

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Gene McCaskill, Commissioner
Derrick L. Williams, Commissioner
Avery B. Wilkinson, Jr., Commissioner

Appellate Tracking/File No. 2013-000413
W.C.C. File No. 0818089

Rubenia B. Hammond,

Employee, Claimant/Appellant,

v.

Aiken Regional Medical Center
ACE American Insurance Company c/o
Sedgwick Claims Management Services, Inc.,

Employer, Carrier/Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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July 15, 2013

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3. **The Commission erred as a matter of fact and/or law in finding and concluding that the Claimant is not entitled to surgery as part of the future casually-related medical treatment pursuant to Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574 (S.C. Ct. App. 1999).....5**

TABLE OF AUTHORITIES

CASES

1. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574 (S.C. Ct. App. 1999)
2. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 103, 580 S.E.2d 100, 101 (2003)

STATUTES AND REGULATIONS

1. S.C. Code Ann. § 42-9-10 (1976)
2. S.C. Code Ann. § 42-9-30(21) (1976)

STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE COMMISSION ERRED AS A MATTER OF FACT AND/OR LAW IN FINDING AND CONCLUDING THAT THE CLAIMANT'S POSITION THAT SHE SUFFERED A WORK-RELATED INJURY TO HER RIGHT SHOULDER AND RIGHT ARM WAS/IS NOT SUPPORTED BY THE GREATER WEIGHT OF THE EVIDENCE IN THE RECORD. **(SEE CLAIMANT'S FORM 30, EXCEPTIONS 1, 2 10, 14, 15 AND 21)**
2. WHETHER THE COMMISSION ERRED AS A MATTER OF FACT AND/OR LAW IN FINDING AND CONCLUDING THAT THE CLAIMANT DID NOT SATISFY HER BURDEN OF PROVING ENTITLEMENT TO TOTAL AND PERMANENT DISABILITY BENEFITS. **(SEE CLAIMANT'S FORM 30 , EXCEPTIONS 3, 4,5,6, 7, 8, 9, 11, 12, 16, 17, 18, 19 AND 22)**
3. WHETHER THE COMMISSION ERRED AS A MATTER OF FACT AND/OR LAW IN FINDING AND CONCLUDING THAT THE CLAIMANT IS NOT ENTITLED TO SURGERY AS PART OF THE FUTURE CASUALLY-RELATED MEDICAL TREATMENT PURSUANT TO **DODGE V. BRUCCOLI, CLARK, LAYMAN, INC., 334 S.C. 574 (S.C. CT. APP. 1999)**. **(SEE CLAIMANT'S FORM 30, EXCEPTIONS 13, 20 AND 23)**

LEGAL ARGUMENT

- 1. The Hearing Commissioner erred as a matter of fact and/or law in finding and concluding that the Claimant's position that she suffered a work-related injury to her right shoulder and right arm was/is not supported by the greater weight of the evidence in the record.**

Within the Initial Brief of the Respondent they have argued that the Claimant's failure to submit an impairment rating to her arm or shoulder precludes an award of disability. This is not the law in South Carolina. The South Carolina Supreme Court has stated: "The Singleton Court intended 'impairment' to encompass a physical deficiency." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 103, 580 S.E.2d 100, 101 (2003). If the claimant proves loss of use to a scheduled body part then such an injury or affect is compensable. The Claimant has proven a disability pursuant to the act. The greater weight of the evidence supports an award of permanency to the right shoulder and right upper extremity. The Defendants have acknowledged in their Brief that the Claimant provided medical records which tend to show some pattern or form of radicular pain and weakness in the right shoulder and right arm. The FCE clearly shows that the Claimant has suffered deficits to her right shoulder and right upper extremity. Limited range of motion and weakness in the right shoulder is noted at Claimant's APA 137. The results noted in the FCE are supported by the objective testing performed by Dr. Downey. An EMG revealed evidence of chronic right C5 radiculopathy with evidence of reinnervation activity. Within the EMG Report it is noted that the physical exam reveals weakness in the right C5/C-6 myotome. (APA 46). The Claimant's position is also supported by the records of the authorized treating physicians, Dr. Holford and Dr. Daniels at APA 63- 67, APA 87- 89 and APA 105. The substantial evidence in the record supports a finding of permanency to the Claimant's right shoulder and right upper extremity and that she has suffered a loss of use.

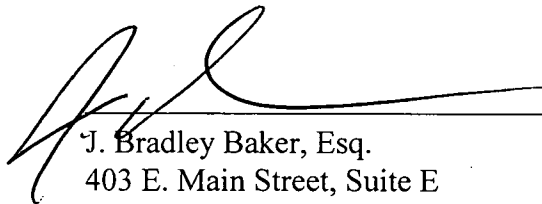
2. The Hearing Commissioner erred as a matter of fact and/or law in finding and concluding that the Claimant did not satisfy her burden of proving entitlement to total and permanent disability benefits.

The Claimant took the position that she was entitled to an award for permanent and total disability, pursuant to Section 42-9-10 or Section 42-9-30(21). The only Vocational Expert to evaluate Ms. Hammond concluded that she was totally disabled within the directing parameters of “quality, dependability and quantity” if not totally disabled in an outright manner (Report of Joel Leonard, CRC, CVE, APA 7-8). The Claimant’s testimony was that she was physically unable to perform her job. She also testified that she had lost over 50% of the use of her back. (Hearing Transcript p. 23, line 25 - pg. 24, line 4). Dr. Downey assigned an impairment rating of 42% loss of use of the Claimant’s cervical spine. APA p. 218. Prior to this accident the Claimant had a solid work record. The only evidence presented that would support the Single Commissioner’s decision to not award permanent and total disability was an FCE conducted two years prior to the hearing. The FCE was performed before the Claimant was at maximum medical improvement and before the Claimant’s neck was an accepted part of the admitted on the job injury. Therefore this evidence was stale and was not reliable evidence at the time of the hearing.

The substantial evidence in the record supports a finding that the Claimant is totally and permanently disabled following her admitted on the job injury of November 10, 2008. The Claimant’s plans to retire does not change the fact that the Claimant had an injury that has had a catastrophic impact on her ability to earn income.

3. The Hearing Commissioner erred as a matter of fact and/or law in finding and concluding that the Claimant is not entitled to surgery as part of the future casually-related medical treatment pursuant to Dodge.

The opinions of Dr. Holford and Daniels are clear. The Claimant should be entitled to “surgery” as part of her future medical treatment. There is substantial evidence within the record to support the Claimant’s position that she is entitled to surgery as part of her Dodge future medical. Future medical treatment should have been ordered and surgery should have been specifically mentioned. The Claimant’s position is supported by Dr. Holford at APA 69-70 and Dr. Daniels at APA 62.



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July 15, 2013

NOTICE OF APPEAL FROM ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
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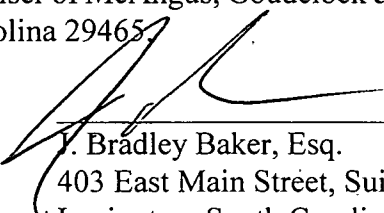
v.

Aiken Regional Medical Center
ACE American Insurance Company c/o
Sedgwick Claims Management Services, Inc.,

Employer, Carrier/Respondents.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on July 15, 2013, addressed to the South Carolina Workers' Compensation Commission, Attn: Judicial Department, Post Office Box 1715, Columbia, South Carolina 29202-1715 and on the Respondents, Aiken Regional Medical Center and ACE American Insurance Company c/o Sedgwick Claims Management Services, Inc. by depositing a copy of it in the United States Mail, postage prepaid on, July 15, 2013, addressed to their attorneys of record, Jason W. Lockhart of McAngus, Goudelock & Courie, LLC, Post Office Box 12519, Columbia, South Carolina 29211, M. McMullen Taylor of McAngus, Goudelock & Courie, LLC, Post Office Box 12519, Columbia, South Carolina 29211, Weston Adams, III of McAngus, Goudelock & Courie, LLC, Post Office Box 12519, Columbia, South Carolina 29211 and Helen F. Hiser of McAngus, Goudelock & Courie, LLC, Post Office Box 650007, Mount Pleasant, South Carolina 29465.



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