

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

**APPELLATE PANEL DECISION AND ORDER**

**COMMISSION PANEL:** Melody L. James (Chair); Gene McCaskill; R. Michael Campbell, II

SCWCC File No.: 2207846

SONYA PARKS,

Claimant,

v.

CINTAS CORPORATION,

Employer,

and

FARMINGTON CASUALTY COMPANY,

Carrier,

Defendants.

**RECEIVED**

**May 17 2024**

**SC Court of Appeals**

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**AFFIRMED**

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Hearing held in Richland, South Carolina,  
on November 21, 2023

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

**Appearances:** Lola S. Richey, of Richey and Richey, P.A. Attorneys at Law,  
appeared on behalf of Claimant/Appellant.

Matthew C. LaFave, of Crowe LaFave Garfield and Bagley,  
LLC, appeared on behalf of Defendants/Respondents.

**Court Reporter:** Amber Scarborough, 803.252.3445.

**Filed:** May 8, 2024

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

The above case came on to be heard before the undersigned Commissioner in Greenville, South Carolina, on October 25, 2022, pursuant to notice timely and properly given to all parties of record. The Claimant was represented by Lola S. Richey, Esquire. Defendants Cintas Corporation and Farmington Casualty Company were represented by Matthew C. LaFave, Esquire, Esquire. Claimant sought benefits due to an alleged injury by accident she contends occurred on June 15, 2022, whereby Claimant contends that while lifting heavy and long garments at work she heard a “pop” in her left shoulder. Claimant initially refused medical treatment offered by her employer but instead opted to go home to rest. However, she subsequently contacted Kami Phillips, Human Resource Manager, and asked to be seen by a doctor. Claimant was already undergoing treatment for a right shoulder injury with Dr. Stephen Geoffrey Pill thus efforts were made to have her seen by him for her left shoulder. As scheduling would not permit a visit to Dr. Pill Claimant was taken to Dr. Joel Anderson Smithwick of Prisma Health Occupational Health. Her last follow up was on September 19, 2022, after which time Defendants denied the claim.

Claimant filed her Form 50, Notice of Claim on July 9, 2022, requesting a hearing. Defendants filed a Form 51, Answer to Request for Hearing on August 3, 2022, denying this claim.

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

### **IT IS FOUND AS A FACT:**

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That at the time of the alleged accident on June 15, 2022, the Claimant was employed as a folder for Cintas Corporation;
3. That at the time of the alleged accident on June 15, 2022, Claimant had an average weekly wage of \$708.54, thereby entitling her to a compensation rate of \$472.39;

4. That Claimant did not have medical treatment on June 15, 2022, the date of her alleged injury.

5. That Claimant refused to be taken for medical treatment on June 15, 2022, despite being same offered.

6. That Claimant, on June 15, 2022, was actively treating for a right shoulder injury sustained during her employment with Cintas Corporation.

7. That the Claimant is right hand dominant.

8. Claimant failed to meet her burden of proving an aggravation of a pre-existing condition resulting from the June 15, 2022, work incident.

9. Specifically, although Dr. Smithwick's medical opinion regarding causation is not directly refuted in the record, I find Dr. Smithwick's opinions are limited based on the "patient history." Neither the questionnaire nor Dr. Smithwick's answers address whether Claimant's pre-existing left shoulder condition was dormant, which is required by South Carolina case law.

10. I find the greater weight of the evidence, including medical evidence, show Claimant had already been recommended for, and scheduled, surgery for her left shoulder three (3) times prior to her June 15, 2022, work incident. In fact, Claimant had been referred for a follow-up MRI on her left shoulder in November of 2021, which she never obtained.

11. Claimant testified that she was able to perform her job prior to June 15, 2022; however, she admitted her left shoulder problems started in 2020. Claimant also testified that she knew her left shoulder was always bothering her. Claimant's supervisor testified that Claimant never complained about her left shoulder at work.

12. I find the testimony regarding the ability to work and lack of complaints does not outweigh the prior medical evidence in the record.

13. I also find Claimant's perceived ability to work does not necessarily mean her prior full-thickness rotator cuff tear from November of 2021 was dormant.

14. I find Claimant's pre-existing left shoulder condition was not dormant and that she fails to satisfy the requirements of S.C. Code Ann. § 42-9-25.

15. All claims for benefits related to the June 15, 2022, work injury are denied.

16. That these findings of fact are based on the preponderant evidence of record, including the greater weight of the evidence and the testimony of record.

**IT IS CONCLUDED AS A MATTER OF LAW:**

1. Where applicable, these Conclusions of Law are to also be construed as Findings of Fact.
2. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act, as amended. S.C. Code Ann. § 42-1-130 and § 42-1-140.
3. The Claimant failed to satisfy the requirements of S.C. Code Ann. § 42-9-35 in that she failed to establish her pre-existing condition was dormant prior to the June 15, 2022, work incident. *See Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011); *Frampton v. S.C. Department of Natural Resources*, 432 S.C. 247, 851 S.E.2d 714.
4. Claimant has fourteen (14) days from the date of this order to appeal the ruling to the full Commission.

**III. ISSUES ON APPEAL**

1. Claimant, separate from the issues on appeal, presented a Motion to Admit Newly Discovered Evidence, which included a March 17, 2023 MRI report for the left shoulder, medical records from Steadman Hawkins of the Carolinas dated July 26, 2022 – July 7, 2023, and a Medical Questionnaire from Dr. Stephen Geoffrey Pill dated July 7, 2023.

2. Did the Single Commissioner err by disregarding the Claimant's hearing testimony and the testimony of her co-workers and management witnesses, and evidence that the Claimant was not complaining of any significant problems with her left shoulder and left arm until lifting a very heavy garment overhead at work?

3. Did the Single Commissioner err by disregarding the expert medical testimony of the defendant-employer's authorized treating doctor that the Claimant's June 15, 2022, lifting injuries at work aggravated and worsened her left shoulder and arm to a reasonable degree of medical certainty under South Carolina Code Annotated § 42-9-35?

4. Did the Single Commissioner err by failing to consider the greater weight of evidence by disregarding the Claimant's testimony and the deposition of her coworkers, and the defendant-employer's management deposition.

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

##### **IT IS FOUND AS FACT:**

1. Claimant's Form 50, Request for Hearing, from which the Decision and Order that is the subject of this appeal was issued was filed July 9, 2022 with the hearing occurring on October 25, 2022.
2. The Decision and Order following the aforementioned hearing was filed on April 15, 2023.
3. Claimant's Motion to Admit Newly Discovered Evidence was filed July 20, 2023.
4. Claimant's Motion to Admit Newly Discovered Evidence was timely submitted for the Appellate Panel to consider in advance of the issues raised on appeal.
5. Claimant's affidavit, submitted with the Motion to Admit Newly Discovered Evidence was unsigned.
6. The evidence Claimant sought admission for was created after her Form 50, Request for Hearing filed on July 9, 2022 and as such is not newly discovered evidence.

7. Claimant did not exercise reasonable diligence in securing the evidence she sought to have admitted in her July 20, 2023 Motion to Admit Newly Discovered Evidence.

8. Claimant presented nothing on appeal that indicated the single commissioner disregarded testimony of co-workers', managers, or medical experts.

9. It is found, by the greater weight of the evidence, including medical evidence, that Claimant had been recommended for, and scheduled, surgery for her left shoulder three (3) times prior to her June 15, 2022, work incident.

10. It is found that Claimant's testimony was consistent with a condition that was not dormant.

11. There is substantial evidence in the record to support the findings of the single commissioner that Claimant failed to meet her burden of proving an aggravation of a pre-existing condition.

**IT IS CONCLUDED AS A MATTER OF LAW:**

1. Claimant failed to comply with S.C. Reg. 67-707(B) in submitted the motion with an unsigned affidavit.

2. Claimant failed to comply with S.C. Reg. 67-707(C)(1) as she failed to establish the exercise of due diligence in attempting to secure the evidence prior to the time of the first hearing.

3. The Claimant failed to satisfy the requirements of S.C. Code Ann. § 42-9-35 in that she failed to establish her pre-existing condition was dormant prior to the June 15, 2022, work incident. *See Murphy v. Owens Corning*, 393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011); *Frampton v. S.C. Department of Natural Resources*, 432 S.C. 247, 851 S.E.2d 714.

**ORDER**

Based on the foregoing, it is hereby:

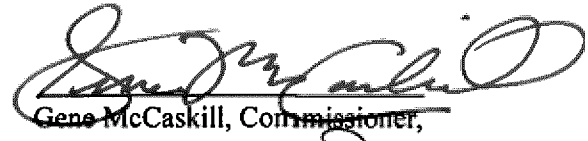
IT IS, THEREFORE, ORDERED that Claimant's Motion to Admit Newly Discovered Evidence is denied.

IT IS FURTHER ORDERED that the Decision and Order of the single commissioner, filed on April 15, 2023 is affirmed.

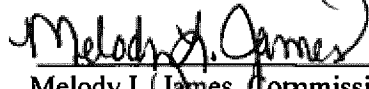
No hearing costs or penalties are assessed in this matter.

**AND SO IT IS ORDERED.**

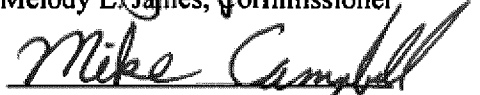
\_\_\_\_\_ (date)  
Columbia, SC



Gene McCaskill, Commissioner,



Melody L. James, Commissioner,



R. Michael Campbell, II, Commissioner

**Order Served via email:**

Matthew C. LaFave Crowe LaFave Garfield & Bagley <a href="mailto:matt@crowelafave.com">matt@crowelafave.com</a>	Lola S. Richey Richey & Richey <a href="mailto:Lolarichey@bellsouth.net">Lolarichey@bellsouth.net</a>
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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 May 8, 2024***