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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS COMPENSATION COMMISSION

WCC No. 062913  
Ct. App. No. 2013-000437

Gloria Parker, Employee, ..... Respondent,

v.

Fairfield County School System, Employer, and  
S.C. School Boards Insurance Trust, Carrier, ..... Appellants.

MOTION TO DISMISS

Respondent Gloria Parker moves to dismiss this appeal for lack of jurisdiction.

STATEMENT OF THE CASE

This is an appeal from a final decision and order of an appellate panel of the South Carolina Workers Compensation Commission dated February 20, 2013, awarding the respondent benefits for an injury by accident occurring on October 19, 2006. The appellants filed with this Court a notice of appeal dated March 1, 2013, along with a certificate of service showing service on Belinda S. Ellison [sic], attorney for the respondent. The respondent now moves to dismiss the appeal because (1) the appellants failed to serve the notice of appeal on the Workers Compensation Commission, and (2) the court of common pleas, not the court of appeals, has jurisdiction of workers compensation appeals where the accident occurred before July 1, 2007.

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## DISCUSSION

1. The Court of Appeals lacks jurisdiction because the appellants failed to serve the notice of appeal on the Commission.

In 2006, the General Assembly amended the Administrative Procedures Act to require a party appealing from the decision of an administrative agency to serve and file a notice of appeal in the same in the same manner that the appellate court rules require on appeal to the court of appeals or supreme court. S.C. Code Ann. § 1-23-380(1)(Supp. 2012).<sup>\*</sup> The appellate court rules, in turn, require service of the notice of appeal on all other parties and on the agency itself within 30 days after receipt of the agency decision. Rule 203(b)(6), SCACR. This requirement is jurisdictional; failure to serve the notice on the agency within the specified time deprives the appellate court of jurisdiction. *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 96, 668 S.E.2d 795, 797 - 98 (2008).

Here the appellants filed with their notice of appeal a proof of service purporting to certify that counsel had served the notice on the Commission and the respondent by mail, but the certificate then reflects mailing only to the respondent's attorney. *See* Exhibit A, attached. The certificate says nothing about mailing the notice of appeal to the Commission. In addition, the Judicial Department of the Commission has indicated it has not received a copy of the notice of appeal. *See* Exhibit B, attached.

Because the respondents failed to satisfy the jurisdictional requisite of serving the agency from which they appeal, the Court should dismiss this appeal.

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\* Effective July 1, 2006. *See* Act No. 387, 2006 S.C. Acts 387, §§ 2, 57. This APA requirement takes precedence over any conflicting provision in the Workers Compensation Law. *Pringle v. Builders Transport*, 298 S.C. 494, 381 S.E.2d 731 (1989).

2. The Court of Appeals lacks jurisdiction of this appeal because the respondent's injury occurred before July 1, 2007.

Before 2007, the South Carolina Workers Compensation Law provided for appeal from a final decision of the commission to the court of common pleas. S.C. Code Ann. § 42-17-60 (1985). In 2007, the General Assembly amended this section prospectively to permit a direct appeal to the court of appeals. S.C. Code Ann. § 42-17-60 (Supp. 2012); *see also* Act No. 111, 2007 S.C. Acts 111, part I, § 30.

However, the amendment made this direct appeal available only for injuries occurring on or after July 1, 2007. *Id.*, part IV, § 2 (“[T]his act takes effect July 1, 2007, . . . and applies to injuries that occur on or after this date.”). As a result, the former version of section 42-17-60, providing for appeal to the court of common pleas, remains the rule for cases arising out of injuries occurring before July 2007. *Pee Dee Regional Transp. v. S.C. Second Injury Fund*, 375 S.C. 60, 650 S.E.2d 464 (2007). In such cases, the court of common pleas, not the court of appeals, has jurisdiction of the initial judicial review. *Id.*

Here the parties stipulated, and the commission found, that the respondent's accident occurred on October 19, 2006. Appellate Panel Decision and Order, pp. 9, 11 - 12. (Exhibit C, attached). The employer's representative completed workers comp forms on the injury on or before October 23, *id.* at 10, and the respondent received substantial medical treatment throughout the fall of 2006 and continuing thereafter. *Id.* at 13 - 14. Beyond dispute, the injury in this case occurred well before July 1, 2007. For this additional reason, this Court thus lacks jurisdiction of this appeal.

The question thus arises whether the Court should dismiss the appeal or transfer it

to the court of common pleas pursuant to Rule 204, SCACR. For two reasons, dismissal is the proper course.

First, as explained above, the fact that the appellants appealed to the wrong court is only one of two jurisdictional defects, the other being the failure to serve the Commission with the notice of appeal. Second, because the court of appeals is entirely lacking in jurisdiction pursuant to the applicable appeals statute (the pre-2007 version of section 42-17-60), it lacks the power to transfer jurisdiction to another court.

It is well established that where a court lacks jurisdiction, any action it takes in the matter, except to dismiss, is absolutely void. *Ross v. Richland County*, 270 S.C. 100, 240 S.E.2d 649 (1978). A court without jurisdiction cannot transfer the matter to the proper court unless a statute authorizes such a transfer. *Id.*

The General Assembly has authorized the court of appeals to transfer appellate cases to the supreme court where that court has exclusive appellate jurisdiction. S.C. Code Ann. § 14-8-260 (Supp. 2012). This statute also authorizes a reciprocal transfer to the court of appeals where appropriate. *Id.* But we have found no statute permitting this Court to transfer an appeal to the court of common pleas where that court would properly have had jurisdiction. Thus, the only action here consistent with the statutory limits of the Court's jurisdiction is to dismiss.

*[concluded next page]*

CONCLUSION

Beyond dispute, the court of appeals may not hear this appeal. For the reasons stated, we believe this means the Court must dismiss this appeal. If the Court disagrees, however, it should transfer the appeal to the Court of Common Pleas for Fairfield County.

May 23, 2013



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Lexington, S.C. 29071  
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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA  
WORKERS COMPENSATION COMMISSION

WCC No. 062913  
Ct. App. No. 2013-000437

Gloria Parker, Employee, ..... Respondent,

v.

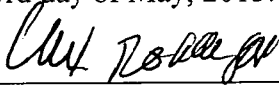
Fairfield County School System, Employer, and  
S.C. School Boards Insurance Trust, Carrier, ..... Appellants.

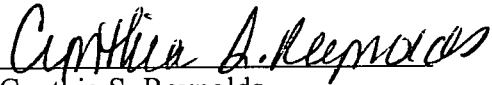
CERTIFICATE OF SERVICE

Personally appeared before me, Cynthia S. Reynolds, who being duly sworn, deposes and says that she is the secretary for Lex A. Rogerson, Jr., attorney, with offices at 111 East Main Street, Suite C, Lexington, South Carolina, that on the 23rd day of May, 2013, she served the MOTION TO DISMISS, with exhibits thereto, in the above captioned matter on the appellants by depositing a copy of same in the United States Mail with sufficient postage affixed to the following persons, to-wit:

Adrienne L. Turner  
Boykin & Davis, L.L.C.  
P.O. Box 11844  
Columbia, SC 29211

SWORN TO before me this  
23rd day of May, 2013.

  
Notary Public for South Carolina  
My commission expires: 6-23-18

  
Cynthia S. Reynolds

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Workers' Compensation Commission

APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

Commssion Appellate Panel

WCC No.: 062913

Fairfield County School System/SC School Boards Insurance Trust,..... Appellant,

v.

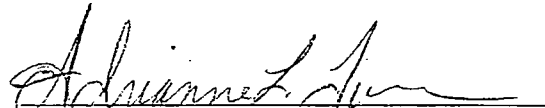
Gloria Parker, ..... Respondent.

**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal of Appellant on South Carolina Workers' Compensation Commission and Gloria Parker, Respondent, by depositing a copy of it in the United States Mail, postage prepaid, on March 1, 2013, addressed to their attorneys of record as follows:

Belinda S. Ellison, Esq.  
Belinda Ellison, LLC  
P.O. Box 1527  
Lexington, SC 29071

Attorneys for Respondent Gloria Parker

  
Adrienne L. Turner

Boykin & Davis, LLC  
P.O. Box 11844  
Columbia, South Carolina 29211  
(803) 254-0707

Attorney for Appellant

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MAY 23 2013

**SC Court of Appeals**

Exhibit  
A

**William**

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**From:** Hollmon, Eugenia [EHollmon@wcc.sc.gov]  
**Sent:** Thursday, May 16, 2013 8:51 AM  
**To:** William  
**Cc:** bellison@belindaellison.com  
**Subject:** RE: Gloria Parker, WCC # 0620913

Mr. Lorenzo,

We have not received anything from Ms. Turner indicating an appeal of the Full Commission order to a higher court. The order was served back in February so the appeal time has already expired. If you need anything further, please let me know.

Genia Hollmon  
Judicial Department

---

**From:** William [mailto:william@belindaellison.com]  
**Sent:** Thursday, May 16, 2013 8:21 AM  
**To:** Hollmon, Eugenia  
**Cc:** bellison@belindaellison.com  
**Subject:** Gloria Parker, WCC # 0620913

Ms. Hollmon:

This will confirm that I spoke with Valerie a few minutes ago, and she has indicated that the Defendants have not notified the Commission of their intent to appeal this case to the higher court. Can you please confirm whether or not you have received Defendants intent to appeal?  
I look forward to hearing from you.

Sincerely,

**William Lorenzo**  
*Paralegal*  
**Law Office of Belinda Ellison, LLC**  
Post Office Box 1715  
407 East Main Street  
Lexington, SC 29071  
Phone (803)359-5582  
Facsimile (803)359-1146  
e-mail: [william@belindaellison.com](mailto:william@belindaellison.com)

Exhibit  
B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Gloria Parker,

Employee,

Claimant,

vs.

Fairfield County School System,

Employer,

and

SC School Boards Insurance Trust Fund,

Carrier,

Defendants.

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION  
COMMISSION

WCC File No.: 0620913

Appellate Panel Decision and Order

DATE OF REVIEW HEARING: Hearing held and oral arguments presented in Columbia,  
South Carolina on the 30<sup>th</sup> day of September, 2011.

APPELLATE PANEL: Commissioner Susan Barden, Commissioner, Gene McCaskill, and  
Commissioner Melody James, Chair.

APPEARANCES: Claimant represented by S. Belinda Ellison, Esquire, Law Office of  
Belinda Ellison, LLC, Employer & Carrier represented by  
Adrienne L. Turner, Esquire, of Boykin & Davis, LLC.

PURPOSE OF HEARING: To determine issues set forth in Forms 50 and 51.

Exhibit  
C

## STATEMENT OF THE CASE

Claimant filed a Form 50 maintaining that she was injured by accident on October 19, 2006, in a compensable accident, and that she reached maximum medical improvement on March 19, 2009, per the recommendation of Dr. Netherton (APAp 126). Claimant seeks a finding of compensability of injuries to her right knee, right leg and back; payment of heretofore causally related medical treatment; and payment of temporary total disability from February 28, 2007, to April 16, 2007, from April 30, 2007, to August 13, 2007, from September 4, 2007, to maximum medical improvement date. Further, Claimant maintains she is permanently and totally disabled, and she is entitled to lifetime causally related medical care. Claimant seeks payment of the award in a lump sum and proration language be included in the order. (Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955)).

Claimant points to pages from Defendants' evidence (APAp 162 and 172), the reports of Dr. Stuck a few days after the accident and a report of Dr. Holmes, orthopaedic, on November 21, 2006, as supportive of her claim. Both Dr. Stuck and Dr. Holmes record a history of injury of getting up from her chair and twisting her knee. Dr. Holmes notes that she was getting up to answer the phone, twisted her knee and the assistant principal caught her from falling to the ground.

Claimant notes that no doctor has returned Claimant to work. Doctors Johnson, Polletti, and Holmes establish a causal relationship of the injury on the job to the back (APAp 78, 98, 65, 66, 120) and the knee (APAp 26, 52) to a reasonable degree of medical certainty. Dr. Johnson and Dr. Holmes' 2011 depositions establish a compensable accident with injury to back and knee.

The Defendants deny the claim in its entirety defending the claim as an idiopathic fall; however, if the claim is found compensable, it is only compensable as it relates to the knee. Defendants maintain the back was not aggravated as a result of any work related activity. Defendants maintain that the date of maximum medical improvement is August 24, 2010, the date when Holmes releases her.

Defendants objected to previous schedulings of the single commission hearing to take the medical depositions; however, Defendants withdrew their request to have the deposition of Dr. Poletti (TRp 5). Defendants objected to Claimant's APA Exhibit 9, Joel Leonard, CRC, CVE, and APA Exhibit 5, Psychological and Training Services, Robert Brabham, PhD on relevance. The Commission overruled the objection and allowed the reports in as they were properly noticed and provided. Defendants had the reports of Brabham and Leonard for months, as the hearing was first scheduled in January 2011.

A hearing was held on September 29, 2011, before Commissioner Scott Beck. Commissioner Beck issued a Decision and Order on June 29, 2012. The Decision and Order concluded there was a compensable accident, ordered medical care, and found the injured worker was totally and permanently disabled.

Defendants timely filed a Form 30 (Request for Commission Review). Following presentation of briefs by the parties, the Appellate Panel of the Workers' Compensation Commission heard oral arguments on September 30, 2012. Fairfield County School District and SC School Boards Insurance Trust, Form 30 sets forth the following grounds:

1. The Single Commissioner erred in Finding of Fact numbers 2 through 7 to the extent such findings can be read to determine compensability of the claimant's alleged

- injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
2. The Single Commissioner erred in Findings of Fact numbers 8 through 10 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
  3. The Single Commissioner erred in Finding of Fact numbers 11 through 13, the error being that evidence in the record does not support such findings as relates to the credibility of the witness nor with respect to the characterization of the testimony of Woodle. Further, neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
  4. The Single Commissioner erred in Finding of Fact numbers 14 through 15 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
  5. The Single Commissioner erred in Finding of Fact numbers 15 through 20 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
  6. The Single Commissioner erred in Finding of Fact numbers 21 through 27 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.

7. The Single Commissioner erred in Finding of Fact numbers 28 through 37 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
8. The Single Commissioner erred in Finding of Fact numbers 38 through 41 to the extent such findings can be read to determine compensability of the claimant's alleged injuries or causal connection between claimant's alleged knee injury and her pre-existing back condition and/or her ability to maintain gainful employment, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
9. The Single Commissioner erred in Finding of Fact numbers 42 through 48 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, causal connection between claimant's knee injury and pre-existing spinal injuries, and/or the extent of the severity of the claimant's pre-existing back problems, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings. The Single Commissioner erred in Finding of Fact numbers 49 through 52 to the extent such findings can be read to determine credibility of the witnesses and/or compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
10. The Single Commissioner erred in Finding of Fact number 53, the error being that the pictures the claimant offered into evidence should have been excluded due to lack of relevance and lack of prior disclosure to the defense, and because the

pictures depict carpeting in the office of the claimant's attorney NOT the carpeting in the school where the underlying incident took place. Moreover, to the extent such finding can be read to determine compensability of the claimant's alleged injuries, neither the actual testimony and other facts in evidence nor the applicable case, statutory, or regulatory law support such finding.

11. The Single Commissioner erred in Finding of Fact numbers 54 through 56 to the extent such findings can be read to determine compensability of the claimant's alleged injuries, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
12. The Single Commissioner erred in Finding of Fact number 57 through 59 to the extent such findings can be read to determine compensability of the claimant's alleged injuries and/or liability on the part of Defendants for claimant's injuries or medical care, the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such findings.
13. The Single Commissioner erred in Conclusions of Law numbers 1 through 14 to the extent such conclusions fail to find that Claimant suffered a non-compensable, idiopathic incident and unrelated pre-existing back problems and to the extent such conclusions result in liability to the defendants; the error being that neither the facts in evidence nor the applicable case, statutory, or regulatory law support such conclusions of law.
14. The Single Commissioner erred in the Order and Award portion of his Order, the error being that neither the evidence nor the applicable case, statutory nor regulatory law support an award to claimant nor liability on the part of defendants.

15. The Single Commissioner erred in the Order and Award portion of his Order, the error being that the neither the evidence nor the applicable case, statutory nor regulatory law support an award to claimant nor liability on the part of defendants.

**APA SUBMISSIONS**

**CLAIMANT'S SUBMISSIONS**

1.	Fairfield Memorial Hospital	2/19/2007-5/15/2008	1-11
2.	Fairfield Medical Associates	10/24/2006-11/21/2007	12-18
3.	Parkridge Surgery Center, Operative Report - Dr. Wendell Holmes	2/28/2007	19-25
4.	The Moore Orthopaedic Clinic - Dr. Wendell Holmes	11/21/2006-10/5/2010	26-59
5.	Palmetto Imaging	11/6/2006	60
6.	Southeastern Spine Institute - Dr. John Johnson, Dr. Steven Polleti, Dr. Mark Netherton, Dr. Richard Holgate.	2/26/2007-11/16/2010	61-98
7.	East Cooper Regional Medical Center	3/26/2007-11/26/2007	99-120
8.	Palmetto Pain Management Clinic	8/25/2008-9/24/2010	121-139
9.	Joel Leonard, CRC, CVE	3/31/2008	140-144
10.	Psychological and Training Services, P.A. - Robert Brabham, Ph.D.	7/6/2009	145-158
11.	The Moore Orthopaedic Clinic - Dr. Wendell Holmes	5/23/2011	159
12.	Southeastern Spine Institute - Dr. Steven Polleti	6/22/2011	160

EXHIBITS DESCRIPTION

A.	Wage and Sick Leave Verification for Workers' Compensation signed by Richard Woodle, 10/19/2006
B.	Deposition of Richard Woodle
C.	Deposition of Dr. Wendell Holmes
D.	Deposition of Dr. John Johnson
E.	Notice of Deposition for Dr. Steven C. Poletti dated 9/9/2011 (after 9/1/11 hearing)
F.	Subpoena to Opposing Counsel for any Notice of Deposition to Dr. Poletti dated September 14, 2011. No response to Subpoena
G.	Photographs

DEFENDANTS' APA SUBMISSIONS

11.	The South Carolina Neurological Clinic	12/20/2010	159-160
12.	Fairfield Medical Associates	2/25/2002	161
13.	Dr. Deborah Stuck	10/24/2006	162-163
14.	Palmetto Health	5/24/2000	164-166
15.	Moore Orthopaedics	5/9/2000-8/24/2010	167-179
16.	Southeastern Spine Institute	3/14/2002-1/2/2008	180-196
17.	HealthSouth dated 11/23/99	11/23/1999	197
18.	Fairfield Medical Associates	6/9/1981-5/15/2008	198-313
19.	Columbia Neurosurgical Associates	2/7/2006-11/22/2005	314-331

EXHIBITS DESCRIPTION

C.	Records relating to claimant's employment
D.	Claimant's deposition testimony
E.	Records relating to previous employment of Richard Woodle
F.	Long Term Disability Statement - State of South Carolina Long Term Disability benefits

## STIPULATIONS

Counsel for all parties stipulated at the call of the hearing to the following:

1. The date of the alleged accident is October 19, 2006;
2. The average weekly wage is \$426.16, with a resulting compensation rate of \$284.10;
3. The hearing was set on Form 51 and Form 51; The date of the alleged accident is October 19, 2006;
4. The average weekly wage is \$426.16, with a resulting compensation rate of \$284.10;
5. The hearing was set on Form 51 and Form 51;
6. The Commission has jurisdiction to hear this matter;
7. Venue is appropriate in Fairfield county. However, in light of previous rescheduled hearings, the parties have no objection to the matter being heard in Richland county;
8. Claimant is the employee and the employer is Fairfield County Schools. The carrier is South Carolina School Board, Self-Insurance Trust Funds; and
9. The Commission's file is a part of the record with the exception of self-serving declarations and unstipulated medical reports.

## EVIDENCE OF THE CASE

Two witnesses testified live, Gloria Parker, Claimant, and Latonya Brown, on behalf of the Defendants. Deposition testimony included Richard Woodle, assistant principal, Dr. S. Wendell Holmes, and Dr. John F. Johnson. Defendants did not object at the trial of the case to the APA Exhibits; however, when the witness referred to Exhibit G, photographs, Defendants raised an objection. Defendants objected to the relevance of the photographs, despite earlier

stipulating to their admissibility. The Single Commissioner admitted the photographs in evidence.

### FINDINGS OF FACT

Based on the exhibits, stipulations, testimony, and APA submissions, the Appellate Panel finds the greater weight of the evidence supports the following Findings of Fact as required under SC Code of Laws 42-17-40:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act and Administrative Procedures Act as amended.
2. The claim was heard before the single hearing Commissioner with proper notice. Claimant has sustained her burden of proof of a compensable injury by accident.
3. There is a clear causal connection with her accident and her employment. We find this based upon the record in its entirety, including the testimony of all the witnesses, the medical evidence, and the evidentiary submissions. Claimant was not injured in an unexplained way. Both Claimant and her supervisor, Vice Principal Woodle, describe a similar floor problem. This is a witnessed event by the assistant principal who filled out the workers' compensation forms at least by October 23, 2006, a few days after the accident.
4. Proper notice was provided to the Employer, including Vice Principal Woodle, the eye witness, and Principal McIntire.
5. The average weekly wage is \$426.16, with a resulting compensation rate of \$284.10.
6. Claimant testified that she has never been charged with a crime, never been denied bond, never filed bankruptcy, owns her own house, and paid off her mortgage. She has fostered children, raised children, and adopted a foster child.

7. Claimant has gone without salary, wages, or temporary total for several years. Claimant is capable of handling her funds in a lump sum, and there is no prejudice to the Defendants.

8. Claimant was born in 1951, and is 61 years old at the signing of this Order. She has been married just over forty-five years to her husband, Jimmy. She has lived in South Carolina her entire life. They have three children, all grown, and they have a foster child whom they adopted.

9. Claimant has completed ten years of public education in South Carolina, and went back to school at age thirty to get a high school diploma. Her prior work experience includes working in sewing factories since age fifteen where she held a variety of jobs, including collar fitting, shearing, and working as a center traveler. She had some limited supervisory experience in the final three years of her seventeen years at Uniroyal until 1990. She last worked at Fairfield Primary School for almost thirteen years. At the school she began as a substitute teacher, then as teaching assistant, then attendance clerk, then detention monitor, and then front office worker, which included picking up mail, greeting the public, filling out absentee forms, and making arrangements to call in substitute teachers.

10. On October 19, 2006 Claimant answered the telephone and learned that a teacher was going to be absent. She left her desk to get an absentee slip. The counter where she worked was large and similar to the size of the judicial bench and was weighted with file cabinets. There was heavy furniture on top of the carpeting. With frequent vacuuming, the carpet had ruffles. A ruffle in the carpet caused her to twist her knee, and Assistant Principal Woodle caught Claimant to keep her from falling to the floor. Claimant suffered a compensable injury by accident. on

October 19, 2006, to her back and right knee when she tripped and stumbled on loose, uneven, ruffled, low piled carpeting, twisted her right knee, and was caught by her assistant principal.

11. Claimant's testimony of how the accident happened is credible and is corroborated by the testimony of Assistant Principal Woodle (Claimant's testimony and deposition of Woodle).

12. Woodle's deposition testimony is consistent with that of Claimant. Woodle is a long time resident of the county and held a supervisory position. Gloria Parker worked at the front desk, the reception area, and the whole area in the front. Woodle testified that Claimant's foot just sort of caught on the carpet which was very similar to the carpet in the deposition room. Woodle testified Claimant lurched forward, and he caught Claimant by the arm. Woodle testified there was no tear in the carpet. Woodle testified that he completed the accident report based on part what he saw when Claimant twisted her knee.

13. Woodle testified that the carpet was replaced throughout the room some time several months after the injury. He described wall to wall carpeting – an indoor/outdoor type, much like what is here (the office venue for his deposition), a low nap, a very short nap. Woodle testified Claimant's foot just did not get up high enough.

14. Claimant suffered from a pre-existing lumbar spine condition. There are acute and new findings of aggravation by the work accident of her admitted pre-existing spine condition.

15. Both Dr. Poletti (APAp 65 – 66) and Dr. Johnson (APAp 78 – 79) are of the expert opinion that Claimant's pre-existing back condition was aggravated by her knee injury. Dr. Johnson and Dr. Poletti are treating doctors.

16. Claimant and her employer explained her fall. The fall was not an idiopathic fall.

Claimant was not injured in an unexplained way. Both Claimant and her supervisor, Vice Principal Woodle, describe a similar floor problem. This is a witnessed event by the assistant principal who filled out the workers' compensation forms at least by October 23, 2006, a few days after the accident. Dr. Holmes finds an acute tear in the knee. Drs. Holmes, Poletti and Johnson have consistent medical histories of two knee surgeries aggravating her back.

17. Claimant's testimony establishes a causal connection between her original accident of October 19, 2006, and the need for two knee surgeries as well as the treatment with her back.

18. Medical care began when Principal McIntire sent Claimant to Fairfield Medical, a practice which includes Doctors Stuck and Barnett.

19. On October 24, 2006, Claimant saw Dr. Steven Barnett who noted a workers' compensation injury and a history of injury getting up from her chair and twisting the knee on October 19, 2006 (APAp 12). Claimant was given an out of work note immediately following the injury from October 24, 2006 through October 27, 2006 (APAp 1).

20. On October 30, 2006, Claimant returned to Dr. Barnett, who notes that she has been unable to work due to the knee and the need for an MRI. (APAp 15). Dr. Barnett noted that Claimant was out of work from April 30, 2007 through August 13, 2007, in part, as a result of her leg and back pain (APAp 18).

21. On November 21, 2006, Dr. Wendell Holmes, orthopaedic surgeon, saw Claimant and noted an injury when Claimant got up to answer the phone, twisted her knee at work, was caught by her assistant principal from falling on the ground, and started having knee pain ever since (APAp 53). Dr. Holmes continued to treat Claimant, and on February 19, 2007 he recommended Claimant have knee surgery (APAp 57). On February 28, 2007, Dr. Holmes

performed knee surgery, arthroscopic partial medial meniscectomy and chondroplasty (APAp 19).

22. On April 7, 2007, Dr. Holmes addressed causation and confirmed that Claimant did get hurt on the job, her right knee injury was directly related to her job, and denied that it could have been caused by any other factor. Thus Dr. Holmes confirms that Claimant injured her right knee on the job on October 19, 2006 (APAp 26). Claimant was released to go back to work and was able to work for a few weeks before being taken out of work again by Dr. Barnett (APAp 18).

23. On September 11, 2007, Claimant returned to Dr. Holmes, noting a flare up of pain over the last four weeks in her knee. Holmes noted that she did go back to work, and fortunately she does not have to walk at work. She was given a shot in the knee for pain (APAp 28). An MRI of the knee was done on January 31, 2008, and it noted that she had developed joint effusion with a Baker's Cyst (APAp 31). Dr. Holmes referred Claimant for a series of Synvisc injections in her knee over a three week period to see if that would help her pain and symptoms (APAp 34). Claimant's back pain continued, and on August 19, 2008, Dr. Holmes wanted to confirm if relieving the back pain would help relieve the knee pain. Holmes instructed her to return after seeing her back surgeon (APAp 39).

24. As her right knee pain continued without improvement, Dr. Holmes performed a second knee surgery on September 18, 2009, the operation performed included an arthroscopic partial medial meniscectomy, 75%, and chondroplasty, medial femoral condyle (APAp 41-42). Claimant returned for follow up visit and again saw Dr. Holmes on June 30, 2009. He gave an injection in the knee in hopes that it would calm the pain and noted that Claimant should continue to ambulate with a cane (APAp 45).

25. Claimant continued to treat with Dr. Holmes. In follow up visit on August 24, 2010, he noted that she walked with a cane mostly because of her back, but the knee was bothering her. Holmes injected the knee, and recommended continued conservative treatment including ice, elevation, Ultram, and ambulation with a cane. Claimant was to call Dr. Holmes on an as-needed basis (APAp 50).

26. On October 5, 2010, Dr. Holmes confirmed that his original questionnaire responses from April 5, 2007 are stated most probably and to a reasonable degree of medical certainty, and that the right knee injury was caused by her work accident of October 19, 2006 (APAp 52).

27. Dr. Holmes' deposition fully supports the causal relationship of the job injury to the knee treatment and care, with opinions stated to a reasonable degree of medical certainty.

28. On February 26, 2007, Claimant reported to Dr. John Johnson with Southeastern Spine Institute, Dr. Johnson noted that Claimant has been seen there in the past for her back; however, she suffered an on the job injury on October 19, 2006, and the back symptoms were worse (APAp 61). Claimant underwent an MRI of the back, and on March 26, 2007, Dr. Johnson reviewed the MRI and noted possible annular tear at 5-1, he noted concerns that her right knee might be playing some part of perpetuating her back problem (APAp 64).

29. On March 31, 2007, Dr. Steven Polleti, also with Southeastern Spine Institute, addressed causation, and it is his opinion that the right knee injury and resulting altered gait worsened Mrs. Parker's low back condition, resulting in her need for medical treatment once again at Southeastern Spine Institute, commencing on February 27, 2007, and the low back surgery and the continuing medical treatment (APAp 65). Dr. Polleti also confirmed that the

worsened low back pain and medical treatment since February 26, 2007, are causally related to the right knee injury of October 19, 2006 (APAp 66).

30. Claimant underwent several lumbar epidural steroid injections at East Cooper Regional Medical Center, which did not improve her back symptoms (APAp 99-120).

31. Claimant saw Dr. Polleti on October 1, 2007, and he noted that she has had exhaustive non-operative care to date, and she is still having moderately severe pain in the back, buttocks, hips, especially in the right leg. Polleti noted that Claimant was a candidate for lumbar discography to assess the integrity of her lumbar discs and see if surgical intervention was appropriate, Claimant agreed (APAp 71).

32. On November 26, 2007, Claimant underwent a back surgery consisting of far lateral (transpedicular) discectomy/disc decompression L4-5, L5-S1 (two level) (APAp 74).

33. On January 7, 2008, Dr. Johnson also addressed causation and concurred with Dr. Poletti's opinion that the right knee injury and resulting altered gait worsened Mrs. Parker's low back condition, resulting in her need for medical treatment once again at Southeastern Spine Institute, commencing on February 27, 2007, including the low back surgery continuing medical treatment (APAp 78). Dr. Johnson confirmed that the worsened low back pain and medical treatment since February 26, 2007, are causally related to the right knee injury on October 19, 2006 (APAp 79).

34. Dr. Johnson's deposition testimony is fully supportive of the causal relationship of the back symptoms and treatment to the job injury, with opinions stated to reasonable degree of medical certainty.

35. On August 25, 2008, following back surgery, Claimant began pain management with Palmetto Pain Management, a practice which includes Dr. Netherton. From August 25, 2008 through September 24, 2010, Claimant has complained of low back and right leg pain at each and every visit (APAp 121-139).

36. Claimant continues to need medical treatment for her back injury. Claimant has been undergoing injections with Dr. Mark Netherton (APAp 88-97), also with Southeastern Spine Institute, approximately every 90 days. Her most recent injection was on September 24, 2010 (APAp 97). Claimant's next injection with Dr. Netherton is scheduled for January 3, 2010.

37. Claimant still takes Lortab. The Lortab helps with both her back and spine, but it is not enough to allow her to work.

38. Dr. Barnett (APAp 301-302) indicates Claimant can neither walk nor sit, and that she is extremely limited in her ability to function. Her physical capacities are; zero lifting; no walking/standing or sitting at one time (in hours); no bending/stooping; occasionally grasp and reach; and walking/standing or sitting less than one hour in an eight hour work day. On February 22, 2008, Dr. Barnett recommends that Claimant stop working; this condition is related to Claimant's employment, that she has severe low back pain with bilateral leg pain, hip and buttocks pain, and has objective findings on an L4-5 and L5-S1 herniation (APA pg. 301).

39. On March 19, 2009, Dr. Netherton noted that Claimant is not a candidate to pursue any type of gainful employment as her degenerative spine disease can only be worsened by her attempt to work (APAp 126). Dr. Netherton notes it is his vocational opinion that Claimant's back is so severe (APAp 126), "She should refrain from significant lifting and from standing or sitting for prolonged periods of time. She should refrain from climbing, squatting, stooping, and crawling, and should basically protect her low back as significant exertion could exacerbate her

condition. I do feel this patient is not a candidate to pursue any type of gainful employment as her degenerative spine disease can only be worsened by her attempt at work.”

40. While the report of Robert Brabham was created for the purpose of a social security disability determination, we find its content clearly pertinent and relevant to this matter. (APAp 145 --156). On July 6, 2009, Robert Brabham, Ph.D. evaluated Claimant and was his opinion, to a high degree of professional certainty, based on nearly forty-five years of vocational rehabilitation and psychology experience that she is unable to engage in full-time gainful, competitive employment. Brabham also noted that Claimant's combination of physical conditions, including her back and knee injuries, would in and of themselves render her totally disabled from continuing any gainful employment (APAp 152, 154).

41. Joel Leonard evaluated Claimant for disability on March 31, 2008. Leonard noted that the claim for disability retirement benefits is based on alleged functional problems secondary to Claimant's lower back and right knee. Relative to such, Mrs. Parker states that she experiences significant pain-related deficits that effectively preclude the regular and customary performance of her job. Leonard notes that Claimant did have spinal problems since at least 2002, but most recently her symptoms returned in a significant manner. Leonard noted that Claimant remains under the regular and ongoing care of various physicians to include two orthopaedic specialists. Leonard agreed that Claimant should be granted disability for her injuries (APAp 140-144).

42. Claimant had treatment for her spine while she was an employee of the school district and before her October 2006 work accident. The treating doctors said her pre-existing condition was aggravated by the work injury (APAp 314-316). In a report dated February 7, 2006, which refers to an MRI in October of 2005 with lumbar degenerative disc disease at L3.

L4,5-S1, lumbar stenosis at L3-4 and mild right paracentral disk protrusion. Dr. Gunter assesses lumbar degenerative disc disease, spondylolysis and mild neck pain. He referred Claimant to Dr. Rawl as there was no surgical alternative. Dr. Poletti wrote a letter of medical necessity and notes (APA p193), December 9, 2002, with a severe lumbar spine condition with a need for weight loss. Claimant underwent a gastric bypass surgery. Dr. Johnson (APA p192) on June 8, 2004, says she has been using a walking stick, recently having undergone an injection and antalgic gait favoring the right leg. Dr. Johnson explained in his deposition that cane use as noted in the medical records is a snapshot of that particular day, not the day before or after.

43. Before October of 2006, Mrs. Parker never made physical complaints at work. (Woodle Deposition p 38, ln 15-18). Neither Vice Principal Woodle or Latonjia Brown testify to pre-accident cane use.

44. No doctor before Claimant's injury told her that she had a torn annulus or acute finding on x-ray or MRI of the spine. Claimant was not aware that anyone had ever recommended surgery. Claimant's recollection is that Dr. Poletti told her that she needed to wait and she had the gastric bypass surgery the following year, December of 2002. Claimant recalls Poletti said that losing weight would help her back.

45. Before her work injury, Claimant got a spine injection with year-long or greater pain relief; post injury, she is injected every three months.

46. Claimant's pre-existing medical care with Fairfield Medical Associates included treatment for urinary tract infections, neck, shoulder, arthritis, sinuses, colds, as well as intermittent problems with her back which had resulted in no time out of work.

47. Claimant testified that her gastric and urinary tract problem would include a side

pain or hip pain, and sometimes back and leg pain, but none of these put her out of work. She treated with Dr. Gunter before she was hurt on the job with her back. It was bearable and she did her job. She never had to be out. It was manageable by medication. She missed no time from work before October 19, 2006, for her back. She had forty-five days built up sick leave when she was injured. Woodle called her a model employee.

48. Claimant saw Dr. Gunter in February of 2006 and admitted she had back pain but it was not excruciating like it was after her work injury. She called it bearable, managed by medication, and not interfering with work schedules.

49. Claimant testified that no one from workers' compensation, neither the man who called or witness Latonjia Brown asked about the condition of the floor. Her recollection was they wanted to know only if she had fallen to the floor. Woodle confirmed that he was not contacted by anyone in the district office to investigate the accident or to answer any questions about what he witnessed in the accident.

50. Latonjia Brown testified that the report of accident was submitted to her two days after the accident. She denied the claim after the knee MRI because nothing was wrong with the floor and there was nothing on the floor that may have caused Claimant to have pain. Brown did not visit the school on or near the date of accident. Ms. Brown confirmed that she did not come to the school to investigate the accident. She did not inspect the flooring. She did authorize the initial medical care. She did not ask Claimant if there was a defect in the floor. Brown completed the accident report in the Commission file but when it left her hands, the word "alleged" in large handwriting did not appear on the report. She testified that Claimant was released from their employ after an absence.

51. No one from the district office helped Woodle complete any workers' compensation

Forms. Opposing Counsel asked Woodle about Deposition Exhibit 3, Supervisor's Accident Report. Woodle made no mention of tripping in Exhibit 3, but explained it was just the way he worded it at the time; it was because of her foot just catching on the carpet. (Woodle Deposition p 31, ln 14-25).

52. The Claimant has sustained her burden of proof of a compensable injury by accident. There is a clear causal connection with her accident and her employment. We find this based on the record on the whole, including the testimony of all the witnesses, the medical evidence and the evidence submission.

53. Upon reviewing the evidence in the photographs and the testimony of the two witnesses to the event, the carpeting was not a smooth surface.

54. Claimant had two surgeries and returned to work after the first surgery and returned to work after the second surgery. She lost her job on November 7, 2006, her second knee surgery in September of 2006 and before her lumbar fusion on January 7, 2008.

55. Claimant testified that she has worked nowhere since her second knee surgery and that no doctor has returned her to work since the second knee surgery. She goes to pain management every three months for injections in her back and she takes medication.

56. Dr. Holmes waived reading and signing his deposition testimony, but the court reporter made an error in dates. Dr. Holmes testified he saw Claimant the first time in 2006 in the initial response.

57. Claimant is entitled to reimbursement for any causally related medical expenses.

58. Claimant is at maximum medical improvement on August 24, 2010 per the report of Dr. Holmes.

59. Claimant is in need of additional medical care for her back and leg.

## CONCLUSIONS OF LAW

Accordingly, as provided in SC Code of Laws 42-17-40, it is the determination of the Commission as follows:

1. Under Section 42-1-130, Claimant was a covered employee at the time in question.
2. Under Section 42-1-140, the Defendant/Employer was a covered employer.
3. Under Section 42-1-40 the average weekly wage is defined.
4. Under Section 42-1-160, Claimant sustained a compensable injury by accident to her leg and back, with chronic pain, arising out of and in the course and scope of her employment.
5. Under Section 42-15-20, proper notice was provided to Employer.
6. Under Section 42-15-60, Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitations, injections, hospitalizations, surgeries, and medications related to her injuries which tend to effect a cure, provide relief, and/or tends to lessen her period of disability. Dodge v Brucoli, et al, 514 S.E.2d 593 (Ct.App. 1999)
7. Under Section 42-9-10, Claimant is entitled to receive compensation during the period of temporary total disability at her applicable compensation rate.
8. Under Section 42-9-10, Claimant is entitled to receive compensation for her period of total disability. Total disability does not require complete helplessness. The generally accepted test of total disability is the inability to perform services other than those that are so limited in quality, dependability, and quantity that a reasonably stable market for them does not exist. Wagner v. Peeples Nat., 118 S.E.2d 812 (1961); Coleman v. Quality Concrete, 142 S.E.2d 43 (1965); Colvin v. E.I. DuPont, 88 S.E.2d 581 (1955); Stephenson v. Rice Services, 473 S.E.2d 699 (1999).
9. An injured worker may establish total disability through multiple physical injuries.

Under this scenario a Claimant who has a Section 42-9-30 scheduled injury must show an additional injury. McCollum v. Singer Co., 330 S.C.103, 386 S.E.2d 471 (Ct.App. 1989) (Court found Claimant totally disabled due to combined partial impairments to the back, stomach and leg).

10. Under Section 42-15-60, the Claimant is entitled to lifetime treatment for her related injuries without regard to any limitation in the Act including the maximum compensation limit, and lifetime maintenance of prosthetic hardware.

11. The Claimant's award of any total and permanent disability shall be reduced to present value and paid in a lump sum, with allocation language. This is in the best interest of the Claimant. The Defendants offered no evidence that it would be prejudicial to have the award paid in a lump sum with allocation language. Use of allocation language does not change the commuted lump sum value of the award based on the 500 week maximum compensation the Defendants must pay to the Claimants.

12. Under Section 42-9-301, the Commission has authority to award lump sum payments and to fix, establish or otherwise ascertain such payment along with allocation language as allowed under Utica-Mohawk Mills v. Orr, 87 S.E.2d 589 (1955). Under Regulation 67-1605 E, it is appropriate for the Carrier to receive a discount as calculated therein. Accrued but the heretofore unpaid weeks are not commuted.

13. Both Drs. Holmes and Johnson are fully favorable to the claim of a compensable injury to the back and knee. The doctors have given their opinions in written form, medical records, and in their depositions, to a reasonable degree of medical certainty, support of injury by accident and a causal connection. Dr. Johnson reviewed the pre-date of accident of February

2006 note of Dr. Gunter relating the low back pain and bilateral leg radiation as a portion of his basis for his medical opinion.

14. Defendant's objection to the submission of the Brabham and Leonard reports is overruled on relevancy.

#### **ORDER AND AWARD**

IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner is affirmed in full with one exception; delete the fourth sentence in Finding of Fact number eight (8) that contained the duplicative language "she has been married forty-five years to her husband, Jimmy." Said change has been made in this Order.

IT IS THEREFORE ORDERED that Gloria Parker, the Claimant, sustained a compensable injury to her leg aggravating her back, causing leg and back pain, arising out of and in the course and scope of her employment with Fairfield County School System;

IT IS FURTHER ORDERED that Claimant has received necessary and proper medical care, treatment, surgery, physical therapy, and other care from Fairfield Memorial Hospital, Wendell Holmes, MD, John Johnson, MD, Mark Netherton MD, Steven Poletti MD, Deborah Stuck MD, Dr. Barnett, Parkridge Surgery Center, Palmetto Imaging, East Cooper Medical Center, Palmetto Pain Management, Fairfield Medical Associates, and SC Neurological Clinic, which shall remain the ongoing responsibility of Defendants, including reimbursement to Claimant for mileage and medications;

IT IS FURTHER ORDERED that Claimant is totally and permanently disabled as a result of her combination of loss of use of her back and leg, and therefore, Claimant shall receive 500 weeks of compensation at her applicable compensation rate of \$284.10 from the Defendants, from the date of maximum medical improvement, with Defendants being given

credit for temporary compensation to be paid through the date of maximum medical improvement;

IT IS FURTHER ORDERED that Claimant, Gloria Parker, shall receive 102 weeks of temporary total disability for dates of February 28, 2007, to April 16, 2007, from April 30, 2007, to August 13, 2007, from September 4, 2007 to August 24, 2010;

IT IS FURTHER ORDERED that Defendants' shall pay to Claimant unpaid accrued weeks of permanent disability as of the date of this order are ninety-five (95) weeks, which are not commuted;

IT IS FURTHER ORDERED that the Defendants shall pay the Claimant total and permanent disability benefits after August 24, 2010, for the period not to exceed five hundred (500) weeks as provided in S.C. Code Anno. Section 42-9-10 which award, after payment of attorney's fees and costs, shall be apportioned over the Claimant's life expectancy of 23.27 years under S.C. Code Anno. Section 19-1-150;

IT IS FURTHER ORDERED that the Defendants shall pay the remaining unaccrued balance of this award for total and permanent disability in a commuted lump sum;

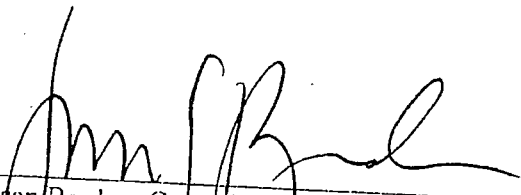
IT IS FURTHER ORDERED that the Defendants shall pay the temporary total disability, the unpaid accrued permanent disability, and the commuted balance of total and permanent disability weeks in a lump sum of One Hundred Thirty-One Thousand Five Hundred Six and 70/100 (\$131,506.70) Dollars, which is allocated as follows:

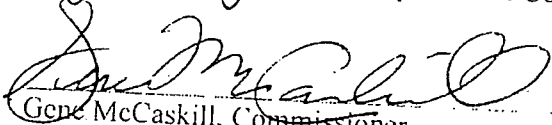
- a) Forty-Three Thousand Eight Hundred Thirty (\$43,835.57) to the Claimant's attorneys as attorneys' fees;
- b) Eighty-Six Thousand Two Hundred Twenty-Six and 95/100 (\$86,226.95) Dollars future disability benefits, at the rate of Seventy-Three and 73/100 (\$73.73) Dollars

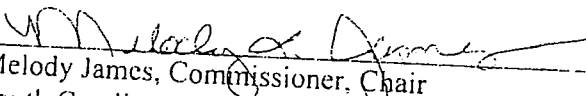
per week for a period of 23.27 years (the Claimant's life expectancy pursuant to S.C. Code Ann. Section 19-1-150), commencing per the Order, pursuant to Sciarotta v. Brown, 837 F. 2d 135 (3<sup>rd</sup> Circ. 1988). See also on remand; 735 F. Supp. 148 (D.N.J. 1989); as well as the provisions of the South Carolina Workers' Compensation Act, as interpreted by the Courts of the State of South Carolina; and

c) One Thousand Four Hundred Forty-Four and 18/100 (\$1,444.18) Dollars to reimburse Claimant and her attorney for costs and expenses incurred in the prosecution of this claim.

AND IT IS SO ORDERED.

  
Susan Barden, Commissioner  
South Carolina Workers' Compensation Commission

  
Gene McCaskill, Commissioner  
South Carolina Workers' Compensation Commission

  
Melody James, Commissioner, Chair  
South Carolina Workers' Compensation Commission

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 February 20, 2013**