

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

160750

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

RECEIVED

JAN 10 2024

SCWCC File No. 1614988

SC Court of Appeals

Debra Wilson, deceased, Claimant,Appellant,

v.

NHC Homecare Midlands, Employer, and
Premier Group Insurance Company, Carrier, Respondents.

NOTICE OF APPEAL

Appellant, Debra Wilson, appeals the Appellate Panel Decision and Order of the SC Workers' Compensation Commission filed June 9, 2023, which was served via email on June 9, 2023, and also the Appellate Panel Administrative Order denying Appellant's Motion for Reconsideration served via email on December 7, 2023. A copy of both Orders and the original Decision of the Hearing Commissioner are attached hereto as Exhibits A, B & C.

Pursuant to SC Code §42-17-60, the grounds of the appeal which involve specific, fundamental and egregious errors of law are presented to the Court as set out hereinafter.

Under SC Code §42-17-60, and also specifically as set out in SC Code §1-23-380, this Court may reverse a decision of an Agency, in this case the SC Workers' Compensation Commission, where the substantial rights of the Appellant have been prejudiced because the Administrative Decision is and specifically in this case

- (a) in violation of statutory provisions;
- (d) affected by other errors of law; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Wherein the following errors of law are placed on appeal before the Court as grounds for appeal:

1. That the Full Commission erred as a matter of law where the Hearing Commissioner found as a matter of law as set out in the statute that the Claimant had sustained 50% or more loss of use of her back and was presumed to be totally and permanent disabled under SC Code §42-9-30 (21) (2021) which conclusion of law is in accordance with statute, by remanding the matter to the Hearing Commissioner, "for an analysis and determination of disability to the back as a result of the Claimant's admitted lower back injury". (Emp. add.)

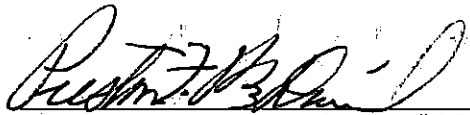
2. That where the decision to be made under SC Code §42-9-30(21) is loss of use of the back, the Full Commission erred as a matter of law by bifurcating the back and requiring the Hearing Commissioner to base his decision based on the evidence in reference to the "lower back" and not to include any evidence in reference to loss of use of other parts of the back. The legal issue under law is loss of use of the back; it is not loss of use of the lower back, loss of use of the mid-back, or loss of use of the upper back. It is loss of use of the back to do work requiring the use of the back.

3. That where the issue before the Hearing Commission was whether or not the Claimant had lost 50% or more of the functional use of her back to do work requiring the use of the back under the scheduled member statute, SC Code §42-9-30(21), the Commission erred by finding as a fact that, "this Panel cannot determine whether or not the Single Commissioner used facts from the neck in his determination of disability under SC Code Ann. §42-9-30(21) (1976)."

4. That the decision of the Full Commission bifurcating the back where the issue before the Hearing Commissioner was loss of use of the back under SC Code §42-9-30(21) is arbitrary and capricious and characterized by an unwarranted abuse of

discretion since it is without a rational basis, any exercise of judgment, and is made without any adequate determining principles and not governed by statutory or any fixed rules or standards and reflects a policy of the current Commission contrary to the Act to limit awards under SC Code §42-9-30(21) for a claimant having lost 50% or more of the use of the back and being entitled to the maximum award under the statute for the injury.

Respectfully submitted,



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and

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Attorneys for the Claimant

January 8, 2024

Other Counsel of Record:

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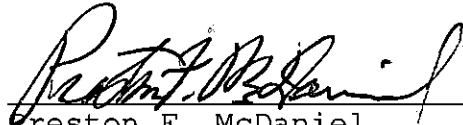
PROOF OF SERVICE

I certify that I have served the **NOTICE OF APPEAL** by depositing a copy of it in the United States Mail, postage prepaid, on January 8, 2024 addressed to:

Ms. Amy Bracy, Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

Clark W. McCants, III, Esquire
Nance & McCants
Post Office Box 2881
Aiken, South Carolina 29802

Dated: January 8, 2024



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Proudly representing injured workers
for over 35 years.

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January 8, 2024

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SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: Debra Wilson, deceased, Claimant v. NHC Homecare
Midlands, Employer, and Premier Group Insurance
Company, Carrier
WCC File No.: 1614988**

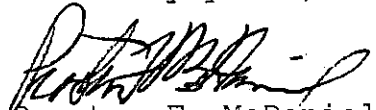
Dear Ms. Kitchings:

Enclosed for filing is the original and one (1) copy of our Notice of Appeal in the above referenced matter. Also, enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Respondent;
2. a copy of the Orders which are to be challenged on appeal; and
3. the required filing fee of \$250.00.

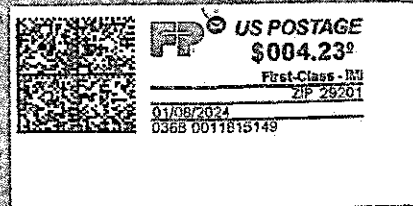
We would appreciate your returning to us a clocked-copy in the enclosed self-addressed stamped envelope. I hope this is sufficient for filing but should you need any additional information, please let us know.

Sincerely yours,


Preston F. McDaniel

PFM/kth
Enclosures

cc: Ms. Amy Bracy, Judicial Director, SCWCC
Kenneth M. Mathews, Esquire
Clark W. McCants, III, Esquire



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