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**Mar 14 2024**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
In the Court of Appeals

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**APPEAL FROM SOUTH CAROLINA**  
SC Workers' Compensation Commission  
Appellate Panel

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Appellate Case No. 2024-000038

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Debra Wilson, Claimant, ..... Appellant,

v.

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

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**INITIAL BRIEF OF APPELLANT**

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**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE COMMISSION PANEL ERR AS A MATTER OF LAW "IN VIOLATION OF THE STATUTORY PROVISIONS" OF SC CODE §42-9-30(21) REQUIRING REVERSAL BY VACATING THE AWARD TO THE BACK AND REMANDING REQUIRING A BIFURCATION AND CONSIDERATION OF ONLY PART OF THE BACK FOR AN AWARD TO THE BACK?

## STATEMENT OF THE CASE

This appeal involves only an error of law on behalf of the Commission Panel requiring reversal. All factual statements contained in this Statement of the Case are contained in Orders of the Commission and the WCC Briefs of the parties.

The following is set out in the Decision and Order of Commissioner Campbell filed December 24, 2021. This case involves an admitted accident occurring on April 27, 2016. After years of treatment the Claimant filed a Form 50 on September 23, 2019 alleging that the Claimant was totally and permanently disabled because she had lost 50% or greater the functional use of her back to do work requiring the use of her back and also on the basis that she had suffered a total loss of earning capacity. The Defendants filed a Form 51 response and filed a Form 21 to pay compensation on October 21, 2019, and January 31, 2020, respectively. The original hearing scheduled for February 26, 2020 due to the Covid-19 pandemic and the Claimant's unrelated illness had to be continued with Ms. Wilson passing away three (3) days prior to the February 26, 2020 hearing. In the Form 50 Ms. Wilson had alleged injuries to her back, buttocks (hips), legs (particularly left leg and foot), bi-lateral arms, and hands as a result of the fall, landing on her buttocks while rushing around the corner of a desk at work. The

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

Following the pandemic and after a lengthy time concerning the conduct of a Dependency Investigation, this matter came to be heard by Commissioner Michael Campbell on October 20, 2021 for a determination of the benefits to which the Claimant's sole dependent, her husband, Tim Wilson, was entitled due to her scheduled member injuries under SC Code §42-9-30; and alleging on the basis of having lost 50% or more of the functional use of her back to do work requiring the use of her back that she was entitled to an award for total disability under SC Code §42-9-30(21). At that time, the Defendants agreed that they provided accepted medical care for both wrists including surgery to both wrists and provided medical care for the Claimant's low back and agreed that they had provided evaluation and some treatment for the neck. While they maintained their denial and took the position that she was not entitled to an Award for having lost 50% or more of the functional use of her back to do work

requiring the use of her back, under SC Code §42-9-30(21) they agreed she was entitled to an award for the scheduled members admitted. (See Decision and Order of Commissioner Campbell, 12/24/21). In his Findings, Commissioner Campbell made Findings of Fact in reference to the functional capacity evaluation that established on an objective basis that she was limited from a physical demand standpoint to limited sedentary or limited light duty work. She did not meet the full requirements of even sedentary or light duty work categories. She was found to have medical impairments of 3% to the right hand, 5% to the left hand, 23% regional impairment to the cervical spine, and 11% regional impairment to the lumbar spine. (Order, p. 7, 12/24/21). He also made a Finding of Fact that Dr. Forrest opined that the Claimant had a 23% regional impairment to her cervical spine, 11% regional impairment to her lumbar spine, and deferred to the physical therapist ratings concerning the hands and the treating psychologist as to the psychological brain impairments. Dr. Forrest further stated the opinion that Ms. Wilson had lost 50% or more of the functional use of her back to do work requiring the use of her back and recommended pain management. In his opinion, the Claimant was totally disabled from work. (Order, pp.7-8, 12/24/21). Dr. Nicholas Lind opined that the work-related accident had aggravated her pre-existing

anxiety and depression and assigned a 9% impairment to the brain and determined that additional psychological treatment would tend to lessen the period of disability. (Order, p. 6, 12/24/21). A vocational evaluation was performed by vocational expert Harriet Fowler and in her opinion to a reasonable degree of vocational certainty the Claimant was not able to maintain gainful employment in the economy. (Order, p. 8, 12/24/21). In his Findings of Fact, the Commissioner also noted treatment by Dr. Holbrook for evaluation and treatment of the Claimant's neck pain and noted that the medical care including surgery to both wrists, epidural steroid injections in the lumbar spine, physical therapy, medications, and wrist braces. Mr. Wilson testified as to his wife's significant problems after the accident, which are detailed in the Findings of Fact of the Commissioner and that her back was causing most of her problems and that she was pretty much in constant pain with the low back and in his opinion she would not be able to work a full 8-hour shift bending, stooping, and lifting as her job required. (Order, pp. 6-8, 12/24/21). Based on the evidence presented, the Commissioner made the following Award and Order:

**"ORDER**

**... IT IS ORDERED** that Claimant sustained greater than 50% disability to her back and is permanently and totally disabled...." (Order, p. 11, 12/24/21).

The Defendants filed a Form 30 on 1/7/22 which included twelve (12) grounds for appeal, none of which requested a bifurcation of the back or alleged that the cervical spine was not accepted. (Form 30, 1/7/22). However, in their Brief to the Full Commission filed March 11, 2022, Defendants in part argued that they had denied the neck as being an injury as a result from the accident and without a Finding that she had sustained an injury to the neck as a result of the accident, the Award made under SC Code §42-9-30(21) failed as a matter of law. (Appellants' Brief, pp. 6-7, 3/11/22).

The Claimant filed a responsive Brief and in addressing the issues argued that:

"the only essential issue before the Commissioner was an Award for loss of use to the back under SC Code §42-9-30(21) and under §42-9-280 as a scheduled member." (Respondent's Brief, pp. 8-11, 1/16/23).

After argument, the Full Commission Panel vacated in part, and remanded and made Conclusions of Law in pertinent part:

"(pursuant to SC Code Ann. §42-1-160(1976), and other applicable law and Regulation, the Claimant sustained an injury to her lower back, her arms and her psyche as a result of the accident arising out of and in the course of her employment with the employer.

6. Pursuant to SC Code Ann. §42-1-160(1976), and other applicable law and Regulation, the Claimant's neck has not been found to be compensable as part of this matter."

The Commission Panel then ordered:

"IT IS SO ORDERED that the Panel vacates the determination of disability to the Claimant's back and remands this 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." (Appellate Panel Decision and Order, p. 10, 6/9/23).

In the Motion for Reconsideration filed pursuant to SC Code §1-23-380 and in compliance with Reg. 67-215(B), the Claimant filed for reconsideration as a matter of law on the basis that the Defendants did not raise as an issue the bifurcation of the back and more importantly that Claimant's Counsel knew of no case law, upon which the Commission is duty bound to rely, which bifurcates the back or which in any way separates any region of the back for purposes of a scheduled loss of use award to the back; and set out that the Award to be made is premised upon the threshold requirement that the Claimant prove a loss of use of a specific member, organ or bodily part as set forth under SC Code §42-9-30, in this case the back. (Motion for Reconsideration, p. 2, 6/14/22). An Administrative Order was issued on December 6, 2023 denying Claimant's Motion for Reconsideration only on one of the Claimant's bases for asking for reconsideration, that being that the Defendants had failed to raise the issue of bifurcation of the back in their Form 30. The Order also noted that the Appellate Panel had remanded the claim back to the

Hearing Commissioner to make a "determination of disability to the back based on the admitted lower back injury" because they could not determine if the Commissioner had:

"relied upon facts related to Claimant's alleged neck injury in making the award to the back".  
(Emp. add.)

(Administrative Order, 12/06/23). No decision was entered on the Panel's decision to bifurcate the back as a matter of law only to note in the Order that the case was remanded to the Single Commissioner consistent with the Full Commission's Order on June 9, 2023.

From that final Decision, this appeal follows.

#### STANDARD OF REVIEW

SC Code §1-23-380 provides that this Court may reverse a decision of an Agency, in this case the Workers' Compensation Commission, where the substantial rights of the Appellant have been prejudiced because the Administrative Decision and specifically in this case is:

- (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.

#### Appealability

"Appeal from an interlocutory Order will lie where such Order affects the merits or denies the Appellant of a substantial right; and an Order

involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.” Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (SC App. 1993); Canteen v. McLeod Regional Medical Center, 384 S.C. 617, 682 S.E.2d 504 (SC App. 2009).

The Commission’s Decision is immediately appealable because it finally determined Ms. Wilson’s entitlement to an award for loss of use of the back and required the award to be based on only the “lower back injury”. (Appellate Panel Decision and Order, p. 10, 06/09/23).

Specifically on point, in Canteen v. McLeod Regional Medical Center, supra, the Single Commissioner made an award concerning Mr. Canteen’s brain injury and the Full Commission Panel reversed that decision on that body part and remanded the case to the Single Commissioner for a determination of permanency to the other bodily parts other than Canteen’s brain. This Court held that where an interlocutory Order such as the one involved here, affects the merits or deprives the Appellant of a substantial right, i.e., an award to her back for loss of use of the back not just a part of her back, the decision is immediately appealable because it finally determines some substantial matter forming a whole or part of some cause of action. In Canteen, the Commission denied benefits to the brain. This Order is immediately appealable because it vacated the entitlement to the Award for loss of use to the “back” and

remanded requiring bifurcation and a ruling based on just the lower back which is an error of law "in violation of statutory provisions".

### ARGUMENTS

I. THE COMMISSION PANEL ERRED AS A MATTER OF LAW "IN VIOLATION OF THE STATUTORY PROVISIONS" OF SC CODE §42-9-30(21) BY VACATING THE AWARD TO THE BACK AND REMANDING REQUIRING A BIFURCATION AND CONSIDERATION OF ONLY PART OF THE BACK FOR AN AWARD TO THE BACK.

Under SC Code §42-9-30, commonly referred to as the scheduled member section, Awards are made for "loss of use" of the enumerated body part, member or organ and specifically subsection (21) provides as follows:

"(21) for the loss of use of the back ..."

Thus the issue under SC Code §42-9-30(21) 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 the upper back, commonly referred to as the neck, it is simply and solely loss of use of the back.

This Commission Panel's decision and remand requiring bifurcation have been specifically found to be "without merit" by this Court. Quoting from Sanders v. MeadWestvaco Corp., 371 S.C. 284, 638 S.E.2d 66 (SC App. 2006) (cert. dismissed):

"The Circuit Court concluded '[a] review of the record reflects that these injuries and disabilities were clearly to the back'. MeadWestvaco's argument that because the Appellate Panel's Order was too specific in identifying the regions of the back where

Sanders' loss occurred and that these regions are somehow separate from the back itself is without merit.

Accordingly, even though the SI joint and lumbar spine are not specifically mentioned in §42-9-30, we find no reversible error in the manner in which the Appellate Panel characterized Sanders' injuries. A review of the Appellate Panel's Order and the record reflects Sanders' injury and subsequent disability **was clearly to his back.** This approach is consistent with our policy of liberally construing the Workers' Compensation Act in favor of coverage." (Emp. add.).

Under case law, the Award under §42-9-30 is premised upon the threshold requirement that the claimant prove a loss, or loss of use of, a specific "member, organ, or part of the body". Hill v. Owens-Corning Fiberglass, 301 S.C. 554, 393 S.E.2d 172 (1990) (Emp. add.). This Court and the Supreme Court have always spoke in terms of, and the claimant's burden is to prove, whether the claimant has sustained a loss of the use of their back to do work requiring the use of their back, not a specific section of the back. There are numerous cases on this point; and on the fundamental principle that the Commission must apply a liberal interpretation in favor of benefits to the injured worker; see for example Sanders, supra. The Appellant knows of no case upon which the Full Commission Panel could have relied for bifurcating the various sections of the back for an Award. To the contrary and specifically in the case of G.E. Moore Co. v. Walker, 232 S.C. 320, 102 S.E.2d 102 (1958) the Supreme Court

made it clear that the issue is "the loss of use" of the specific listed member. The Supreme Court in Roper v. Kimbrell's of Greenville, Inc., 231 S.C. 453, 99 S.E.2d 52 (1957) under the maxim of a liberal interpretation of the Act held that there was no requirement of a specific injury to the member to award benefits where the member is affected by the injury.

Also contrary to the Panel's bifurcation in reference to an Award, all of the cases decided by the Supreme Court and the Court of Appeals speak in reference to loss of use of the back, not loss of use of a specific section of the back. Clemmons v. Lowe's Home Centers, Inc., 420 S.C. 282, 803 S.E.2d 268 (2017); Bateman v. Town and Country Furniture Co., 287 S.C. 158, 336 S.E.2d 890 (SC App. 1985); McCollum v. Singer Co., 300 S.C. 158, 386 S.E.2d 471 (SC App. 1989); Lyles v. Quantum Chemical Co., 315 S.C. 440, 434 S.E.2d 292 (SC App. 1993) (reh. den., cert. den.).

In addition, the following opinions have been entered in reference to the apparent issues being raised by the Commission Panel.

First, in Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 644 (2005), the Supreme Court noted that the Commission can properly consider and should consider unrelated medical conditions in reference to the overall disability resulting from the injury.

In Wilbanks v. Kentucky Fried Chicken/Holt Industries, 312

S.C. 131, 439 S.E.2d 300 (SC App. 1993), this Court reiterated that where the claimant had had a series of past back injuries, the issue was the overall loss of use of the back following the work-related injury.

In Sanders v. MeadWestvaco Corp., supra, again this Court held that it was proper in reference to a loss of use of the back Award to consider the sacrum, which is not part of the back, in determining the overall loss of use of the back Award.

Therefore, since the Remand Order of the Full Commission denied Ms. Wilson an entitlement to an Award for loss of use following an injury to her back in violation of the Statute under which she is entitled to such Award, the Court should reverse the decision and reinstate the decision of the Single Commissioner made in reference to the Claimant's entire back; particularly since that decision was not challenged. None of the Hearing Commissioner's Findings of Fact or Conclusions of Law were challenged by the Panel in reference to loss of use of her back as a whole. Determination that she had lost 50% or more of the use of her back to do work requiring the use of her back was simply challenged on an error of law or requirement of the Commission Panel requiring a bifurcation of the back and an Award based simply on the low back, not the entire back.

**CONCLUSION**

For the foregoing reasons, the Court should reverse the decision of the Commission Panel requiring bifurcation of the back and since the Hearing Commissioner's Findings and Conclusions were not otherwise challenged as to the award for loss of use of the back and are the law of the case, reinstate the Single Commissioner's decision as a final decision in this matter. Further delay and remand is not needed. Russell v. Walmart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019).

Respectfully submitted,



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March 14<sup>th</sup>, 2024