

APPELLATE PANEL DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO: 1013465

DELORES PORTER

EMPLOYEE,  
CLAIMANT/APPELLANT

VS.

MEDFORD NURSING CENTER

EMPLOYER,

AND

KEY RISK INSURANCE COMPANY,

CARRIER,  
DEFENDANTS/RESPONDENTS

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Appellate Panel Review held in Columbia, South  
Carolina, on April 16, 2013, per notices timely  
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

6/14/13

APPEARANCES: Claimant/Appellant represented by Steve Wukela, Jr., Esquire,  
of Conway, South Carolina.

Defendants/Respondents represented by George D. Gallagher,  
Esquire of McAngus Goudelock & Courie, I.L.C of Columbia,  
South Carolina.

## APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and the Regulations of the South Carolina Workers' Compensation Commission, the following records were admitted into evidence at the Single Commissioner Hearing without objection:

### Defendants' Submissions:

1. Medical records of Thomas Hokanson, M.D., dated 1/17/08-6/25/12, 25 pages;
2. Medical records of Peter Johnson, M.D., dated 1/26/10-7/8/10, 18 pages;
3. Medical records of Robert Elvington, M.D., and Anthony Alexander, M.D., dated 7/22/10-2/28/11, 21 pages;
4. Medical records of Christopher Paramore, M.D., dated 5/31/11-3/6/12, 13 pages;
5. Medical records of Patrick Denton, M.D., dated 10/19/11-11/14/11; 8 pages;
6. Medical records of Jason B. O'Dell, M.D., dated 8/30/11-4/13/12, 21 pages.
- Ex. 1 Claimant's timesheets, dated 9/18/11-10/10/11, 3 pages;
- Ex. 2 Work excuse from Dr. O'Dell and Dr. Alexander, dated 10/6/11, 3 pages;
- Ex. 3 Claimant's short-term disability application and paperwork, dated 10/13/11-12/8/11, 9 pages.

### Claimant's Submissions:

7. Medical records of Pee Dee Orthopaedic Assoc., dated 2/25/04-4/13/11, 56 pages;
8. Medical records of Walter James, M.D., dated 4/24/08-2/16/12, 18 pages;
9. Medical records of Peter Johnson, M.D., dated 1/26/10-7/8/10, 34 pages;
10. Medical records of Ashley Reaves, FNP, dated 2/22/10-11/22/10, 6 pages;
11. Medical records of Christopher Paramore, M.D., dated 5/3/11-2/15/12; 29 pages;
12. Medical records of Nep Geuvarra, PT, dated 10/4/11-3/21/12, 4 pages;
13. Medical records of Charles Parke, M.D., dated 11/22/11, 2 pages;
14. Medical records of Supen Patel, M.D., dated 2/24/12, 4 pages;
15. Deposition of Christopher Paramore, M.D., dated 5/23/12;
16. Deposition of Delores Porter, dated 7/1/12;
17. Deposition of Jason O'Dell, M.D., dated 7/17/12.

## STIPULATIONS

The parties stipulated at the Single Commissioner Hearing to the following:

1. Date of injury is January 23, 2010.
2. Claimant's average weekly wage and applicable compensation rate are \$454.50 and \$303.02, respectively.
3. Claimant sustained an injury to her right shoulder and neck.

## STATEMENT OF THE CASE

Claimant sustained an admittedly compensable work-related injury to her neck and right shoulder on January 23, 2010. Claimant alleges that she also injured her head, lower back, right arm, right leg, right foot, and has a psychological overlay. The injury occurred while Claimant was moving a patient. Claimant takes the position that she has not reached maximum medical improvement or, in the alternative, if she has reached maximum medical improvement that she is permanently and totally disabled. Claimant also takes the position that she is entitled to temporary total disability that has not been paid by Defendants. Finally, Claimant contends that the Commission does not have jurisdiction over this claim because Defendants have not made all required temporary total disability payments.

Defendants dispute that Claimant suffered any injury to her head, lower back, right arm, right leg, right foot, or has psychological overlay as a result of her work-related accident. Defendants submit that Claimant has reached maximum medical improvement for her compensable neck and right shoulder injuries. Defendants admit that Claimant is entitled to permanent partial disability for loss of use of the shoulder and neck per §42-9-30 but deny he is permanently and totally disabled under §42-9-10. This contention is based on Claimant being released by Dr. Paramore to full duty with no restrictions. Further, Defendants contend that Claimant is not entitled to any additional temporary total disability because her temporary total disability benefits were properly terminated pursuant to S.C. Code Ann. §42-9-260 and Regulation 67-505 after Claimant returned to work for more than 15 calendar days. Finally, Defendants contend that jurisdiction is proper because all owed temporary total disability payments are current and benefits were properly stopped after she returned to work.

In her Order dated January 14, 2013, Commissioner James, *inter alia*, made the following findings of fact:

1. Claimant has suffered an injury to her right shoulder and neck.
2. Claimant has not sustained her burden of proof that the lower back is related to the work accident.
3. Claimant has not sustained her burden of proof that her right leg and foot are related to the work accident. These injuries are a pre-existing condition. Claimant has not proven that the work accident aggravated or worsened her condition.
4. Defendants followed the statute and regulations of the South Carolina Workers' Compensation Commission in suspending the Claimant's temporary compensation benefits while she was working. There was no mandate that such benefits be reinstated because she worked from September 19 through October 6 before she became disabled for a condition totally unrelated to her work accident.
5. Temporary total benefits were properly terminated pursuant to the Act. The records shows that Claimant returned to work full duty from September 19 through October 6—a period of more than 15 calendar days.
6. Claimant's disability and inability to work as of October 10, 2011 to the present is the product of her non-work related foot condition.
7. Claimant reached MMI to the cervical spine as of 2/8/12 pursuant to Dr. Paramore.
8. Claimant reached MMI to the right shoulder as of 11/9/11 pursuant to Dr. Denton.
9. Claimant is awarded permanent partial disability of 38% to the spine and 5% to the shoulder.
10. Claimant is awarded hardware pursuant to the Act. No other future medical is necessary or awarded pursuant to the opinions of Dr. Paramore.
11. Claimant is denied a lump sum award without prejudice. The record does not contain any questions regarding lump sum payment.

Commissioner James also made the following conclusions of law:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Sections 42-15-10 and 42-17-20, jurisdiction and venue are proper.
3. Pursuant to S.C. Code Ann. Sections 42-1-130 and 42-1-140, an employer/ employee relationship existed between Claimant and Employer.
4. Pursuant to S.C. Code Ann. Section 42-1-160, Claimant sustained a compensable injury by accident arising out of and in the course of employment.
5. Pursuant to S.C. Code Ann. Section 42-9-10, Claimant is entitled to temporary total disability benefits for the period of time during which the incapacity for work is total.
6. S.C. Code Ann. §42-9-260(F) provides, in pertinent part, that "[a]fter the one-hundred-fifty day period has expired, the Commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and Commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in §42-9-260(B)(1) or (B)(2) are present." (emphasis added).
7. S.C. Code Ann. §42-9-260 (B)(1) is the exception to the requirement of an evidentiary hearing when a worker has met the fifteen day return to work threshold. It provides, in pertinent part that benefits may be suspended when **"the employee has returned to work; however, if the employee does not remain at work for a minimum of fifteen days, temporary disability payments must be resumed immediately;"** (emphasis added).
8. Regulation 67-505(C)(1) and (2) provides the mechanism for suspending temporary total benefits after the first one hundred fifty days. The regulation provides, in pertinent part, "[t]emporary compensation may be suspended as follows: (1) When the authorized health care provider reports the claimant is able to return to work without restriction to the same or other

suitable job, and such job is provided by the employer, the employer's representative may suspend temporary compensation **while the claimant is working** unless temporary partial compensation is due; or (2) When the authorized health care provider reports the claimant is able to return to work at limited duty and the employer provides limited duty work consistent with the terms upon which the claimant has been released, the employer's representative may suspend temporary compensation **while the claimant is working** unless temporary partial compensation is due...." (emphasis added).

9. Regulation 67-505(H) provides that "[i]f the employer's representative refuses to reinstate temporary compensation after the fifteen day period above, the claimant may request a hearing according to R.67-207." (emphasis added).
10. Pursuant to S.C. Code Ann. §42-9-30 Claimant sustained a 38% spine and 5% shoulder rating.

Claimant timely filed a Form 30 appealing Commissioner James's Decision and Order on January 23, 2013. Claimant's Appeal raised numerous exceptions, but for all practical intents and purposes the alleged exceptions are predicated on three main issues: 1) whether the Commissioner erred by allowing the hearing to proceed when TTD benefits were allegedly improperly terminated; 2) whether the Commissioner erred by finding the scope of Claimant's compensable injuries were limited to the cervical spine and shoulder; and 3) whether the Commissioner erred in not awarding Claimant permanent and total disability per 42-9-10, or in the alternative, erred by only awarding Claimant PPD per 42-9-30 for 38% loss of use of the spine and 5% loss of use of the shoulder.

#### **EVIDENCE OF THE CASE**

Defendants presented two witnesses at the Single Commissioner Hearing: Ms. Lula Wallace and Ms. Dana Jones. Claimant testified on her own behalf.

Ms. Wallace is the payroll and benefits coordinator for Wilson Senior Care. (Hr'g Tr. 16:4-8). Wilson Senior Care is the parent company for Medford Nursing Center. (Hr'g Tr. 16:9-

11). Ms. Wallace's job is to handle H.R. matters and short- and long-term disability issues. (Hr'g Tr. 16:15-22). Ms. Wallace stated that Claimant returned to work in September 2011 with Medford Nursing Home following her full duty release from the authorized providers. (Hr'g Tr. 16:23 -- 17:5). Claimant's first full day of work was September 19, 2011. (Hr'g Tr. 17:8-13). Claimant also worked on September 20<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> and October 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup>. (Hr'g Tr. 17:14 -- 23:9). September 19, 2011 to October 6, 2011 is eighteen (18) calendar days.

On October 6, 2011, Claimant informed Ms. Wallace that she was going to have surgery on her foot and that she needed to fill out disability paperwork. (Hr'g Tr. 23:12-15). Ms. Wallace stated that Claimant indicated the foot injury was not related to her January 2010 work accident. (Hr'g Tr. 23:16-21). In addition, Claimant's short-term disability paperwork indicates that her foot injury is not the result of a work-related accident. (Exhibit 3, MetLife Short-Term Disability Application). Specifically, on page 2 of Exhibit 3 (marked as page 8), Claimant was asked "Is Condition Work Related" and her response was "No." (Exhibit 3, MetLife Short-Term Disability Application). In addition, on Claimant's long term disability application, she was again asked whether the condition was work related and again responded "no." (Exhibit 3, MetLife Long-Term Disability Application).

As noted above, Claimant worked a total of 11 days between September 19<sup>th</sup> and October 6<sup>th</sup>. (Hr'g Tr. 27:17-25). Claimant did not work on September 21<sup>st</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 30<sup>th</sup> or October 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup>. Ms. Wallace stated that Claimant was not at work on September 21<sup>st</sup> because it scheduled paid time off (PTO). (Hr'g Tr. 35:21 -- 36:1). Ms. Wallace also stated that Claimant was not at work on September 24<sup>th</sup> and 25<sup>th</sup> because they "could have been days off from work" but admitted that she was unsure if they were scheduled days off or if Claimant had to call in

sick (Hr'g Tr. 37:7-12). However, Ms. Wallace did note that Claimant had remaining PTO days that she did not use for her time off on September 24<sup>th</sup> and 25<sup>th</sup>. (Hr'g Tr. 38:1-13). Finally, Ms. Wallace indicated that Claimant was off work on September 30<sup>th</sup> and October 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> but did not know whether it was scheduled PTO or whether Claimant called in sick. (Hr'g Tr. 39:17 -- 40:15).

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Ms. Dana Jones testified that she is the Health Information Technology Administrator for Wilson Senior Care. (Hr'g Tr. 49:8-23). As part of her job, Ms. Jones was in charge of monitoring employees transitioning back into the workplace after being released from workers' compensation disability. (Hr'g Tr. 50:9-12). Ms. Jones recalled receiving a work release for Claimant. (Hr'g Tr. 51:14-24, APA p. 75). The work release was dated September 19, 2011 and contained no restrictions. (APA p. 75). Even though Claimant had been released to full duty with no restrictions, Ms. Jones testified that Claimant indicated she was not ready to return to a regular duty assignment. (Hr'g Tr. 52:15-19). Because of Claimant's reservations with working a regular duty assignment, she was placed on a restricted duty assignment that continued the physical restrictions assigned to Claimant prior to being released to full duty. (Hr'g Tr. 52:19-22).

After several days of returning to work and accommodating Claimant's requested restrictions to regular duty, Ms. Jones stated that Claimant began discussing "going out" with an injury. (Hr'g Tr. 55:3-11). Ms. Jones asked Claimant if the new injury was related to her work injury and Claimant said "no." (Hr'g Tr. 55:11-14). In fact, Claimant told Ms. Jones that her "doctor wanted to take her out for some time for this" and Ms. Jones recalled that Claimant referred to it as a "spur or bursitis" in her right foot or heel. (Hr'g Tr. 55:14-25). At no point during any conversation with Claimant about her foot injury did Claimant mention to Ms. Jones

that the injury was related to a work-related accident. Further, Claimant never told Ms. Jones that the reason she needed off work for any day was because of her neck or shoulder injuries. (Hr'g Tr. 56:10-15). Claimant also informed her scheduler that the time she was missing from work was for chest pain (not neck or shoulder pain) and, therefore, she went to her family physician instead of her authorized treating physician. (Hr'g Tr. 66:19 – 67:24).

After each witness for Defendants testified, Claimant testified on her own behalf.

Claimant is a 51 year old female with one semester of technical college education. (Hr'g Tr. 73:8-22). After leaving technical college, Claimant was employed as a salesperson in a department store. (Hr'g Tr. 74:6-13). After working as a salesperson, Claimant moved to Georgia and became a homemaker for eight years. (Hr'g Tr. 74:16-23). Claimant began working for Wilson Senior Care in 1996. (Hr'g Tr. 75:17-19).

After suffering her work accident, Claimant first went to see Dr. Peter Johnson. (Hr'g Tr. 81:1-2). Claimant stated that she told Dr. Johnson that she tripped on the leg of a wheelchair and that her "...shoulder and...neck was always hurting." (Hr'g Tr. 81:3-23). Dr. Johnson treated Claimant for a few months and assigned Claimant to light duty work. (Hr'g Tr. 82:2-8). After treating with Dr. Johnson, Claimant was referred to see Dr. Elvington. Dr. Elvington treated Claimant for her shoulder injury but kept her on light duty work restrictions. (Hr'g Tr. 83:6-9). Claimant maintained that she was not getting better under Dr. Johnson and Dr. Elvington's care. (Hr'g Tr. 83:14-21). After treating with Dr. Elvington, Claimant was sent to see Dr. Alexander. (Hr'g Tr. 84:1-4). Dr. Alexander kept Claimant on light duty work restrictions. (Hr'g Tr. 84:10-11). While treating with Dr. Alexander, he recommended that Claimant see another doctor for possible surgical intervention. (Hr'g Tr. 84:16-18). Dr. Alexander recommended Dr. Choksi, however Claimant was ultimately referred to Dr. Paramour. (Hr'g Tr. 84:21 - 85:1).

After being referred, Dr. Paramour performed surgery on Claimant's neck. Claimant was out of work due to the surgery for a period of three months. (Hr'g Tr. 87:13-15). Claimant was released to return to work following the surgery on September 19, 2011. When she returned, Claimant states that she told Ms. Jones that she was unable to work regular duty and would need to have some accommodations because she was unable to handle the heavier patients at the time. (Hr'g Tr. 89:16-20). Because of her inability to perform regular duty, Ms. Jones placed Claimant on restricted duty. (Hr'g Tr. 90:12). Restricted duty included passing out ice, taking vital signs, pushing some residents to the dining room, and other light duty tasks. (Hr'g Tr. 90:13-17). Claimant states that even these activities caused her a great amount of pain but that she did not tell any supervisor or Ms. Jones about her pain. (Hr'g Tr. 90:18 - 91:2).

On cross examination, Claimant stated the reason she gave for not being able to work after October 6, 2011 was her foot and it was not because of her shoulder and her neck. (Hr'g Tr. 108:7-12). Claimant also stated that she was not scheduled to work on September 24<sup>th</sup> and 25<sup>th</sup> or on October 1<sup>st</sup> and October 2<sup>nd</sup>. (Hr'g Tr. 94:2-5, 108:23 -- 109:1). Further, Claimant stated that the days she had off on October 1<sup>st</sup> and 2<sup>nd</sup> had nothing to do with her neck or shoulder. (Hr'g Tr. 109:20-23). Additionally, Claimant admitted that she was having problems with her right foot, heel, ankle, and Achilles area before January 23, 2010. (Hr'g Tr. 111:24 - 112:3). Claimant also stated that her initial medical reports with Dr. Johnson indicate only that she suffered injuries to her neck and right shoulder. (Hr'g Tr. 113:24 - 114:4). In fact, throughout the entirety of her medical records with Dr. Johnson, Claimant's foot is never referenced as part of her treatment. (APA p. 26-43). Further, the medical reports from Dr. Elvington also fail to contain any note of Claimant's foot pain or an aggravated injury to her foot. (APA p. 44-64).

Claimant also saw Dr. Dawson and Dr. Arabi for her foot. At Dr. Dawson's office, Claimant filled out an intake form that asked for information about her visit. Claimant admits to filling out the form. (Hr'g Tr. 117:8-9). On that form, Claimant was asked if her condition was due to an accident or injury. (APA p. 126-127). Claimant responded "no." (APA p. 127). On a subsequent form filled out on August 17, 2011, Claimant was again asked if her condition was due to an accident or injury. (APA p. 131). Again, Claimant responded "no." (APA p. 131). During visits with Dr. Arabi, a podiatrist, in June 2010, Claimant failed to make any mention to him about an aggravation of her pre-existing foot condition. (APA p. 136). Claimant stated that her foot was feeling better in June 2010 and that her foot would follow a pattern of flare ups and calm down periods both before and after the accident. (Hr'g Tr. 119:3-16). Finally, Claimant testified that she also had pre-existing lower back and neck problems prior to her January 2010 work accident. (Hr'g Tr. 119:17-20).

#### **FULL COMMISSION FINDINGS OF FACT**

Based on the record before us, We make the following Findings of Fact:

1. Claimant has suffered an injury to her right shoulder and neck.
2. Claimant has not sustained her burden of proof that the alleged low back injury is related to the work accident.
3. Claimant has not sustained her burden of proof that her alleged right leg and foot injuries are related to the work accident. The evidence shows these injuries are a pre-existing condition and Claimant failed to prove that her work accident aggravated or worsened her condition.
4. Defendants followed the statute and regulations of the South Carolina Workers' Compensation Commission in suspending Claimant's temporary compensation

benefits during the period of time Claimant returned to work. Defendants had no duty to reinstate Claimant's temporary total disability benefits because she returned to work from September 19 through October 6 before she became disabled for a condition unrelated to her work accident.

5. There is no statutory duty to pay temporary total disability benefits while Claimant is actually working. In this case, Claimant was not paid temporary total disability benefits for periods she worked between September 19 and October 6 when she went out of work for the unrelated condition.
6. Temporary total benefits were properly terminated pursuant to the Act. The record shows that Claimant returned to work at full duty on September 19, 2011. Claimant also worked on September 20<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> and October 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup>. Review of a calendar reveals that September 19, 2011 to October 6, 2011 is eighteen (18) calendar days—which is a period of more than fifteen (15) calendar days.
7. Claimant went out of work for her right foot injury on October 10, 2011, which the evidence shows was not the result of, nor aggravated by, this work accident. Specifically, Claimant repeatedly noted to doctors and on paperwork that her foot condition was not the result of a work-related accident.
8. Claimant's disability and inability to work since October 10, 2011 to the present is the product of her non-work related foot condition.
9. Claimant never filed a Form 50 seeking reinstatement of her temporary total disability benefits.

10. Claimant reached MMI to the cervical spine as of February 8, 2012 pursuant to Dr. Paramore's records.
11. Claimant reached MMI to the right shoulder as of November 9, 2011 pursuant to Dr. Denton's records.
12. Claimant is awarded permanent partial disability of 38% to the spine and 5% to the shoulder.
13. Claimant is awarded hardware and lifetime maintenance pursuant to the Act. No other future medical is necessary or awarded pursuant to the opinions of Dr. Paramore.
14. Claimant is denied a lump sum award without prejudice. The record does not contain any questions regarding lump sum payment.

**FULL COMMISSION CONCLUSIONS OF LAW**

We conclude under the South Carolina Workers' Compensation Act, Section 42-1-10, S.C. Code of Laws, et. seq., that:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Sections 42-15-10 and 42-17-20, jurisdiction and venue are proper.
3. Pursuant to S.C. Code Ann. Sections 42-1-130 and 42-1-140, an employer/employee relationship existed between Claimant and Employer.
4. Pursuant to S.C. Code Ann. Section 42-1-160, Claimant sustained a compensable injury by accident arising out of and in the course of employment.

5. Pursuant to S.C. Code Ann. Section 42-9-10, Claimant is entitled to temporary total disability benefits for the period of time during which the incapacity for work is total.
6. S.C. Code Ann. §42-9-260(F) provides, in pertinent part, that “[a]fter the one-hundred-fifty day period has expired, the Commission shall provide by regulation the method and procedure by which benefits may be suspended or terminated for any cause, but the regulation must provide for an evidentiary hearing and Commission approval prior to termination or suspension unless such prior hearing is expressly waived in writing by the recipient or the circumstances identified in §42-9-260(B)(1) or (B)(2) are present.”
7. S.C. Code Ann. §42-9-260 (B)(1) is the exception to the requirement for an evidentiary hearing when a worker has met the fifteen day return to work threshold. It provides, in pertinent part that benefits may be suspended when “the employee has returned to work; however, if the employee does not remain at work for a minimum of fifteen days, temporary disability payments must be resumed immediately;”
8. Regulation 67-505(B) states that “[d]isability is presumed to continue until the claimant returns or agrees he or she is able to return to work for fifteen calendar days.”
9. Regulation 67-505(C)(1) and (2) provides the mechanism for suspending temporary total benefits after the first one hundred fifty days. The regulation provides, in pertinent part, “[t]emporary compensation may be suspended as follows: (1) When the authorized health care provider reports the claimant is able to return to work

without restriction to the same or other suitable job, and such job is provided by the employer, the employer's representative may suspend temporary compensation while the claimant is working unless temporary partial compensation is due; or (2) When the authorized health care provider reports the claimant is able to return to work at limited duty and the employer provides limited duty work consistent with the terms upon which the claimant has been released, the employer's representative may suspend temporary compensation while the claimant is working unless temporary partial compensation is due....”

10. Regulation 67-505(H) provides that “[i]f the employer’s representative refuses to reinstate temporary compensation after the fifteen day period above, the claimant may request a hearing according to R.67-207.”
11. Pursuant to S.C. Code Ann. §42-9-30 Claimant sustained a 38% loss of use to the spine and 5% loss of use of the shoulder.

**CONCLUSION**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the foregoing constitutes a **FULL AFFIRMATION** of the Single Commissioner’s Decision and Order.

**AND IT IS SO ORDERED.**

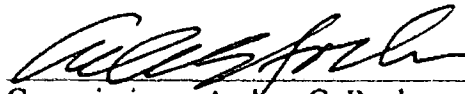


Commissioner Gene McCaskill  
For the Appellate Panel

**WE CONCUR:**



Commissioner Aisha Taylor



Commissioner Andrea C. Roche