioner Decision and Order does not contain findings and conclusions that (a) any injuries sustained by the Claimant were gradual in onset and caused by the cumulative effects of repetitive traumatic events, (b) the preponderance of evidence for this matter shows that there is a causal connection, established by medical evidence, between the repetitive activities that occurred while the employee was engaged in the regular duties of her employment and her alleged injuries and (c) the medical evidence for this matter establishes a direct causal relationship between the condition under which the Claimant's work was performed and her alleged injuries.
6. Such findings and conclusions are necessary in order to support an award of compensation and benefits in this matter. See Michau v. Georgetown County ex rel. S.C. Cnty. Workers Comp. Tr., 396 S.C. 589, 594, 723 S.E.2d 805,807 (2012), Murphy v. Owens Corning, 393 S.C. 77, 85, 710 S.E.2d 454, 458 (Ct. App. 2011) and Brooks v. Benore Logistic System, Inc., (Opinion No. 5891, Filed January 19, 2022).

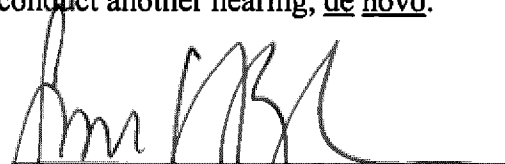
CONCLUSIONS OF LAW

1. The Notice of the Appellate Review Hearing for this matter was timely and properly served upon all parties of interest.
2. The Claimant seeks compensation and benefits pursuant to the provisions of the South Carolina Workers' Compensation Act.
3. The South Carolina Workers' Compensation Commission has jurisdiction in this matter.
4. The Claimant's compensation rate is \$190.30 based upon an average weekly wage of \$285.43.
5. The Single Commissioner Decision and Order for this matter does not set forth findings of fact or conclusions of law to support an award of compensation and benefits to the Claimant under the South Carolina Law, and specifically those required by S.C. Code Ann. § 42-1-172 (1976).
6. In particular, the Single Commissioner Decision and Order does not contain findings and conclusions that (a) any injuries sustained by the Claimant were gradual in onset and caused by the cumulative effects of repetitive traumatic events, (b) the preponderance of evidence for this matter shows that there is a causal connection, established by medical evidence, between the repetitive activities that occurred while the employee was engaged in the regular duties of her employment and her alleged injuries and (c) the medical evidence for this matter establishes a direct causal relationship between the condition under which the Claimant's work was performed and her alleged injuries.
7. Such findings and conclusions are necessary in order to support an award of compensation and benefits in this matter. See Michau v. Georgetown County ex rel. S.C. Cnty. Workers Comp. Tr., 396 S.C. 589, 594, 723 S.E.2d 805,807 (2012), Murphy v. Owens Corning, 393 S.C. 77, 85, 710 S.E.2d 454, 458 (Ct. App. 2011) and Brooks v. Benore Logistic System, Inc., (Opinion No. 5891, Filed January 19, 2022).


ORDER

IT IS, THEREFORE, ORDERED that the Decision and Order filed in this matter on November 8, 2021 is hereby vacated in its entirety. This matter is remanded to be assigned to a Jurisdictional Commissioner, other than the Commissioner who issued the Decision and Order dated November 8, 2021, who shall conduct another hearing, de novo.


SO ORDERED.



Susan S. Barden, Commissioner
Appellate Panel Chairman



Gene McCaskill, Commissioner



R. Michael Campbell, II, Commissioner

Dated: 6-28, 2022
Columbia, South Carolina

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 Valerie Deller on June 28, 2022