

**DECISION AND ORDER  
OF  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**SCWCC FILE NO.: 1614988**

Debra A. Wilson,

Claimant,

v.

NHC Homecare Midlands/ Midlands Homecare

Employer, and

Premier Group Insurance Company

Carrier, Defendants.

Hearing held in Richland County,  
South Carolina on October 20, 2021

Appearances:

Preston F. McDaniel, Esquire, of McDaniel Law Firm, of  
Columbia for Claimant, Debra A. Wilson

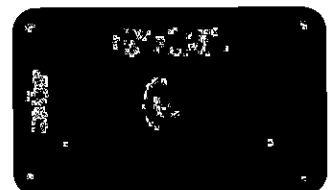
Clarke McCants, IV & Clarke McCants, III, Esquires, Nance &  
McCants of Aiken for Defendants, NHC Homecare and Premier Group  
Insurance Company

Purpose of Hearing: To determine all issues as set forth in Forms 21, 50 & 51.

Decision and Order: By R. Michael Campbell, II, Commissioner

Filed: December 24, 2021

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## I. STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. Notice of the hearing was timely and properly served on all parties of interest.
2. Venue, set in Richland County, is proper.
3. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injury occurring while in employment of the Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case.
4. Claimant's average weekly wage is \$933.70 and the corresponding compensation rate is \$622.50.
5. The parties stipulated to the results of Defendants' good faith dependency investigation and that Claimant's husband, Mr. Tim Wilson, is her next of kin dependent upon her for support.
6. The Commission's file with the exception self-serving declarations and unstipulated medical reports are admitted as part of the record.

## II. APA SUBMISSIONS

At the start of the Hearing, Defendants objected to Claimant's evidence of injuries to body parts other than the back as irrelevant if Claimant argues that she sustained 50% or more loss of use to the back. In response, Claimant argued that if the undersigned found that she sustained less than 50% loss of use of the back, the evidence is relevant to support an award for her additional body parts.

The following records and reports were submitted into evidence pursuant to the Administrative Procedures Act and Regulation 67-612:

### Claimant's Submissions:

<u>Tab No.</u>	<u>Name of Report/Physician/ Practice</u>	<u>Date(s)</u>	<u>Page(s)</u>
1	Southeastern Spine Institute Leonard Forrest, MD	09/10/2019	1-4
2	Columbia Rehabilitation Clinic Tracy Hill, PT	09/03/2019	5-34

3	Post Trauma Resources Nick Lind, Psy.D.	06/19/2018 – 11/27/2019	35-44
4	Midlands Ortho & Neurosurgery Thomas Holbrook, MD	11/06/2017 – 01/09/2019	45-58
5	Carolinas Center for Advanced Management of Pain Y. Eugene Mironer, MD	04/29/2019	59-62
6	SC Diagnostic Imaging	10/17/2017	63-64
7	Midlands Orthopedics Coleman Fowble, MD Michael Ugino, MD David Redmond, MD Ivan LaMotta, MD Ryan Wetzel, MD Thomas Holbrook, Jr., MD	08/12/1026 – 02/26/2020	64A -146
8	Harriet Fowler, M.Ed., CRC Vocational Evaluation	11/19/2019	147-166

Defendants' Submissions:

<u>APA</u>	<u>Medical Provider</u>	<u>Dates</u>	<u>Pages</u>
1	Midlands Orthopedics & Neurosurgery	03/23/2017 – 10/14/2019	1-9
2	South Carolina Oncology Associates	7/4/2019 – 11/14/2019	10-81
3	Deposition of Leonard Forrest, M.D.	12/16/2019	82-119
4	Deposition of Michael Ugino, M.D.	2/12/2020	120-153
5	Dependency Evaluation	6/23/2020	154-206

### III. STATEMENT OF THE CASE

This matter originally came before the Commission pursuant to Claimant's Form 50 filed on September 23, 2019 and Defendants' Forms 51 and 21, dated October 21, 2019 and January 31, 2020 respectively. However, due to Claimant's unrelated chronic illness and the COVID-19 pandemic, the Hearing, originally set for February 26, 2020, was postponed until the present. Initially, Claimant, a former office manager for NHC Homecare, alleged injuries to her back, buttocks (hips), legs (particularly left leg and foot), bilateral arms, and hands when she fell on her bottom rushing around a corner at work on April 27, 2016. Defendants admitted the injuries to

her back and right wrist but denied that the injuries to her neck and left wrist were causally related to the fall. Thereafter, pursuant to a September 17, 2017 Consent Order, Defendants agreed to provide an evaluation for Claimant's neck injury, the costs of a splint for her left wrist, treatment recommended by Dr. Fowble for her right wrist, and an additional medical evaluation of her lower back.

Claimant's September 23, 2019 Form 50 sought a determination that Claimant was totally and permanently disabled because she lost greater than 50% of the use of her back and suffered a total loss of earning capacity. In response, Defendants admitted that Claimant's injuries to her bilateral arms and lower back were work related, alleged that she had reached maximum medical improvement, and denied that she was permanently disabled. After the parties engaged in an unsuccessful mediation, Defendants filed their January 31, 2020 Form 21 Request to Stop Payment of Compensation. Defendants again contended that Claimant reached maximum medical improvement as of March 23, 2017, requested a determination on permanent disability benefits, and a credit for overpayment. Unfortunately, Claimant passed away from unrelated causes three days prior to the February 26, 2020 Hearing. These main issues remain ripe for adjudication with the stipulation that Mr. Tim Wilson is entitled to Claimant's permanency award as her rightful beneficiary. Accordingly, he requests a lump sum award for his wife's permanent and total disability for the 313 weeks remaining on the claim and an Order confirming that Claimant's authorized medical bills be paid through the date of her death. Defendants dispute that she is entitled to benefits for permanent and total disability.

Therefore, the issues for consideration by the undersigned at the time of the Hearing were whether claimant reached maximum medical improvement and the degree permanency, if any, Claimant sustained because of her work accident. This matter was set for a Hearing before the undersigned on October 20, 2021 in Richland County, South Carolina. Preston McDaniel, Esquire, of the McDaniel Law Firm appeared on behalf of Claimant's dependent, Mr. Tim Wilson. Clarke McCants, IV & Clarke McCants, III, Esquires, of Nance & McCants appeared on behalf of the Defendants.

#### **IV. FINDINGS OF FACT**

1. Notice of Hearing was timely and properly served on all parties of interest.

2. Venue is proper in Richland County, South Carolina.
3. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injury occurring while in the employment of the Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over the issue.
4. Claimant's average weekly wage is \$933.70 and the corresponding compensation rate is \$622.50.
5. The parties stipulated to the results of the dependency investigation and that her husband, Mr. Timothy Wilson, is Claimant's next of kin dependent upon her for support.
6. Claimant, an office manager for Defendant NHC Healthcare, sustained admitted injuries by accident arising out of and in the course of employment on April 27, 2016 when she fell on her bottom rushing around a corner at work.
7. Defendants initially provided treatment with Dr. Stacy Gallaway, an occupational therapy provider, from the day after her accident until the end of May 2016. Thereafter, Defendants provided treatment with Dr. Fowble for Claimant's lumbar spine and carpal tunnel syndrome. (Claimant's APA 7). He provided referrals to additional providers as he deemed appropriate.
8. An MRI, dated July 25, 2016, returned findings of facet arthritis at L4-5 and L5-S1. There was no significant cord compression. Dr. Fowble notes "nothing terrible." He ordered a course of physical therapy and medication. (Claimant's APA 7, p. 141-143).
9. When physical therapy failed to relieve Claimant's symptoms, Dr. Fowble ordered a lumbar epidural steroid injection, performed on October 25, 2016, followed by a facet injection, which also failed to relieve her symptoms. (Claimant's APA 7, p. 104, 125-134, 138).
10. He also ordered an EMG study to investigate the origin of Claimant's carpal tunnel symptoms and referred her to Dr. LaMotta to evaluate her L4-5 stenosis. (Claimant's APA 7, p. 125-128; Defendants' APA 1, p. 5-8).
11. Dr. LaMotta evaluated Claimant on March 23, 2017. In his opinion, she reached maximum medical improvement for her lumbar spine, did not require any additional treatment and was not a surgical candidate, did not sustain any loss of function, and could perform light

- duty work. Accordingly, he assigned a 0% impairment rating. (Claimant's APA 7, p. 111-114).
12. A repeat MRI on Claimant's lumbar spine, dated October 17, 2017, revealed degenerative changes, no acute injury to the lumbar spine, and a chronic disc herniation at L-2. (Claimant's APA 4, p. 55, 58; Claimant's APA 6, p. 63).
  13. A repeat MRI on Claimant's cervical spine, also dated October 17, 2017, revealed mild degenerative disc change, no herniation, no stenosis, and no acute bony or soft tissue injury. (Claimant's APA 4, p. 56-57; Claimant's APA 6, p. 64).
  14. Claimant's EMG study indicated moderate bilateral carpal tunnel syndrome. Her left wrist worse than her right. The test was negative for cervical radiculopathy. (Claimant's APA 7, p. 105-106, 121). Based upon the results from the EMG, Dr. Fowble recommended conservative treatment for her wrists and ordered splints. (Claimant's APA 7, p. 114-117).
  15. When conservative treatment failed, Claimant sought surgical treatment with Dr. Ugino who performed a bilateral carpal tunnel release. (Claimant's APA 6; Defendants' APA 4, p. 124).
  16. Claimant also alleged psychological injuries as a result of her work-related accident. She was treated by Dr. Lind who opined, to a reasonable degree of medical certainty, that Claimant's work accident aggravated her pre-existing anxiety and depression. According to Dr. Lind, Claimant reached MMI for her psychological injury on October 22, 2018, and sustained a 9% impairment to the brain. She required additional psychological treatment that will tend to lessen the period of her disability. (Claimant's APA 3, p. 44).
  17. Dr. Fowble opined that Claimant's bilateral carpal tunnel syndrome was most probably caused by her work-related fall and that the braces were medically necessary for pain relief. (Claimant's APA 7, p. 101).
  18. Mr. Wilson also testified that Claimant did not have any problems with he back prior to the work accident. (Hr. Tr. p. 33-34).
  19. According to Mr. Wilson, after the accident, but before her cancer diagnosis, Claimant was unable to pick up her grandchildren, unable to cook and host large family dinners unassisted and without frequent breaks, unable to carry the laundry downstairs to the washing machine, and unable to ride her motorcycle as much as she did prior to her accident because of her injuries. (Hr. Tr. p. 21-23; 26-28; 30).

20. His testimony is corroborated by Claimant's deposition testimony. During her deposition in 2018 she testified that after the accident she experienced difficulties vacuuming, was "in pain constantly with the low back," and did not think she would be able to work a full 8-hour shift bending, stooping, and lifting as her job required. (Defendants' APA 5, p. 198, 204).
21. Though Claimant sustained injuries to her bilateral hands/arms, and psyche because of the accident, her husband, Mr. Wilson, testified at the hearing that Claimant's back injury caused most of her problems functioning normally. (Hr. Tr. p. 53).
22. After Claimant's right carpal tunnel release in July 2019, she was diagnosed with Stage IV Metastatic Lung Cancer that had spread to the brain. (Defendants' APA 2). The condition was discovered after Claimant was admitted to the emergency room on August 1, 2019 for persistent stroke symptoms. (Defendant's APA 2, p. 18).
23. Claimant also treated with Dr. Holbrook for her lumbar spine injury. He did not believe Claimant would benefit from a spinal surgery. In his January 9, 2019 treatment note, he indicates that Claimant's neck pain has improved, but her low back pain remained the same. He referred her to pain management. (Claimant's APA 4, p. 49).
24. Claimant was treated by Dr. Eugene Mironer for pain management for her lumbar spine and received an injection. (Claimant's APA 5).
25. No physician opined that Claimant was candidate for spinal surgery.
26. Claimant completed a Functional Capacity Evaluation with Tracy Hill at Columbia Rehabilitation Clinic on September 3, 2019. Ms. Hill determined that Claimant could work in the limited sedentary to limited light work. She "[did] not meet the full requirements necessary for sedentary or light work." In addition, she noted her poor aerobic capacity and limited cervical and lumbar range of motion. (Claimant's APA 2, p. 5). She opined that claimant sustained 3% permanent impairment to the right hand, 5% permanent impairment to the left hand, 23% permanent regional impairment to the cervical spine, and 11% permanent regional impairment to the lumbar spine. (Claimant's APA 2, p. 33-34).
27. Claimant presented for IME with Dr. Forrest on September 9, 2019. He opined to a reasonable degree of medical certainty that Claimant's fall at work on April 27, 2016 aggravated a previously dormant lumbar spine condition. He also opined that Claimant reached maximum medical improvement and sustained a 23% regional impairment to her

- cervical spine and 11% regional impairment to her lumbar spine. He deferred to Tracy Hill's impairment rating for Claimant's carpal tunnel injuries and Dr. Lind for Claimant's psychological injuries. (Claimant's APA 1, p. 3).
28. In Dr. Forrest's opinion, Claimant is totally disabled. She has permanently lost greater than 50% use of her spine. He recommended continued pain management. Her cancer diagnosis is unrelated to her neck and back symptoms since the accident or her disability. (Claimant's APA 1, p.4; Defendants' APA 3, p. 96, ln. 14-18; p. 102-103, ln. 1-9; p. 107, ln. 10-23)).
29. However, during his deposition, he testified that he heavily relied upon Tracy Hill's Functional Capacity Evaluation and Claimant's subjective complaints. (Defendants' APA 3, p. 96, ln. 21-25; p. 101, ln. 19-25). He also testified that Claimant did not have any limitations for completing her duties at home, but her job at NHC Homecare was demanding. (Defendants' APA 3, p. 105, ln. 11-19). Based upon the lifting restrictions in the FCE, Claimant was unable to perform all types of sedentary jobs but could perform some jobs in that category. (Claimant's APA 3, p. 114, ln. 11-18). He admitted that he was not sure what her job duties were beyond her subjective description. (Claimant's APA 3, p. 118).
30. A vocational evaluation performed by Ms. Harriet Fowler on November 15, 2019, states that there are no jobs within Claimant's current transferrable abilities. She tested at the 4<sup>th</sup> grade level for math, 6<sup>th</sup> grade level for spelling, and read at a post-high school level. She is a high school graduate. (Claimant's APA 8, p. 147, 149; Defendants' APA 5, p. 181). Her former position as an office manager for NHC Homecare is classified as a "sedentary" job but because Claimant was working in the medical field, an office manager is considered a light physical demand level. In her opinion, to a reasonable degree of vocational certainty, Claimant was not able to maintain gainful employment. (Claimant's APA 8, p. 148, 166).
31. Claimant testified during her deposition that her prior employment experience consisted primarily of medical office manager positions. (Defendants' APA 5, p. 182-184).
32. Claimant received 187 weeks of temporary total disability. (Commission File).
33. Claimant succumbed to cancer on February 23, 2021; three days prior to the original hearing.

## V. CONCLUSIONS OF LAW

1. Notice of Hearing was timely and properly served on all parties in interest.
2. Venue is proper in Richland County, South Carolina.
3. South Carolina Code Ann. § 42-15-10 (2021) confers jurisdiction upon the South Carolina Workers' Compensation Commission to hear and dispose of this claim. The Claimant was hired by a South Carolina employer, was injured in South Carolina, and worked in South Carolina. As the Claimant seeks an award under the Workers' Compensation Laws of this State for injuries he sustained while employed by the Defendant, jurisdiction is proper.
4. Under S.C. Code Ann. § 42-1-130 Claimant is a covered employee.
5. Under S.C. Code Ann. § 42-1-140 Defendant is a covered employer.
6. Under S.C. Code Ann. § 42-9-280, the parties stipulated that Claimant's husband, Mr. Timothy Wilson, is entitled to receive payment of the unpaid balance of compensation as Claimant's next of kin dependent upon her for support.
7. Claimant sustained 50% or more loss of use of her back and is presumed permanently and totally disabled under S.C. Code Ann. § 42-9-30(21)(2021). The back is a scheduled injury under the Act. In cases where a claimant sustains 50% or more loss of use of the back, the injured employee is presumed permanently and totally disabled and entitled to a maximum of 500 weeks of compensation and lifetime medical benefits. S.C. Code Ann. § 42-9-30(21)(2021); S.C. Code Ann. § 42-9-10 (2021); S.C. Code Ann. § 42-15-60(C)(2021). "South Carolina courts have repeatedly considered regional impairment ratings when determining awards under 42-9-30(21)." Clemmons v. Lowe's Home Centers, Inc., 420 S.C. 282, 289 (2017)(internal citations omitted). In Clemmons, our Supreme Court awarded permanent and total disability benefits for a back injury where all impairment ratings, after conversion to regional values for the spine, were greater than 50%. Id. at 284-86. *See also* McMahan v. S. Carolina Dep't of Educ.-Transp., 417 S.C. 481, 491 (Ct. App. 2016) (agreeing with the treating physician's determination that the claimant sustained a 54% impairment to the whole person and was permanently and totally disabled from serious thoracic spinal injuries he sustained when a bus fell on top of him.). However, in both McMahan and Clemmons the Claimant received impairment ratings greater than 50% to the spine when converted to a regional rating.
8. Although regional impairment ratings may be a valuable consideration when determining awards under 42-9-30(21), South Carolina courts have repeatedly made clear that such a

determination is not bound by impairment ratings, but that the Commission “may find a degree of disability different from that suggested by expert testimony” Sanders v MeadWestvaco Corp., 371 S.C. 284, 292, 638 S.E.2d 66, 70. (Ct. App. 2006; *See also* Linen v. Ruscon Constr. Co., 286 S.C. 67, 68–69, 332 S.E.2d 211, 212 (1985) (finding that although expert testimony found claimant suffered from a 20–30% impairment to his back, testimony of vocational expert and claimant provided substantial evidence to affirm Appellate Panel's decision finding claimant's impairment exceeded 50%); Lyles v. Quantum Chem. Co., 315 S.C. 440, 445–46, 434 S.E.2d 292, 294–95 (Ct.App.1993) (finding, pursuant to section 42–9–30, that while expert testimony suggested claimant suffered only a 35% impairment to his back, testimony of claimant and others provided substantial evidence that claimant's impairment exceeded 50%).

9. In this case, Dr. LaMotta assigned a 0% impairment rating in 2017. However, Claimant continued treating for her back receiving pain management and injections. This rating is stale. The most current ratings for her back injuries are provided by Tracy Hill and confirmed by Dr. Forrest: 23% regional impairment to her cervical spine and 11% regional impairment to her lumbar spine for a total of 33% to the back. However, considering Claimant’s education level, her physical limitations defined by the FCE, the results of the vocational evaluation,<sup>1</sup> Dr. Forrest’s medical opinion, and relevant testimony regarding her physical limitations after the accident, Claimant has met her burden to prove that she lost greater than 50% use of her back.
10. Therefore, pursuant to S.C. Code Ann. § 42-9-280; § 42-9-30(21); and § 42-9-10(B) Claimant’s dependent is entitled to receive the remaining 313 weeks of benefits in a lump sum. The calculation is as follows: 500 (max compensation) – 187 (weeks of TTD paid) = 313 weeks due. The commuted value of weeks due is: 295.7265. Therefore, 295.7265 (weeks) X \$622.50 (Compensation Rate) = \$184,089.75 (amount due).

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<sup>1</sup> Because Claimant sustained a scheduled injury under § 42-9-30, she is not required to prove lost earnings. The vocational report in this claim is not considered as proof of lost earnings but as additional support for the effects of loss of use of her back.

**ORDER**

**IT IS ORDERED** that according to the results of a good faith dependency investigation, Mr. Tim Wilson is Claimant's next of kin dependent upon her for support.

**IT IS ORDERED** that Claimant sustained greater than 50% disability to her back and is permanently and totally disabled.

**IT IS ORDERED** that Claimant is entitled to and Defendants shall pay \$184,089.75 permanent total disability benefits.

**IT IS FURTHERMORE ORDERED** that Defendants will make timely payment of the aforementioned benefits to Mr. Timothy Wilson, Claimant's next of kin dependent upon her for support.

**IT IS SO ORDERED!**

  
\_\_\_\_\_  
Commissioner Mike Campbell

**This 24<sup>th</sup> day of December 2021**

**Parties served via Email:**

Preston F. McDaniel, Esquire: [Preston@pfmcdlaw.com](mailto:Preston@pfmcdlaw.com)

Clarke E. McCants, IV, Esquire: [clarkemccants4@gmail.com](mailto:clarkemccants4@gmail.com)

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.

December 24, 2021

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell