

State of South Carolina
Workers' Compensation Commission

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APR 29 2024

SC Court of Appeals

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Melody James, Commissioner; Avery B. Wilkerson, Jr.,
Commissioner; and Cynthia C. Dooley, Commissioner (Chair)

SCWCC File No.: 2110116

Karen Martin,

Claimant,

v.

AMB Transportation, LLC,

Employer,

and

State National Insurance Company, Inc. c/o CBCS,

Carrier,

Defendants.

AFFIRM AND AMEND

Hearing held in Richland, South Carolina,
on July 17, 2023

Per notice timely and properly served upon all Parties of Interest.

Appearances: Charles J. Hodge, of Hodge & Langley Law Firm, appeared on
behalf of Claimant/Appellant.

Regan A. Cobb, of Holder Padgett Littlejohn + Prickett, LLC
appeared on behalf of Defendants/Respondents.

Court Reporter: Sarah Costilow, Creel Court Reporting, 803-252-3445,
contact@creelreporting.com.

Filed: March 25, 2024

I. STATEMENT OF THE CASE

The parties were heard by Commissioner Mike Campbell on February 8, 2023, in Spartanburg, SC. On April 7, 2023, he issued the following Order and Findings of Fact:

II. SINGLE COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Although ATP Dr. Mitchell's opinion regarding Claimant's aggravation of her pre-existing back condition and need for surgery does not include the terminology "stated to a reasonable degree of medical certainty," I find his opinion is supported by the expert opinion of Dr. Kooistra, which does include the terminology "stated to a reasonable degree of medical certainty." In addition, based on Dr. Mitchell's history of treating the Claimant's back, I find he is in the best position to understand the cause and effect to Claimant's back condition. Therefore, I give greater weight to the opinions of Dr. Mitchell.
2. Thus, I hereby find Claimant has met her burden of proof that she sustained an aggravation to her re-existing back condition.
3. Claimant is not at MMI.
4. A determination of permanency is premature at this time.
5. Claimant is entitled to the back surgery and all causally related treatment, as recommended by ATP Dr. Mitchell.
6. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact and the Code of Laws of South Carolina as amended, it is concluded that Section 42-1-120 defines "disability"; Section 42-1-160 defines "injury and personal injury"; and Section 42-9-35 defines "evidence of preexisting injury or condition." Section 42-15-60 defines "Time period medical treatment and supplies furnished ..."

IV. ISSUES ON APPEAL

The Defendants filed an application for review in the case setting forth their reasons, copies of which were furnished to all interested parties, prior to oral arguments presented before the Appellate Panel on July 17, 2023. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration. By appeal, Defendants submit the following:

1. The Single Commissioner erred by failing to exclude Claimant's exhibit D, APA pages 177-179, affidavit from Dr. David Mitchell from evidence per Defendants' objection and S.C. Code 42-9-35 and Michau case law.
2. The Single Commissioner erred in finding that Claimant has met her burden of proof that she sustained an aggravation to her preexisting back condition.
3. The Single Commissioner erred in finding Claimants entitled to low back surgery causally related to the work accident.
4. The Single Commissioner erred in not finding Claimant was at MMI.

V. DECISION OF THE APPELLATE PANEL

FINDINGS OF FACT

1. Although ATP Dr. Mitchell's opinion regarding Claimant's aggravation of her pre-existing back condition and need for surgery does not include the terminology "stated to a reasonable degree of medical certainty", we find his opinion is supported by the expert opinion of Dr. Kooistra, which does include the terminology "stated to a reasonable degree of medical certainty." In addition, based on Dr. Mitchell's history of treating the Claimant's back, we find he is in the best position to understand the cause and effect to Claimant's back condition. Therefore, we give greater weight to the opinions of Dr. Mitchell.
2. Additionally, Claimant has met her burden that she incurred an aggravation of her preexisting condition. Only one physician presents opinion evidence as to whether Claimant's preexisting condition is aggravated or not to a degree of reasonable medical certainty (Section 42-9-35).

While addressing treatment issues, Dr. Hodge, and Dr. Peelle do not opine whether or not the Claimant has aggravated her underlying preexisting condition, to a degree of reasonable medical certainty or otherwise. Dr. Mitchell's opinion evidence on the aggravation of the Claimants' condition is not stated to a reasonable degree of medical certainty. The only opinion to a reasonable degree of medical certainty is Dr. Kooistra who opines that the Claimants' condition is aggravated.

3. The question then becomes whether the Claimant is at MMI or needs surgery. Even if Dr. Mitchell's opinion is discounted as to the issue of aggravation, he issues opinions with regards to the Claimants' medical treatment (surgery) and is reviewed for that purpose, along with opinions of the other three physicians. Greater weight is given to the opinion of Dr. Mitchell, as he would be in the best position to evaluate the Claimant's treatment needs, due to the history of his previous and current treatment of the Claimant. Although his opinion is not stated to a reasonable degree of medical certainty (Section 42-15-60), his opinion is supported by the expert opinion of Dr. Kooistra, which is stated to a reasonable degree of medical certainty.
4. Thus, we hereby find Claimant has met her burden of proof that she sustained an aggravation to her pre-existing back condition.
5. Claimant is not at MMI.
6. A determination of permanency is premature at this time.
7. Claimant is entitled to the back surgery and all causally related treatment, as recommended by ATP Dr. Mitchell.
8. All other issues are held in abeyance at this time.

CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact and the Code of Laws of South Carolina as amended, it is concluded that Section 42-1-120 defines "disability"; Section 42-1-160 defines "injury and personal injury"; and Section 42-9-35 defines "evidence of preexisting injury or condition." Section 42-15-60 defines "Time

period medical treatment and supplies furnished ...”

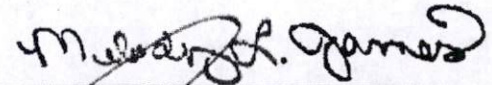
ORDER

IT IS THEREFORE ORDERED that Defendants shall authorize the recommended back surgery and all costs of causally related treatment are recommended by the authorized treating physician, Dr. David Mitchell.

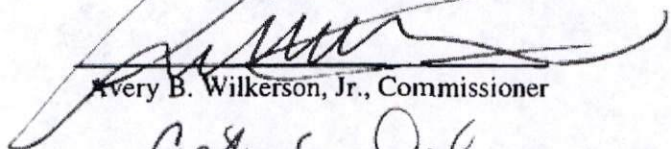
No hearing costs are ordered.

AND SO IT IS ORDERED.

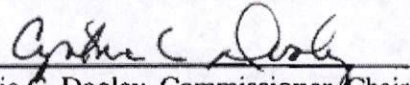
_____ (date)
Columbia, SC



Melody James, Commissioner



Avery B. Wilkerson, Jr., Commissioner



Cynthia C. Dooley, Commissioner/Chair

Order Served via email:

<p>Regan A. Cobb Holder Padgett Littlejohn & Prickett rcobb@hplplaw.com</p>	<p>Richard J. Smith Smith & Beckey Injury Lawyers richard@smithandbeckey.com</p>
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on March 25, 2024