

State of South Carolina
Workers' Compensation Commission

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Apr 12 2023

SC Court of Appeals

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Melody James, Chair; Aisha Taylor; and Michael Campbell

SCWCC File No.: 1815744

Alicia Ruffin,

Claimant/Appellant,

v.

Builders FirstSource, Inc.,

Employer,

and

Liberty Insurance Corp.,

Carrier,

Defendants/Respondents.

AFFIRMED

Hearing held in Richland County, South Carolina,
on December 19, 2022.

Per notice timely and properly served upon all Parties of Interest.

Appearances: Claimant, Alicia Ruffin, appeared pro se.

J. South Lewis, II of Willson Jones Carter & Baxley, P.A.
appeared on behalf of Defendants/Respondents.

Court Reporter: Travis McLeod, Creel Court Reporting, Inc., 1230 Richland St.,
Columbia, SC 29201, (803) 252-3445,
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Filed:

February 14, 2023

I. STATEMENT OF THE CASE

Claimant suffered an admitted, work-related accident to her lumbar and cervical spine on October 4, 2018. Defendants provided treatment for Claimant's cervical and lumbar spine injuries and paid temporary total indemnity benefits. After performing an IME, Charles Kanos (Southeastern Neurosurgical and Spine Institute) assigned a 3% rating to the lumbar spine and a 3% rating to the cervical spine on July 22, 2019.

A hearing was held on September 16, 2020, in front of Commissioner Beck. At hearing, "Claimant agreed that her injury stemming from her October 4, 2018 accident was limited to her neck and back." (Beck Order, p. 4.) Claimant was also advised of her right to counsel and expressly waived that right. (Beck Order, p. 4.) A Decision and Order was served on the parties on December 10, 2020, in which Commissioner Beck found that Claimant was at maximum medical improvement, awarded 15% permanent partial disability PPD to the back pursuant to §42-9-30(21), and found Claimant was not entitled to future medical treatment. Defendants were granted a credit for overpayment of TTD. The result was a net payment due to Claimant in the amount of \$3,012.25.

Claimant attempted to appeal to the Appellate Panel of the South Carolina Workers Compensation Commission (SCWCC). However, that appeal was dismissed by Order dated January 6, 2021, as the appeal was untimely filed. Claimant filed a "Motion to Reinstate" on January 14, 2021. The Commission issued a "Judicial Conference Decision and Order" on February 24, 2021, denying Claimant's Motion to Reinstate.

Claimant then filed a "Notice of Appeal in a Workers' Compensation Case" with the South Carolina Court of Appeals, which was served on Defendants on March 31, 2021. On July 14, 2021, the Court of Appeals dismissed Claimant's appeal because she failed to provide proof of timely service upon Defendants as required by Rule 203 (b)(6), SCACR. On September 13, 2021, the Court of Appeals denied Claimant's Petition for Rehearing. On November 1, 2021, Claimant filed a Petition for Writ of Certiorari with the South Carolina Supreme Court to review whether the Court of Appeals erred in dismissing her untimely appeal.

On November 22, 2021, Defendants filed a Motion to Dismiss. On January 13, 2022, the Supreme Court denied Claimant's petition.

Notwithstanding the finality of the matter, Claimant filed another Form 50 on February 24, 2022, arising out of the same claim. That matter came before Commissioner McCaskill on May 27, 2022, a result of which he issued an Order holding that Claimant was not entitled to any further benefits and further ordered:

IT IS ORDERED that further pleadings filed by the Claimant against Defendants subsequent to the date this Decision and Order becomes the law of the case shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they relate to the same set of facts and circumstances already decided by the final decision of the SC Court of Appeals.

IT IS ORDERED that subsequent to the date this Decision and Order becomes the law of the case Defendants shall be relieved of any obligation to respond to further filings by Claimant related to this claim unless specifically instructed to do so by the Commission.

See Decision and Order of Commissioner McCaskill dated August 3, 2022. Claimant did not appeal this Order within the statutory appeal period.

Shortly thereafter, Claimant refiled yet another Form 50 Request for Hearing dated August 8, 2022. Commissioner Wilkerson issued an Order dated September 7, 2022, declining to hear the matter, based on the doctrine of *res judicata*. This appeal ensued.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

In his Decision & Order, Commissioner Wilkerson made the following specific Findings of Fact and Conclusions of Law:

STATEMENT OF FACTS

1. *Claimant suffered an admitted, work-related accident to her lumbar and cervical spine on October 4, 2018. Defendants provided treatment for Claimant's cervical and lumbar spine injuries and paid temporary total indemnity benefits.*

2. *The Single Commissioner awarded 15% permanent partial disability to the back by Decision and Order, dated December 10, 2020. The Single Commissioner also found the Claimant at maximum medical improvement and found that she was not entitled to any further medical treatment.*
3. *Thereafter, Claimant appealed this decision to both the Court of Appeals and the Supreme Court. After the Supreme Court denied certiorari and before the Commission adjudicated Defendants' motion to certify the Form 19, Claimant filed another Form 50 Hearing request, dated February 24, 2022, seeking benefits for injuries to her neck, brain, psyche that occurred on October 4, 2018 while in Defendants' employ. Claimant also alleged that she sustained additional injury to her neck on April 12, 2019 and on June 19, 2019. According to Claimant, her injuries resulted from either an accident, illness, repetitive trauma, occupational disease, or physical brain injury.*
4. *The February 24, 2022 pleading was administratively dismissed by the Single Commissioner on August 3, 2022 because, in his determination, the issues plead therein were res judicata having previously been adjudicated by Commission Decision & Order, dated December 10, 2020.*
5. *Claimant's August 8, 2022 Form 50 Hearing request alleges injury to the neck, brain, and psyche occurring on October 4, 2018, April 12, 2019, and June 19, 2019 while she was employed by Defendant Builders FirstSource. She again asserts that her injuries resulted from either repetitive trauma or occupational disease.*
6. *The Single Commissioner's August 3, 2022 Decision & Order states in relevant part: "[F]urther pleadings filed by the Claimant against Defendants subsequent to the date this Decision and Order becomes the law of the case shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they relate to the same set of facts and circumstances already decided by the final decision of the SC Court of Appeals."*
7. *Neither party appealed the Single Commissioner's August 3, 2022 Decision & Order.*

CONCLUSIONS OF LAW

1. *The relief sought by Claimant in her August 2022 Form 50 Hearing request is denied. The issues set forth herein are res judicata. "Res judicata bars a subsequent suit by the same parties on the same issues." Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250 (S.C. 1993) and Crosby v. Prysmian Communications Cables, 397 S.C. 101, 108 (S.C. Ct. App. 2012) (citing Bennett v. S.C. Dep't of Corr., 305 S.C. 310 (1991) "Res judicata is shown if (1) the identifies of the parties is the same as the prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." Johnson, 397 S.C. at 251.*
2. *After the South Carolina Supreme Court denied her petition for certiorari, and before the Commission adjudicated Defendants' request to certify the Form 19, Claimant filed a Form 50 Hearing Request, dated February 24, 2022, alleging injury to her neck, brain, and psyche on October 4, 2018 while she was employed by Builders FirstSource. In her February pleading, Claimant alleged that she sustained additional injury to her neck on April 12, 2019 when a physician's assistant removed her neck brace and another injury during an EMG exam on June 19, 2019. She asserted that her injuries resulted from either an accident, illnesses, repetitive trauma, occupational disease, or physical brain injury. The Single Commissioner administratively dismissed this pleading because the issues plead therein were res judicata; Commission's December 10, 2020 fully adjudicated these issues and is the law of the case.*

3. *Claimant's August 2022 Form 50 alleges injury to the same body parts that were claimed in the prior February filing. She also alleges the same injuries occurred while employed by the same defendant as plead in the prior Form 50. She again asserts that her injuries resulted from either repetitive trauma or occupational disease. The Single Commissioner's August 3, 2022 adjudicated these issues and neither party appealed. It is the law of the case.*
4. *Once res judicata is established, the Commission may not continue to adjudicate the matter. The undersigned has reviewed the claim and finds that Claimant's August 8, 2022 Form 50 seeks compensation from the same Defendants for the same previously alleged injuries that occurred on the same date(s) of accident, October 4, 2018, April 12, 2019, and June 19, 2019. This matter has been fully and finally adjudicated by the Appellate Courts and This Commission. Any further relief is barred by the doctrine of res judicata and, pursuant to the Single Commissioner's August 3, 2022 Decision & Order, this matter is administratively dismissed.*

Based on his Findings of Fact and Conclusions of Law, Commissioner Wilkerson ordered the following:

THEREFORE, IT IS ORDERED that Claimant's August 8, 2022 petition for Hearing is denied and dismissed with prejudice.

IT IS ORDERED that further pleadings filed by the Claimant against Defendants subsequent to the date this Decision and Order becomes the law of the case shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they related to the same set of facts and circumstances already decided by the final decision of the Single Commissioner, dated December 10, 2020.

IT IS ORDERED that subsequent to the date this Decision and Order becomes the law of the case Defendants shall be relieved of any obligation to respond to further filings by Claimant related to this claim unless specifically instructed to do so by the Commission. This shall not prevent, however, either party from pursuing a proper appeal of this Decision and order or pursuing a future, unrelated claim not previously adjudicated by the Commission.

III. ISSUES ON APPEAL

On September 12, 2022, within the statutory period, Claimant filed an application for review in the case setting forth the following ground *verbatim* for review:

1. **Did the Commission violate the Claimant's 14th Amendment Rights specifically the Claimant's Right to a Fair Trial?**

See Claimant's Form 30 containing additional details to support and supplement her ground(s) for appeal.

IV. DECISION OF THE APPELLATE PANEL

Based upon the documentary evidence submitted by the respective parties, the Single Commissioner's Order, the briefs and oral arguments submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission's file relative to this claim, and the greater weight and preponderance of the substantial evidence in the record, **WE, THE APPELLATE PANEL, AFFIRM THE HEARING COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW** and set forth the following additional findings of fact and conclusions of law:

APPELLATE PANEL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Claimant suffered an admitted, work-related accident to her lumbar and cervical spine on October 4, 2018. Defendants provided treatment for Claimant's cervical and lumbar spine injuries and paid temporary total indemnity benefits.

2. The Single Commissioner awarded 15% permanent partial disability to the back by Decision and Order, dated December 10, 2020. The Single Commissioner also found the Claimant at maximum medical improvement and found that she was not entitled to any further medical treatment.

3. Thereafter, Claimant appealed this decision to both the Court of Appeals and the Supreme Court. After the Supreme Court denied certiorari and before the Commission adjudicated Defendants' motion to certify the Form 19, Claimant filed another Form 50 Hearing request, dated February 24, 2022, seeking benefits for injuries to her neck, brain, psyche that occurred on October 4, 2018 while in Defendants' employ. Claimant also alleged that she sustained additional injury to her neck on April 12, 2019 and on June 19, 2019. According to Claimant, her injuries resulted from either an accident, illness, repetitive trauma, occupational disease, or physical brain injury.

4. The February 24, 2022 pleading was administratively dismissed by the Single Commissioner on August 3, 2022 because, in his determination, the issues plead therein were res judicata having previously been adjudicated by Commission Decision & Order, dated December 10, 2020.

5. Claimant's August 8, 2022 Form 50 Hearing request alleges injury to the neck, brain, and psyche occurring on October 4, 2018, April 12, 2019, and June 19, 2019 while she was employed by Defendant Builders FirstSource. She again asserts that her injuries resulted from either repetitive trauma or occupational disease.

6. The Single Commissioner's August 3, 2022 Decision & Order states in relevant part: "[F]urther pleadings filed by the Claimant against Defendants subsequent to the date this Decision and Order becomes the law of the case shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they relate to the same set of facts and circumstances already decided by the final decision of the SC Court of Appeals."

7. Neither party appealed the Single Commissioner's August 3, 2022 Decision & Order.

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. The relief sought by Claimant in her August 2022 Form 50 Hearing request is denied. The issues set forth herein are *res judicata*. "Res judicata bars a subsequent suit by the same parties on the same issues." Johnson v. Greenwood Mills, Inc., 317 S.C. 248, 250 (S.C. 1993) and Crosby v. Prysmian Communications Cables, 397 S.C. 101, 108 (S.C. Ct. App. 2012) (citing Bennett v. S.C. Dep't of Corr., 305 S.C. 310 (1991)) "Res judicata is shown if (1) the identifies of the parties is the same as the prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction." Johnson, 397 S.C. at 251.

2. After the South Carolina Supreme Court denied her petition for certiorari, and before the Commission adjudicated Defendants' request to certify the Form 19, Claimant filed a Form 50 Hearing Request, dated February 24, 2022, alleging injury to her neck, brain, and psyche on October 4, 2018 while she was employed by Builders FirstSource. In her February pleading, Claimant alleged that she sustained additional injury to her neck on April 12, 2019 when a physician's assistant removed her neck brace and another injury during an EMG exam on June 19, 2019. She asserted that her injuries resulted from either

an accident, illnesses, repetitive trauma, occupational disease, or physical brain injury. The Single Commissioner administratively dismissed this pleading because the issues plead therein were res judicata; Commission's December 10, 2020 fully adjudicated these issues and is the law of the case.

3. Claimant's August 2022 Form 50 alleges injury to the same body parts that were claimed in the prior February filing. She also alleges the same injuries occurred while employed by the same defendant as plead in the prior Form 50. She again asserts that her injuries resulted from either repetitive trauma or occupational disease. The Single Commissioner's August 3, 2022 adjudicated these issues and neither party appealed. It is the law of the case.

4. Once *res judicata* is established, the Commission may not continue to adjudicate the matter. The undersigned has reviewed the claim and finds that Claimant's August 8, 2022 Form 50 seeks compensation from the same Defendants for the same previously alleged injuries that occurred on the same date(s) of accident, October 4, 2018, April 12, 2019, and June 19, 2019. This matter has been fully and finally adjudicated by the Appellate Courts and This Commission. Any further relief is barred by the doctrine of *res judicata* and, pursuant to the Single Commissioner's August 3, 2022 Decision & Order, this matter is administratively dismissed.

ORDER

For the foregoing reasons, based on the greater weight and preponderance of the substantial evidence in the records,

IT IS HEREBY ORDERED we **AFFIRM** the Decision and Order of the Single Commissioner and dismiss this claim with prejudice.

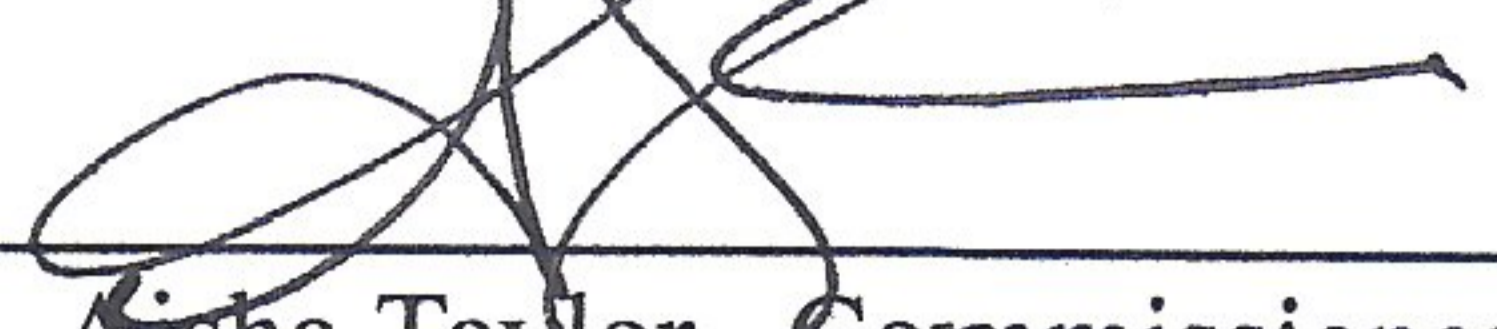
Claimant's Motion to Submit New Evidence is **DENIED**.

Defendants' Motion for Attorney's Fees and Costs is **DENIED**.

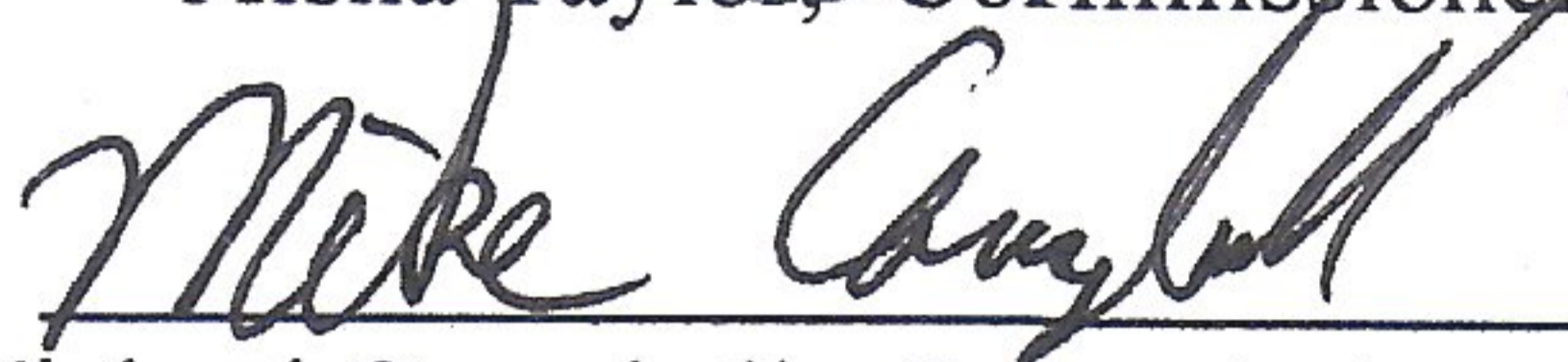
IT IS SO ORDERED.



Melody James, Chair



Aisha Taylor, Commissioner



Michael Campbell, Commissioner

Order Served via E-Mail:

Alicia Ruffin, Claimant <u>innocentlyal@yahoo.com</u>	
Mary Kate Littlejohn, Esquire <u>mklittlejohn@wjlw.net</u>	
J. South Lewis, Esquire <u>jslewis@wjcblaw.com</u>	

Order Served via :

Mary Kate Littlejohn, Esquire
and
J. South Lewis, Esquire
325 Rocky Slope Road
Suite 201
Greenville, SC 29607

Alicia Ruffin, Claimant
563 Duncan Station Drive
Duncan, SC 29334

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS
ORDER IN THE ABOVE-ENTITLED ACTION UPON ALL PARTIES
ELECTRONICALLY OR BY DEPOSITING A COPY HEREOF, POSTAGE PAID,
IN THE UNITED STATES MAIL

This 14 day of February 2023

By: Valerie A. Decker

SCWCC Judicial Department

