

BEFORE THE APPELLATE PANEL OF
THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 2107591

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SEP 16 2022

SC Court of Appeals

Susan Marie Hinson,
Claimant,

vs.

Carolina Gardens,
Employer,

MEMIC Indemnity Company,
Carrier/Defendants.

**APPELLATE PANEL
DECISION & ORDER**

DATE OF HEARING: Hearing held via Zoom on
on June 20, 2022

APPELLANTS: Ashley R. Kirkham of Collins & Lacy of
Columbia, South Carolina

RESPONDENTS: C. Daniel Vega of Chappell Smith &
Arden of Columbia, South Carolina

PURPOSE OF THE HEARING: To determine the issues on appeal set forth on
Form 30

APPELLATE PANEL: Melody L. James, Chair
Aisha Taylor
R. Michael Campbell, II

DATE: August 18, 2022

PROCEDURAL HISTORY

Claimant sustained an alleged work-related injury on or about April 8 or 9, 2021. Defendants denied her claim and denied benefits. Claimant filed a Form 50 requesting a hearing. A hearing was held before the Single Commissioner on October 26, 2021. The Single Commissioner signed and issued an order on February 25, 2022, outlining his Findings of Fact and Conclusions of Law.

Defendants filed a Form 30, Request for Commission Review, stating their grounds for appeal with reasonable specificity. The Appellate Panel of the South Carolina Workers' Compensation Commission granted Defendants' request for review, and both parties timely submitted their briefs into the record.

Accordingly, this matter is now before the undersigned Appellate Panel for review of the Single Commissioner's February 25, 2022 Order in accordance with South Carolina workers' compensation laws and regulations.

STATEMENT OF THE CASE

The parties were first heard by Commissioner Avery B. Wilkerson, Jr., on October 26, 2021. At the call of the hearing, Claimant contended she suffered a compensable injury by accident in the course and scope of her employment on or about April 9, 2021 when she assisted a Caregiver in lifting a resident and felt sharp, severe pain in her neck. Claimant argued the medical evidence demonstrates Claimant suffered a herniated cervical disc when she lifted the patient. Claimant contended the medical evidence pre-dating the injury demonstrated she did not have a pre-existing condition.

Defendants contended Claimant did not suffer an injury by accident in the course and scope of employment. Defendants argued Claimant failed to meet the burden of proving an aggravation of a pre-existing condition. Defendants contended Claimant was to required establish aggravation

of a pre-existing condition because the evidence of record demonstrated Claimant had symptoms suggestive of pre-existing neck pain.

As a result, Commissioner Wilkerson issued a Decision and Order on February 25, 2022 containing the follow Findings of Fact and Conclusions of Law:

Findings of Fact

1. *Claimant, Susan Marie Hinson, is a 47-year-old, single female, with a tenth (10th) grade education, who was recruited to work as a medical technician at Carolina Gardens.*
2. *As a medical technician claimant dispensed medication to residents.*
3. *Claimant testified she hurt her neck when she helped Susan Douglas move a patient. I find claimant's testimony to be honest. Claimant's symptoms and complaints demonstrate she has severe neck pain consistent with a cervical disc injury related to lifting a patient.*
4. *Claimant's testimony is corroborated by her co-worker Robin Douglas. Ms. Douglas' testimony specifically details the incident. Ms. Douglas describes how claimant was feeling when it happened. Ms. Douglas also describes telling the claimant she would find someone else to help her.*
5. *Claimant's testimony is corroborated by her Employee Incident Report (Ex. C3), the employer's Statement of Injured Employee (Ex. C4) and the Employee Incident Report of Robin Douglas (Ex. C2), all of which describe claimant's accident.*
6. *Claimant sent a text message about the incident on April 17 at 9:43 p.m. (Ex. C1).*
7. *As a result of the accident Claimant was provided a medical evaluation by the employer/carrier with Dr. Ekman. Dr. Ekman's report demonstrates claimant suffered an acute work-related incident which caused cervical disc injury. Dr. Ekman recommended claimant remain out of work. Dr. Ekman recommended evaluation by a spine surgeon.*

8. *Claimant was evaluated by Dr. Peelle who stated within a reasonable degree of medical certainty claimant "suffered a disc herniation as a result of this lifting injury." Dr. Peelle recommended a discectomy with disk fusion at C6-7.*
9. *The medical evidence of record, when viewed in its entirety, demonstrates claimant suffered an injury by accident to her cervical spine as a result of attempting to move a patient.*
10. *The medical evidence of record does not support Defendants' assertion claimant suffered an aggravation of a pre-existing condition. Furthermore, claimant did not assert she suffered an aggravation of a pre-existing condition. Claimant specifically asserted a cervical disc injury as a result of lifting a patient.*
11. *Claimant had an acute episode of shoulder pain prior to employment at Carolina Gardens. Doctors conducted a CT scan of the neck and specifically stated it was not a cervical condition. Claimant was specifically given an injection in her shoulder.*
12. *Claimant was given a physical examination prior to employment at Carolina Gardens with her primary medical provider Julie Bowers, APRN, which certified her condition as medically acceptable for the position being offered.*
13. *All three incident reports indicate the accident occurred on April 9, 2021. Payroll evidence suggests claimant worked on April 8 and not April 9. This evidence, however, does not disprove the incident.*
14. *Claimant suffered a cervical spine injury at Carolina Gardens on April 8, 2021, when she was assisting Robin Douglas move a patient and she experienced pain in her neck.*
15. *Claimant is entitled to medical care and treatment for her ongoing cervical disc injury.*
16. *Claimant is entitled to temporary total disability benefits from June 16, 2021, to the present and continuing until further order of the Commission.*

Conclusions of Law

- 1. Pursuant to section 42-1-160, Claimant suffered injury by accident to the cervical spine in the course and scope of employment when she assisted in lifting a patient at Carolina Gardens on April 8, 2021.*
- 2. Pursuant to section 42-15-60, Claimant is entitled to causally related medical care and attention which will tend to effect a cure and provide relief of the injury suffered in the course and scope of employment.*
- 3. Pursuant to section 42-9-10, Claimant is entitled to temporary total disability benefits commencing June 16, 2021, to the present and continuing until further order of the Commission.*

Order

- 1. Defendants shall pay for and provide medical care and attention consistent with the Commissioner's finding Claimant suffered an injury by accident to the cervical spine in the course and scope of employment with Carolina Gardens on April 8, 2021.*
- 2. Defendants shall pay temporary total disability benefits in the amount of \$326.86 per week commencing June 16, 2021, to the present and continuing until further order of the Commission.*

AND IT IS SO ORDERED!

ISSUES ON APPEAL

Defendants raised the following issues to be appealed pursuant to their Form 30, Request for Review:

- 1. Whether the Single Commissioner erred in finding Claimant was not required to meet the burden of proving an aggravation of a pre-existing condition.*

2. Whether the Single Commissioner erred in finding Claimant suffered a compensable accident as Claimant has not met the required burden of proof that her pre-existing condition was aggravated by a work injury.
3. Whether the Single Commissioner erred in finding Claimant met her burden of proving a compensable injury by accident.

STATEMENT OF APPEAL

Having timely submitted briefs setting forth their position, on appeal the parties appeared at oral arguments on June 20, 2022. At the call of the hearing, Defendants argued the Single Commissioner erred in failing to require Claimant establish an aggravation of a pre-existing condition. Defendants further argued Claimant was unable to establish a compensable injury by accident pursuant to § 42-1-160. Thus, Defendants contended the Single Commissioner erred in finding in awarding benefits.

Claimant argued § 42-1-160 injury by accident arising out of and in the course and of her employment. Claimant argued she did not have a § 42-9-35 pre-existing condition. Claimant argued the evidence of record, when viewed in its entirety, established she suffered a compensable cervical disc injury at the time of the accident. Claimant contended the award of the Single Commissioner should, therefore, be affirmed.

FINDINGS OF THE FULL COMMISSION

pursuant to section 42-17-50, the Appellate Panel shall review the Decision and Order, weight the evidence of record presented at the hearing, and, if good grounds be shown make its own Findings of Fact and Conclusions of Law consistent with, or inconsistent with those of the Single Commissioner. After careful review of the instant case under appeal, the Appellate Panel

of the South Carolina Workers' Compensation Commission **Affirms** the Decision and Order of the Single Commissioner with the following **amendment**:

1. Claimant, Susan Marie Hinson, is a 47-year-old, single female, with a tenth (10th) grade education, who was recruited to work as a medical technician at Carolina Gardens.
2. As a medical technician claimant dispensed medication to residents.
3. Claimant testified she hurt her neck when she helped Susan Douglas move a patient. I find claimant's testimony to be honest. Claimant's symptoms and complaints demonstrate she has severe neck pain consistent with a cervical disc injury related to lifting a patient.
4. Claimant's testimony is corroborated by her co-worker Robin Douglas. Ms. Douglas' testimony specifically details the incident. Ms. Douglas describes how claimant was feeling when it happened. Ms. Douglas also describes telling the claimant she would find someone else to help her.
5. Claimant's testimony is corroborated by her Employee Incident Report (Ex. C3), the employer's Statement of Injured Employee (Ex. C4) and the Employee Incident Report of Robin Douglas (Ex. C2), all of which describe claimant's accident.
6. Claimant sent a text message about the incident on April 17 at 9:43 p.m. (Ex. C1).
7. As a result of the accident Claimant was provided a medical evaluation by the employer/carrier with Dr. Ekman. Dr. Ekman's report demonstrates claimant suffered an acute work-related incident which caused cervical disc injury. Dr. Ekman recommended claimant remain out of work. Dr. Ekman recommended evaluation by a spine surgeon.
8. Claimant was evaluated by Dr. Peelle who stated within a reasonable degree of medical certainty claimant "suffered a disc herniation as a result of this lifting injury." Dr. Peelle recommended a discectomy with disk fusion at C6-7.

9. The medical evidence of record, when viewed in its entirety, demonstrates claimant suffered an injury by accident to her cervical spine as a result of attempting to move a patient.
10. The medical evidence of record does not support Defendants' assertion claimant suffered an aggravation of a pre-existing condition. Furthermore, claimant did not assert she suffered an aggravation of a pre-existing condition. Claimant specifically asserted a cervical disc injury as a result of lifting a patient.
11. Claimant had an acute episode of shoulder pain prior to employment at Carolina Gardens. Doctors conducted a CT scan of the neck and specifically stated it was not a cervical condition. Claimant was specifically given an injection in her shoulder.
- 12. Although claimant had symptoms in her neck prior to the injury, the work injury caused a cervical herniation which was not documented prior to the injury.**
13. Claimant was given a physical examination prior to employment at Carolina Gardens with her primary medical provider Julie Bowers, APRN, which certified her condition as medically acceptable for the position being offered.
14. All three incident reports indicate the accident occurred on April 9, 2021. Payroll evidence suggests claimant worked on April 8 and not April 9. This evidence, however, does not disprove the incident.
15. Claimant suffered a cervical spine injury at Carolina Gardens on April 8, 2021, when she was assisting Robin Douglas move a patient and she experienced pain in her neck.
16. Claimant is entitled to medical care and treatment for her ongoing cervical disc injury.
17. Claimant is entitled to temporary total disability benefits from June 16, 2021, to the present and continuing until further order of the Commission.


Conclusions of Law

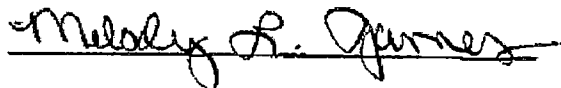
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2. Pursuant to section 42-15-60, Claimant is entitled to causally related medical care and attention which will tend to effect a cure and provide relief of the injury suffered in the course and scope of employment.
3. Pursuant to section 42-9-10, Claimant is entitled to temporary total disability benefits commencing June 16, 2021, to the present and continuing until further order of the Commission.


Order

1. Defendants shall pay for and provide medical care and attention consistent with the Commissioner's finding Claimant suffered an injury by accident to the cervical spine in the course and scope of employment with Carolina Gardens on April 8, 2021.
2. Defendants shall pay temporary total disability benefits in the amount of \$326.86 per week commencing June 16, 2021, to the present and continuing until further order of the Commission.

AND IT IS SO ORDERED!



Aisha Taylor, Commissioner

Melody L. James, Commissioner

R. Michael Campbell, II, Commissioner

Date: _____

Order Served via E-Mail:

Ashley Kirkham Collins & Lacy akikham@collinsandlacy.com	C. Daniel Vega Chappell, Smith & Aden dvega@csa-law.com
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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 August 18, 2022