

**State of South Carolina  
Workers' Compensation Commission**

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MAY 02 2024

**APPELLATE PANEL DECISION AND ORDER** SC Court of Appeals

**COMMISSION PANEL: The Honorable R. Michael Campbell, II; The Honorable T. Scott Beck, Chair; and The Honorable Avery Wilkerson**

SCWCC File No.: 2218722

Marcelina Santibanez,  
Claimant/Respondent,

vs.

Operational Resources, Inc.,

Employer,

and

Old Republic Insurance Company,

Carrier,

Defendants/Appellants

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**AFFIRMED**

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Hearing Held via Zoom in Columbia, SC  
on November 21, 2023

Per notices timely and properly served upon all parties of interest.

Appearances: W. Grady Jordan, of Smith Jordan, P.A., appeared on behalf of Claimant/Respondent.

Benjamin M. Renfrow of Willson Jones Carter & Baxley, P.A., appeared on behalf of Defendants/Appellants.

Court Report: Mary C. Joy, 803-252-3455

Filed: March 25, 2024

## **I. STATEMENT OF THE CASE**

A hearing was held before the undersigned Commissioner on May 16, 2023, upon the filing of a Form 50. Respondent filed a Form 50 dated January 17, 2023, wherein she claimed she suffered an accident to her left knee, right leg when she slipped on grease/water and fell. The Appellants did not file a Form 51.

Respondent's position at the hearing before the Single Commissioner was that she injured her left leg in an accident at work on December 5, 2022, and that she was entitled to medical care and Temporary Total Benefits (TTD) from December 5, 2022, to date and continuing, with credit for any monies paid by the Employer, if any. Although the Form 50 also claimed the Right Leg, Respondent's counsel informed the Commission that Respondent wanted to proceed, for purposes of the hearing, on the claim of the left leg only.

Appellants' position at the hearing before the Single Commissioner was that this is a denied claim and that Respondent cannot meet her burden of proof that it is a compensable Workers' Compensation claim as she has no witness to the alleged accident. Further counsel for the Appellants claimed that this is a medically complex case due to the findings of an MRI showing chondromalacia arthritis that preexisted the injury together with the lack of an acute finding on the MRI. Appellants' position was that there was not an adequate medical opinion from a duly qualified physician linking the medical complex issues to a compensable work injury. Counsel for Appellants also claimed that credibility is an issue in this case. He also informed the Commission that the Employer continued to pay Respondent two-thirds of her salary, or something to that effect, through December 30, 2022.

## **II.SINGLE COMMISSIONER FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

### **FINDINGS OF FACT**

I find that:

- 1) Claimant filed a form 50 seeking a determination of compensability of an alleged accident to her left knee as a result of a slip and fall. She is also seeking medical treatment and TTD benefits. She further alleges that she has not reached MMI.
- 2) Defendants deny that the Claimant had a compensable injury on 12/5/22. They did provide some initial medical treatment, but after some initial discovery in the form of video surveillance was completed, the case was denied. They further allege that the Claimant had pre-existing left knee issues including osteoarthritis.
- 3) The Average Weekly Wage is \$456.21 with a corresponding Compensation Rate of \$304.16 (stipulated).
- 4) Claimant was evaluated at SRHS Occupational Health on 12/5/22. She was diagnosed with a contusion of the left knee as a result of a slip and fall. They recommended sedentary work only with minimal walking and use of a brace, rest, ice, elevation and compression. The Claimant reported 10 out of 10 pain which was aggravated by bending, moving, standing up and walking. She denied any underlying left knee problems. It was noted that the Claimant had bruising, redness and swelling. The Claimant was given an ace wrap and told to use a cane. X-rays were viewed as normal with no acute fracture or dislocation identified, alignment was normal, minimal medial femorotibial compartmental osteoarthritis with subchondral sclerosis. No osseous erosion or focal periosteal reaction. No focal soft tissues abnormality. No radiopaque foreign bodies are seen. No acute abnormality of the left knee. (Claimant APA pgs. 2-13).
- 5) Claimant was evaluated at Spartanburg Medical Center on 12/6/22 for left knee pain. It

was noted that she slipped at work on water and landed on her left knee. She was complaining of worsening of her pain. It was noted that she had small bruises on anterior aspect of the knee and small effusion was noted. She also had tenderness to palpation of the medial and lateral joint lines and patella. The Claimant's calf was non-tender with no swelling. Exam revealed possible internal derangement of the knee due to effusion. They placed the Claimant in a knee immobilizer and recommended ortho evaluation. (Claimant APA pgs. 53-61).

- 6) Claimant was evaluated at SRHS Occupational Health on 12/12/22. The Claimant reported lower extremity pain that was achy and constant, aggravated by bending, moving around, standing up and walking. She noted that she had been to the ER due to worsening of her pain and she was placed in a knee immobilizer. The Claimant admitted that she discontinued use of the immobilizer due to her discomfort and was using the hinged knee brace and ace wrap. She reported 8-9 out of 10 pain, but also noted improvement. The Claimant reported significant pain along front and back of the knee with walking and flexing. She also reported buckling and snapping of the knee. It was noted that she was using a cane to walk and that she was out of work due to the restrictions. It was noted that she walked slowly with an antalgic gait. No effusion was visible, but the knee was diffusely tender. The contusion of the left knee was improved. They recommended sedentary work with minimal walking, use of cane, elevation, knee brace, no climbing, crawling, squatting, or kneeling; ice was recommended and an MRI. (Claimant APA pgs. 14-21).
- 7) Video was taken of the Claimant's activities on 12/16/22 which shows that Claimant walking down an embankment and up a hill with no issues and no brace or ace wrap nor cane. She also walked across a parking lot with no issues and no assistive devices. She

stood for a period of time with no issues and no brace (she was wearing leggings and any brace or ace wrap would have been obvious). She also walked up and down stairs again with no issues and no brace or cane. Investigation Report (Defendants APA pgs. 127-136).

- 8) MRI was completed on 12/27/22. Findings: Probable acute findings which are superimposed on chronic findings, Prepatellar dermal fat contusion. Grade 3 patellar apex chondromalacia. Thinning of the cartilage of the weightbearing medial femoral condyle. No meniscal tear. (Claimant APA pgs. 22-25).
- 9) Claimant was evaluated at SRHS Occupational Health on 1/5/23. The Claimant noted that she was still having the same pain. No external bruising or swelling and no effusion was noted. They noted that SLR intact supine, gait was within normal limits without cane. MRI only acute finding was anterior prepatellar contusion. They recommended discontinuation of the cane, PT and noted that she could return to work with restrictions. (Claimant APA pgs. 26-34).
- 10) Claimant was evaluated at ReGenesis Health Care on 1/19/23. The Claimant noted pain in her right middle finger and left knee. They noted that the X ray from the ER on 12/6/22 showed no acute fracture or dislocation, minimal medial osteoarthritis with subchondral sclerosis, no focal soft tissue abnormality or opacity. She was told not to come back to work and she believes that she has been fired. She stated that was hard for her to go up and down stairs now. They noted that she had limited left knee passive range of motion. No obvious deformity, walks with abnormal gait favoring right side. She was given meds and referred to YMCA Rehab. (Claimant APA pgs. 35-41).
- 11) Claimant attended Physical Therapy (PT) at SMC Rehab/YMCA on 1/27/23. The Claimant complained of left knee pain, frequent clicking, crunching, grinding and

constant pain and swelling that was worse with walking. They noted that the Claimant had observable swelling in the left knee with significant tenderness. (Claimant APA pgs. 62-70).

- 12) Claimant attended PT at SMC Rehab/YMCA on 1/31/23. The Claimant noted that she was feeling a little better and was doing the home exercises and noted 7 out of 10 pain level. (Claimant APA pgs. 71-72).
- 13) Claimant attended PT at SMC Rehab/YMCA on 2/3/23. The Claimant noted that the left knee felt better. (Claimant APA pg. 73).
- 14) Claimant was evaluated at ReGenesis Health Care on 2/7/23. The Claimant noted left knee pain. MRI showed mild patellofemoral thickening and bruising of the patellar fat pad, mild arthritis in the knee. The doctor stated that they believed that the Claimant's pain was from the fall that exacerbated the arthritis. They recommended PT and the Claimant was given a left knee injection and it was noted that it was due to chronic pain. (Claimant APA pgs. 45-47).
- 15) Claimant attended PT at SMC Rehab/YMCA on 2/13/23. The Claimant noted more pain since the injection last week. (Claimant APA pg. 74).
- 16) Claimant attended PT at SMC Rehab/YMCA on 2/20/23. The Claimant had no new complaints. (Claimant APA pgs. 75-76).
- 17) Claimant attended PT at SMC Rehab/YMCA on 2/27/23. The Claimant had no new complaints. It was noted that the Claimant was wearing a neoprene sleeve over her left knee and that there was minimal swelling in the left knee. (Claimant APA pgs. 77-79).
- 18) Claimant was evaluated by Dr. Thompson at ReGenesis on 3/21/23 for left knee pain and popping. The Claimant noted that she had pain when she walks and hears a noise, she also noted swelling is [sic] her foot and that her knee feels like it was going to give way.

She reported her pain at 10 out of 10. She requested a letter that stated that she was disabled and could not work. The doctor refused to give her the letter and recommended that she have an orthopedic evaluation. (Claimant APA pgs. 48-51).

19) An incident report dated 12/5/22, was accomplished by the Defendant Employer. It shows a date of injury of 12/5/22, with the supervisor being notified on 12/5/22 at 2:40 p.m. The incident report states in part, "There was water on the floor in front of a door she was trying to open. When she pulled on the door, wit [sic] was stuck, and she had to pull a little harder than normal. When she did that, she slipped and landed on her left knee on the floor. She said her knee was sore and she struggled to put much weight on it." It also states that slip resistant boots were required and in use by Claimant. (Claimant APA pgs. 81-82).

20) Upon review of the records as a whole, specifically the diagnostic tests (X-ray and MRI), I find that the Claimant did have a compensable injury to her left knee as evidenced by the bruising and swelling. Defendants are responsible for occupational health, Spartanburg Medical Center ER and MRI treatment to date. Claimant has not reached MMI and defendants are ordered to provide additional treatment with an ortho of their choice. Since the employer did not provide the Claimant with light duty work, the Defendants are ordered to pay TTD benefits from the dated [sic] of the accident and on-going. I find that there is insufficient evidence to determine whether the aggravation of the Claimant's underlying osteoarthritis is compensable or not. This finding of fact is based upon the greater weight of the evidence.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Stipulations, APA Submissions, Evidence of the Case and Findings of Fact:

- 1) Pursuant to S.C. Code Ann §42-1-130 (1976), the Claimant was a covered Employee and pursuant to the S.C. Code Ann §42-1-140 (1976), the Employer Operational Resources, Inc. was a covered Employer under the Workers' Compensation Act.
- 2) Pursuant to S.C. Code Ann. §42-1-160 (1976), the Claimant sustained a compensable injury to her Left knee by accident arising out of and during the course of her employment with the Defendant Employer on 12/5/2022.
- 3) Pursuant to S.C. Code Ann. §42-15-60 (1976), the Defendants shall pay for the past causally related medical treatment the Claimant has received, and they shall further provide additional causally related medical care until the Claimant has reached MMI, with any further medical care to be determined at a later date by the Commission.
- 4) Pursuant to S.C. Code Ann. §42-9-10 (1976), the Average Weekly Wage is \$456.21 with a corresponding Compensation Rate of \$ 304.16 (stipulated).
- 5) Pursuant to S.C. Code Ann., §42-9-10 (1976) and §42-9-30 (1976) the Defendants shall pay unto the Claimant TTD benefits from 12/05/2022, and continuing until further order of the Commission.

### **III. ISSUES ON APPEAL**

This matter comes before the Appellate Panel of the Commission upon a Form 30 appeal filed on behalf of the Defendant Employer and Carrier/Appellants. Appellants appeal this matter arguing that this is a medically complex case and Respondent presented no medical doctor's opinion that the fall exacerbated her pre-existing arthritis or that her current symptoms are causally

related to her fall.

Appellants also argue that Respondent is not credible when surveillance showed her walking without limp, difficulty, or an assistive device. They further argue that the Single Commissioner's order was inconsistent in finding no aggravation but ordering Appellants to pay causally related medical care.

#### **IV.DECISION OF THE APPELLATE PANEL**

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in their respective briefs of the parties, as well as those issues raised at the Full Commission Review Hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby **AFFIRM** the Decision and Order of the Single Commissioner filed July 7, 2023.

Below are set out the Findings of Fact and Conclusions of law of the Appellate Panel as to this claim:

#### **FINDINGS OF FACT**

- 1) Respondent filed a form 50 seeking a determination of compensability of an alleged accident to her left knee as a result of a slip and fall. She is also seeking medical treatment and TTD benefits. She further alleges that she has not reached MMI.
- 2) Appellants deny that the Respondent had a compensable injury on 12/5/22. They did provide some initial medical treatment, but after some initial discovery in the form of video surveillance was completed, the case was denied. They further allege that the Respondent had pre-

existing left knee issues including osteoarthritis.

3) The Average Weekly Wage is \$456.21 with a corresponding Compensation Rate of \$304.16 (stipulated).

4) Respondent was evaluated at SRHS Occupational Health on 12/5/22. She was diagnosed with a contusion of the left knee as a result of a slip and fall. They recommended sedentary work only with minimal walking and use of a brace, rest, ice, elevation and compression. The Respondent reported 10 out of 10 pain which was aggravated by bending, moving, standing up and walking. She denied any underlying left knee problems. It was noted that the Respondent had bruising, redness and swelling. The Respondent was given an ace wrap and told to use a cane. X-rays were viewed as normal with no acute fracture or dislocation identified, alignment was normal, minimal medial femorotibial compartmental osteoarthritis with subchondral sclerosis. No osseous erosion or focal periosteal reaction. No focal soft tissues abnormality. No radiopaque foreign bodies are seen. No acute abnormality of the left knee. (Respondent APA pgs. 2-13).

5) Respondent was evaluated at Spartanburg Medical Center on 12/6/22 for left knee pain. It was noted that she slipped at work on water and landed on her left knee. She was complaining of worsening of her pain. It was noted that she had small bruises on anterior aspect of the knee and small effusion was noted. She also had tenderness to palpation of the medial and lateral joint lines and patella. The Respondent's calf was non-tender with no swelling. Exam revealed possible internal derangement of the knee due to effusion. They placed the Respondent in a knee immobilizer and recommended ortho evaluation. (Respondent APA pgs. 53-61).

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immobilizer due to her discomfort and was using the hinged knee brace and ace wrap. She reported 8-9 out of 10 pain, but also noted improvement. The Respondent reported significant pain along front and back of the knee with walking and flexing. She also reported buckling and snapping of the knee. It was noted that she was using a cane to walk and that she was out of work due to the restrictions. It was noted that she walked slowly with an antalgic gait. No effusion was visible, but the knee was diffusely tender. The contusion of the left knee was improved. They recommended sedentary work with minimal walking, use of cane, elevation, knee brace, no climbing, crawling, squatting, or kneeling; ice was recommended and an MRI. (Respondent APA pgs. 14-21).

7) Video was taken of the Respondent's activities on 12/16/22 which shows that Respondent walking down an embankment and up a hill with no issues and no brace or ace wrap nor cane. She also walked across a parking lot with no issues and no assistive devices. She stood for a period of time with no issues and no brace (she was wearing leggings and any brace or ace wrap would have been obvious). She also walked up and down stairs again with no issues and no brace or cane. Investigation Report (Appellants APA pgs. 127-136).

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20) Upon review of the records as a whole, specifically the diagnostic tests (X-ray and MRI), we find that the Respondent did have a compensable injury to her left knee as evidenced by the bruising and swelling. Appellants are responsible for occupational health, Spartanburg Medical Center ER and MRI treatment to date. Respondent has not reached MMI and Appellants are ordered to provide additional treatment with an ortho of their choice. Since the employer did not provide the Respondent with light duty work, the Appellants are ordered to pay TTD benefits from

the date of the accident and on-going. We find that there is insufficient evidence to determine whether the aggravation of the Respondent's underlying osteoarthritis is compensable or not. This finding of fact is based upon the greater weight of the evidence.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Stipulations, APA Submissions, Evidence of the Case and Findings of Fact:

- 1) Pursuant to S.C. Code Ann. §42-1-130 (1976), the Respondent was a covered Employee and pursuant to the S.C. Code Ann. §42-1-140 (1976), the Appellant Employer Operational Resources, Inc. was a covered Employer under the Workers' Compensation Act.
- 2) Pursuant to S.C. Code Ann. §42-1-160 (1976), the Respondent sustained a compensable injury to her Left knee by accident arising out of and during the course of her employment with the Defendant Employer on 12/5/2022.
- 3) Pursuant to S.C. Code Ann. §42-15-60 (1976), the Appellants shall pay for the past causally related medical treatment the Respondent has received, and they shall further provide additional causally related medical care until the Respondent has reached MMI, with any further medical care to be determined at a later date by the Commission.
- 4) Pursuant to S.C. Code Ann. §42-9-10 (1976), the Average Weekly Wage is \$456.21 with a corresponding Compensation Rate of \$304.16 (stipulated).
- 5) Pursuant to S.C. Code Ann., §42-9-10 (1976) and §42-9-30 (1976) the Appellants shall pay unto the Respondent TTD benefits from 12/05/2022, and continuing until further order of the Commission.


**ORDER**

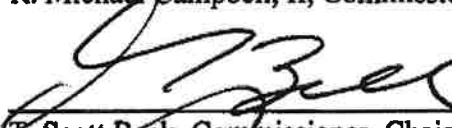
**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Appellants shall pay unto the Respondent TTD benefits from 12/05/2022, and continuing at the Compensation rate until further order of the Commission; and,

**IT IS FURTHER ORDERED** that the Appellants shall pay for the past causally related medical treatment for the Left knee, and they shall further provide additional causally related medical care for the left knee until the Respondent has reached MMI.

**AND IT IS SO ORDERED.**

\_\_\_\_\_ (date)  
Columbia, SC

  
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R. Michael Campbell, II, Commissioner

  
\_\_\_\_\_  
T. Scott Beck, Commissioner, Chair

  
\_\_\_\_\_  
Avery B. Wilkerson, Commissioner



**Order Served via email:**

<p>Benjamin M. Renfrow Wilson Jones Carter &amp; Baxley <a href="mailto:bmrenfrow@wjcblaw.com">bmrenfrow@wjcblaw.com</a></p> <p>E. Julian Cabra Julian Cabra Law Firm <a href="mailto:Julian@cabralaw.com">Julian@cabralaw.com</a></p>	<p>W. Grady Jordan Smith Jordan, PA <a href="mailto:jordan@smithjordan.com">jordan@smithjordan.com</a></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***