

DECISION AND ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
FILE NO. 0809635

DENISE THOMAS, CLAIMANT,

vs.

NVR, INC./RYAN HOMES,
EMPLOYER,

AND

NEW HAMPSHIRE INSURANCE COMPANY,
INSURER, (BROADSPIRE SERVICES, INC., SERVICING AGENT),
DEFENDANTS.

Hearing: Held in Greenville, South Carolina on October 5, 2010.

Appearances: Claimant was represented by Kathryn Williams, Esquire, of
Kathryn Williams, P.A., Greenville, South Carolina.

Defendants were represented by Andrew D. Kaplan, Esquire, of
Rudisill, White & Kaplan, P.L.L.C., Charlotte, North Carolina.

Purpose of Hearing: To determine issues on the Form 21.

Decision and Order: By T. Scott Beck, Commissioner

Filed: January 4, 2011

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SC Court of Appeals

STIPULATIONS

1. The parties were subject to and bound by the Workers' Compensation Act at the time in question.
2. The South Carolina Workers' Compensation Commission has jurisdiction to hear the claim.
3. The relationship of employer and employee existed at the time in question.
4. Claimant's average weekly wage and compensation rate are \$960.23 and \$640.19, respectively.
5. Venue, set in Greenville County, is proper.

ADMINISTRATIVE PROCEDURES ACT SUBMISSIONS

Pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Ann. § 1-23-330, the following medical reports were submitted as evidence:

CLAIMANT'S EVIDENCE

<u>A.P.A. #</u>	<u>Name of Physician/ Health Care Provider</u>	<u>Date of Report</u>	<u>Number of Pages</u>
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12	First Report of Injury	06/30/08	147-151
13	DHEC Patient Care Form	06/30/08	152
14	Greenville Hospital System	06/30/08	153-157
15	Carolinas Medical Center	07/02/08	158
16	Doctor's Care	07/07/08	159-160
17	Rebecca Holdren, M.D.	07/14/08-08/03/10	161-267
18	Elite Physical Therapy	08/27/08-12/03/08	268-279
19	Hillcrest Hospital	11/10/08	280-281

20	Renuka R. Harper, Ph.D.	12/22/08	282-285
21	Glenn Scott, M.D.	06/08/10	286-287
22	Randy Adams, M.Ed., CVE	06/21/10	288-296
23	Patrick B. Mullen, M.D.	07/06/10	297-302
24	George R. Bruce, M.D.	07/07/10	303-307
25	Performance Appraisal	01/21/08	308
26	SSD Award Letter	01/13/09	309-310

DEFENDANTS' EVIDENCE

A.P.A. # Name of Physician/
Health Care Provider Date of Report Number of
Pages

1	Pain Management Associates, P.A.	06/17/04-05/29/08	1-45
2	Hillcrest Memorial Hospital	01/06/00-11/10/08	46-53
3	Carolina Medical Center	09/20/06-03/20/09	54-99
4	Greenville Radiology	11/08/06	100-101
5	Greenville Hospital System	08/08/07	102-103
6	Open MRI of Simpsonville	08/16/07	104-107
7	Piedmont Neurosurgical Group, Michael N. Bucci, M.D.	09/11/07	108-124
8	Premier Physical Therapy	09/13/07	125-127
9	Orthopaedic Associates, Gerald Rollins, M.D.	05/13/09	128-131
10	Glenn L. Scott, M.D.	03/11/10-05/25/10	132-138

A.P.A. # Exhibit Date Number of Pages

11.	Decision and Order	02/25/10	139-146
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STATEMENT OF THE CASE

On September 10, 2009, Commissioner Andrea C. Roche entered a Decision and Order finding as fact and concluding as a matter of law that, on June 30, 2008, claimant sustained an injury by accident causing an exacerbation of a pre-existing back and left lower extremity condition; that claimant's severe pre-existing psychological problems were not aggravated by the fall; although the psychological problems are aggravating the pain, the fall and the pain associated with it did not aggravate the psychological condition; that claimant has not reached maximum medical improvement and is entitled to causally related treatment for the low back and left leg; and that claimant has been temporarily totally disabled since July 1, 2008, and is entitled to temporary total disability compensation at the rate of \$640.19 per week to the present and continuing until further Order of the Commission. On February 25, 2010, the Full Commission affirmed Commissioner Roche's Decision and Order in its entirety.

On August 9, 2010, defendants filed a Form 21. This matter was heard by the undersigned on October 5, 2010, in Greenville.

EVIDENCE OF THE CASE

I. Testimony

At the time of hearing, claimant was fifty-eight (58) years old. Claimant has a Master's degree in Guidance and Counseling. (Hr. Tr. p. 9.) Claimant testified that, prior to working for defendant-employer, she worked in sales, sales management, real estate, and owned a clothing store. (Id. at p. 10.)

Claimant was employed with defendant-employer as a sales representative for approximately four (4) years prior to June 30, 2008. (Id.)

Claimant testified that she had problems with her neck and back prior to June 30, 2008. (Id.)

Claimant testified that she treated with Dr. Holdren prior to June 30, 2008. (Id.) Claimant further testified that she was actively treating with Dr. Holdren at the time of accident, and was on medications. (Id. at p. 14.)

Claimant testified that supervisors with defendant-employer were aware of her prior back problems. (Id. at p. 13.)

Claimant testified that she had emotional problems prior to June 30, 2008. (Id.) Claimant testified that events in her life, including the death of parents and job-related stressors, caused some "serious problems." (Id.) Claimant testified that she had been on medication for psychological problems prior to June 30, 2008. (Id.)

Claimant testified that she treated with Dr. Scott until May 2010. (Id. at p. 15.) Claimant testified that Dr. Scott indicated that she would continue to need treatment and prescribed a gym membership. (Id.)

Claimant testified that she is taking more medication now than before the accident. (Id. at pp. 15-16.) Claimant testified that Dr. Holdren has written her out of work. (Id.)

Claimant testified that she is "having excruciating pain in my low back, in my left leg. And

the pain – I don't know how to describe it except to say sometimes my back goes out with any notice." (Id. at p. 16.) Claimant testified that she uses a cane now and did not prior to the

accident. (Id. at p. 17.) Claimant testified that use of the cane takes pressure off of her back and left leg. (Id.)

Claimant testified that her “whole quality of life has changed. I can’t do – I’m unable to do the things that I was able to do. I can’t – I don’t – I used to cook. I used to enjoy cooking. I don’t – I can’t do that anymore. I can’t clean my house anymore or do laundry.” (Id. at p. 18.)

Claimant further testified that she “used to enjoy going out with friends. Used to go to dinner, go to movies, dancing, travel.” (Id. at p. 19.) Claimant testified that she cannot do those things now because “of the pain and how I feel. The pain causes me to be that much more depressed and not want to be around people and not want to do things because I’m hurting all the time. I’m uncomfortable.” (Id.) Claimant testified that her pain has progressively gotten worse.

(Id.) Claimant testified that “[i]t makes me feel really sad, depressed that I can’t – my whole life has changed. And I just can’t do any of the things that I used to do. And that is sad.” (Id. at p. 20.)

Claimant testified that she could not perform her pre-accident job with defendant-employer because “I couldn’t move around and go show homes, up and downstairs, and be mobile enough to do that. I wouldn’t be able to be my old friendly personable self with the customers because of the depression and the pain. So I wouldn’t – I don’t think that I would be able to do that at all.” (Id.)

Claimant further testified that she could not go back to any of the sales work performed in the past (Id.)

Claimant testified that she spends “18 to 20 hours lying down in bed. I pretty much go out for doctors appointments, massage appointments, something like that, but pretty much I’m

up eating or something like that. The rest of the time I'm lying down in the bed." (Id. at p. 21.)

Claimant testified that she has trouble concentrating and "it could be from the depression, but I can't focus on anything. I can't like read. My mind just goes from one thing to the other. My memory is bad. I don't know if it is from taking all the medications over a period of time" (Id. at p. 22.) Claimant testified that the pain is distracting. (Id.)

Claimant testified that she can stand in one place for approximately three or four minutes at the most. (Id. at p. 23.)

Claimant testified that she receives Social Security Disability. (Id.)

Claimant requests benefits to be paid in a lump sum. (Id. at p. 24.) Claimant testified that she has incurred medical debt. (Id.) Claimant testified that she has incurred credit card debt of approximately \$20,000.00. (Id.) Claimant testified that she has a mortgage on her home in the amount of approximately \$150,000.00. (Id.). Claimant testified that she owes approximately \$12,000.00 on a car loan. (Id. at p. 25.) Claimant testified that her intent would be to pay down debt. (Id. at pp. 25-26.)

Claimant testified that prior to working for defendant-employer she made approximately \$80,000.00 to \$100,000.00 per year in sales with homebuilders. (Id. at p. 25.)

Claimant testified that, if she could, she would be working. (Id. at p. 26.)

Upon cross-examination, claimant testified that she holds a master's degree in counseling. (Id.) Claimant admitted that counseling is no longer of interest because "I feel that in order for me to help somebody else, I have to have myself pretty much together. And I feel that emotionally I'm not able to help anyone else. I'm too depressed emotionally and too sad. And the pain – I just don't see how I could do it." (Id. at p. 27.)

Claimant admitted that prior to the accident she was taking Cymbalta for depression. (Id.)
Claimant further admitted that she had been hospitalized for a major depressive episode. (Id.)

Claimant testified that prior to her employment with defendant-employer, she worked for Loreal Cosmetics as a sales manager. (Id. at p. 28.) Claimant further testified that she owned a lady's clothing store and sold advertising in the Yellow Pages. (Id. at p. 29.) Claimant further testified that she worked for M&M as a salesperson. Claimant testified that her prior employment involved some travel, and "with each position I started in sales and was promoted to management because of my accomplishments." (Id.)

Claimant admitted that physical therapy "seemed like it was helping me. I was doing better than I was." (Id. at p. 30.) Claimant admitted that she told Dr. Scott that, "I did fairly well with physical therapy. I improved over a period of time. My physical therapist thought I had made significant improvement from when I first started until the end of physical therapy, yes." (Id.) Claimant further admitted that, "I'm sure I indicated to him that I felt that, I, you know, would hopefully continue improvement." (Id. at p. 31.)

Claimant testified that during Dr. Bruce's evaluation, "I might have been having neck pain that day, yes." (Id.) Claimant admitted that, at the time of Dr. Bruce's evaluation, any numbness or tingling in her legs "had improved." (Id. at p. 32.) Claimant further admitted that it "is a possibility that date I didn't that I saw him," have any numbness or tingling in her legs. (Id.)

Claimant testified that she took Lyrica briefly and Neurontin prior to the accident. (Id. at p. 35.)

Claimant admitted that, "I would say twice a week I have really bad pain in my neck, yes." (Id.) Claimant further admitted that, "And then even though my neurosurgeon stated that

my neck was worse than my back, my problems have always occurred in my back mostly, but I do have neck pain occasionally. I do, to a point where it's difficult to just turn that way, you know, when you are driving, difficulty to even turn your neck without really hurting, but the thing that is keeping me from doing mostly any activity or event is not so much my neck, but it's my back." (Id at p. 36.)

II. Medical Evidence

On March 11, 2010, claimant presented to Dr. Scott with complaints of pain in her low back and to a lesser extent her neck. (Defendants' A.P.A. Submissions p. 136.) Dr. Scott noted a long-standing history of cervical spondylosis and degenerative lumbar spine and disc disease. Dr. Scott further noted, "she had been referred to Dr. Michael Bucci for a neurosurgical consultation and it was felt by Dr. Bucci that no surgery was indicated, although he did state that she might well have to have her cervical spine surgery in the future." (Id.) Dr. Scott noted, upon examination, that claimant uses a cane and "requires assistance to move[] on and off the examining table, although she is independent in rising and sitting in a chair." (Id. at p. 137.) Dr. Scott noted that claimant has two pain patches over the lumbar area; that she has hesitancy to motion with decreased mobility in all parameters; that she has "increased pain as she begins to flex[] from the extended position and has difficulty reaching neutral;" that she has tightness but "I cannot detect sustained paravertebral spasm." (Id.) Dr. Scott diagnosed degenerative lumbar spine and disc disease; multilevel cervical spondylosis; and deconditioning. Dr. Scott opined that surgical intervention is not indicated and recommended myofascial massage and therapy along with gradual core strengthening and increasing ambulation.

On April 7, 2010, claimant presented to Dr. Scott for evaluation. (Defendants' A.P.A.

Submissions p. 135.) Dr. Scott noted “the patient comes for a followup visit and has made improvement after three visits at Advanced Therapy Solutions.” (Id.) Dr. Scott further noted, “she is pleased with her program and feels it is helping her. She relates better mobility and less pain.”(Id.) Dr. Scott opined that, “I feel we should continue with her current program as I feel today’s interval check demonstrates satisfactory progress.” (Id.)

On April 27, 2010, claimant presented to Dr. Scott for evaluation. (Defendants’ A.P.A. Submissions p. 134.) Dr. Scott noted that claimant “has made very good improvement with her physical therapy at Advanced Therapy Solutions. She seems much more comfortable and also has a better long range outlook.” (Id.)

On May 5, 2010, claimant presented to Dr. Scott for evaluation. (Defendants’ A.P.A. Submissions p. 132.) Dr. Scott noted, “she has had one flare up of back pain after bending and twisting a couple of weeks ago although this is gradually improving. From the description, I feel she very likely had spasm secondary to her facet arthritis.” (Id.) Dr. Scott noted, “her clinical course appears unchanged and I feel she has reached maximum medical improvement.” (Id.) Dr. Scott recommended work capabilities be limited to a sedentary level “although this is academic as she has received her social security disability.” (Id.) Dr. Scott assessed a 7% whole person impairment, and noted that, “I would apportion 3% to preexisting and 4% as affects of the injury itself.” (Id.)

Claimant submitted a vocational evaluation performed by Mr. Randy Adams. (Claimant A.P.A. Submission pp. 288-296.) Mr. Adams opined that, “considering the psychological factors alone, it is my vocational opinion that Ms. Thomas is not employable in any capacity. Her psychological issues would prohibit her from performing any of her past relevant work or

from utilizing any of her skills that she developed in her work history. Physically she is limited to a sedentary level of functioning. “She does not have any transferable skills due to her psychological limitations.” (Id. at p. 296.) Mr. Adams further noted that claimant stated, “she had mid-back pain 50 percent of the time which she describes as a stabbing pain. She states she has neck and shoulder pain approximately 70 percent of the time which she describes as a throbbing pain with tight muscles.” (Id. at p. 289.)

Claimant further submitted an independent medical evaluation by Dr. George Bruce. (Claimant A.P.A. Submission pp. 303-307.) Dr. Bruce noted that claimant “complained of pain in her back on straight leg raising, but had no definite radiculopathy findings.” (Id. at p. 306.) Dr. Bruce further noted upon examination decreased range of motion of the cervical spine. Dr. Bruce further noted 1 cm atrophy of the left calf as compared to the right, “and I feel this is secondary to disuse due to the pain in her left lower extremity originating from the low back.” (Id.) Dr. Bruce opined that claimant sustained a 16% permanent impairment to the cervical spine and a 19% permanent impairment to the lumbar spine.

The undersigned has thoroughly observed the testimony of the witness and reviewed the evidence. Based on the competent, credible and preponderant evidence of record, I make the following:

FINDINGS OF FACT

1. The parties are subject to and bound by the provisions of the South Carolina Workers' Compensation Act, as amended.
2. An employer-employee relationship existed between claimant and defendant-employer on June 30, 2008.

3. Claimant's average weekly wage and compensation rate are \$960.23 and \$640.19, respectively.

4. Claimant is fifty eight (58) years old.

5. Claimant has a Master's Degree in Counseling, although she last used her degree thirty five (35) years ago.

6. Claimant suffered a compensable injury to her back and left leg (exacerbation) on June 30, 2008. (Commissioner Roche's Decision and Order dated September 10, 2009.)

7. The injury to the left leg is in the form of radiculopathy.

8. Claimant's pre-existing psychological problems were not aggravated by the compensable accident. However, claimant's psychological problems are aggravating claimant's pain. (Commissioner Roche's Decision and Order dated September 10, 2009, affirmed by appellate panel on February 25, 2010.)

9. S.C. Code § 42-9-35 (A)(2) is not cited in Commissioner Roche's Decision and Order dated September 10, 2009, as a ruling of law, but is asserted by claimant at this

proceeding. 10. Dr. Gerald Rollins opined on May 13, 2009, that

there is no objective evidence to

indicate claimant is worse than she was prior to the date of injury, June 30, 2008.

11. On April 7, 2010 and April 27, 2010, authorized treating physician, Dr. Glenn

Scott

noted improvement in claimant's condition with physical therapy.

12. On May 25, 2010, Dr. Scott assessed maximum medical improvement, assigned a 4% impairment rating to claimant's back, and placed claimant in a sedentary level.

13. Dr. George Bruce assigned a 13% whole person rating attributable to claimant's cervical spine (which converts to a 16% permanent partial impairment to the cervical spine), and a 17% whole person rating attributable to the lumbar spine (which converts to a 19% permanent partial impairment to the lumbar spine), although only the low back was found compensable. (Finding of Fact 9, Commissioner Roche's Decision and Order dated September 10, 2009.).

14. Dr. Bruce noted the absence of any findings of lumbar radiculopathy during his evaluation on July 10, 2010.

15. Claimant's vocational report by Randy Adams opines that claimant is permanently and totally disabled, but relies heavily on claimant's psychological condition to arrive at that conclusion.

Mr. Adams opined "[c]onsidering the psychological factors alone, it is my vocational opinion that Ms. Thomas is not employable in any capacity. Her psychological issues would prohibit her from performing any of her past relevant work or from utilizing any of her skills that she developed in her work history. Physically she is limited to a sedentary level of functioning. She does not have any transferable skills due to her psychological limitations."

16. Dr. Scott completed a Clinical Assessment of Pain on June 8, 2010.

17. Claimant is awarded 40% permanent partial disability to the spine. This award takes into account claimant's radiculopathy in her left leg (Commissioner Roche's Decision and Order dated September 10, 2009) and increased pain resulting from her pre-existing (non-compensable) psychological condition.

18. Claimant is entitled to future medical care for the low back and radiculopathy in

her

left leg consistent with the recommendations of the authorized treating physicians.

19. Defendants are entitled to control future medical care.

20. Defendants are entitled to terminate temporary total disability compensation.

Defendants are to receive credit for temporary total disability compensation paid since August 9, 2010, the date of filing of the Form 21.

Based on the foregoing Findings of Fact and pursuant to South Carolina Code § 42-17-40, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact as set forth above are construed to be Conclusions of Law, if applicable.

2. The parties are subject to and bound by the provisions of the South Carolina Workers' Compensation Act, as amended. S.C. Code Ann. §§ 42-1-130 and 42-1-140.

3. Claimant sustained an injury by accident to her back and left leg (radiculopathy) arising out of and in the course and scope of her employment with defendant-employer. S.C. Code Ann. § 42-1-160.

4. Claimant sustained a 40% permanent partial disability to the back. S.C. Code Ann. § 42-9-30.

5. Defendants are entitled to credit for temporary total disability compensation paid since the date of filing of the Form 21 on August 9, 2010. S.C. Code Ann. § 42-9-210.

6. Claimant is entitled to causally-related future medical care for the low back and radiculopathy in her left leg consistent with the recommendations of the authorized treating

physicians; defendants control future medical care. S.C. Code Ann. § 42-15-60.

Pursuant to the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby enters the following:

ORDER

IT IS, THEREFORE , ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein as if set forth verbatim, and that defendants are permitted to stop payment of temporary total disability compensation.

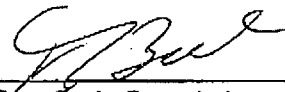
IT IS FURTHER ORDERED that defendants shall pay to claimant compensation for a 40% permanent partial disability to the back.

IT IS FURTHER ORDERED that defendants shall take credit against the aforementioned Award of permanent partial disability for all temporary total disability compensation paid to

claimant since August 9, 2010.

IT IS FURTHER ORDERED that defendants shall provide causally-related future medical care for the low back and radiculopathy in her left leg consistent with the recommendations of the authorized treating physicians; defendants control future medical care.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner

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 certified mail addressed to any unrepresented party.

January 4, 2011

By: Amy Bracy, Administrative Assistant to Commissioner Beck