

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

DECISION AND ORDER

THE HONORABLE AISHA TAYLOR

SCWCC File No.: 2207846

SONYA PARKS,

Claimant,

v.

CINTAS CORPORATION,

Employer,

and

FARMINGTON CASUALTY COMPANY,

Carrier,

Defendants.

Hearing held in Richland County, South Carolina,
on October 25, 2022

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

Appearances: Lola S. Richey, Esquire, of Richey and Richey, PA, appeared on behalf of Claimant.

Matthew C. LaFave, of Crowe LaFave Garfield & Bagley, LLC, appeared on behalf of Defendants.

Purpose of Hearing: To determine issues set forth on the Forms 50 and 51.

Court Reporter: Shelly M. Jones, Bishop Reporting Services, LLC, P.O. Box 1207, Greenville, SC 29602, (864) 640-1634, jill@bishopreporting.com.

Filed: April 15, 2023

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. STIPULATIONS

At the call of the case, the parties stipulated as follows:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers’ Compensation Act.
2. Notice of the hearing was properly and timely served upon all parties in interest.

3. The Claimant had an average weekly wage of \$708.54 and a corresponding workers' compensation rate of \$472.39.

4. The South Carolina Workers' Compensation Commission has jurisdiction over this proceeding and venue in Greenville County, South Carolina is proper.

III. APA SUBMISSIONS

The following APA submissions were submitted on behalf of the Employee/Claimant:

<u>APA</u>	<u>Name of Provider/Other</u>	<u>Date of Report</u>	<u>No. Pages</u>
(1)	Prisma Health Occupational Health Dr. Joel Anderson Smithwick, MD	6/17/22-9/19/22	1-10
(2)	Prior Workers' Compensation Injury to Left Upper Extremity	2/24/11-4/20/11	11-16
(3)	Prior Workers' Compensation Injury to Left Upper Extremity Prisma Health Occupational Health Dr. Joel Anderson Smithwick, MD	4/26/19-6/17/19	17-32
(4)	Prior Workers' Compensation Injury to Right and Left Shoulders	9/1/21-9/13/21	33-37
(5)	MB360 Urgent Care Dr. Rebecca Alsip Iskandar, DO	11/1/21	38-47
(6)	Steadman Hawkins of the Carolinas Dr. Stephan Geoffrey Pill, MD	11/16/21-7/4/22	48-60
(7)	SC Workers' Compensation Commission Consent Order	7/13/22	61-63
(8)	Accident Report and Investigation Left Shoulder and Left Arm	6/15/22-7/13/22	64-74
(9)	Dr. Stephen Geoffrey Pill, MD Deposition Transcript Authorized Treating Physician	6/1/22	75-132
(10)	Via Deposition Transcript Gerrit Kurticz (Safety Manager) Kami Phillips (Human Resources) Tanner Burton (Production Manager) Linda (QA Supervisor) Wanda Jefferson (Co-worker)	9/23/22	133

The following APA submissions were submitted on behalf of the Employer/Carrier:

<u>APA</u>	<u>Name of Provider/Other</u>	<u>Date of Report</u>	<u>No. Pages</u>
(1)	Jonathan York, PA-C	2/10/21-2/22/21	134-151
(2)	Dr. Gabriella Elameyi Ode	3/9/2021	152-174

<u>Exhibit</u>	<u>No. Pages</u>
(1) Form 20, Statement of Earnings of Injured Employee	175

CLAIMANT BIOGRAPHICAL

AGE: 53 Years of Age, Date of Birth: 2/4/1970

SEX: Female

MARITAL STATUS: Married but legally separated

WORK HISTORY: The claimant began working at Cintas through Kelly Staffing in 1998 before being hired full time on July 31, 2010, in the folding room.

IV. EVIDENCE OF THE CASE

The case was called to begin at 1:21 p.m. and Claimant was called as the first and only witness for her case. Defendants called Human Resource Manager Kami Phillips as their only witness. The Claimant offered into evidence an APA containing the reports of Dr. Joel Anderson Smithwick from Prisma Health Occupational Health. Dr. Smithwick first saw the Claimant on June 17, 2022. In this first visit Claimant was noted to have reported having had bilateral torn rotator cuffs which need surgery. No diagnostic testing was performed but Claimant was noted to have a left shoulder strain. Claimant was seen by Dr. Smithwick for one (1) additional visit on June 29, 2022. Thereafter, he was provided with, and signed, a questionnaire on or about September 15, 2022, wherein he stated in the affirmative that he believed Claimant had a “left shoulder injuries causally and directly related and/or

directly aggravated by her June 15, 2022, lifting injuries with Cintas of Greenville.” Dr. Smithwick did; however, explain that “for left shoulder, causality based on patient history.”

The Employer/Carrier offered into evidence an APA submission containing medical records from Blue Ridge Orthopedics-Powdersville and Blue Ridge Ortho Easley. The aforementioned records highlight a very clear pre-existing history of a “nontraumatic complete tear of the left rotator cuff” for which surgery was recommended. Claimant did not, despite attempts at scheduling on three (3) different occasions, undergo the recommended surgery. The role she stated requires her to perform physical activities such as lifting, pulling, and reaching overhead.

Claimant was the first witness called to testify and stated that she began working for Cintas in 1998 where she has primarily worked in the folding room folding coveralls, frocks, pants, and shirts thereafter sealing them for the pack-out room. During her testimony Claimant described numerous claimed injuries that she contends occurred while employed by Cintas. In 2010 she injured both shoulders when pulling out wet clothes. *See Hearing Transcript*, P. 19, ll. 16-21. Claimant described a second incident from 2019 where her left arm and shoulder were injured when her arm was pinned between a cart and table. Initially, Claimant attempted to testify June 15, 2022, incident giving rise to this hearing was her next claimed injury though she subsequently discussed an accident in September of 2021. Claimant testified that in September she injured her right shoulder when she picked up a tub and attempted to put it under the table. The injury to her right shoulder arose in large part due to issues with Claimant’s left shoulder as she noted she “was trying to keep -- because my left shoulder always bothered me. Like, I didn’t want to -- and I knew I had an injury over there. I didn’t want to put all my weight when I took a tub.” *See Hearing Transcript*, P. 21, ll. 8-11. Following the September incident Claimant indicated that her left shoulder became more of an issue because she “couldn’t

work with her right arm, [she] had to do more with [her] left arm.” *See Hearing Transcript*, P. 22, ll. 6-7.

As to the June 15, 2022, incident Claimant testified that she had to work with coveralls for a new company, Baxter. She noted the coveralls for this group varied greatly in their sizes ranging from 2X to as large as 8X. Claimant testified that she pulled a set of coveralls up toward the table real high. While raising her arm she “got far enough over [her] shoulder and [her] arm popped.” *See Hearing Transcript*, P. 23, ll. 13-14. After the incident she reported what occurred to the production manager, Tanner. The event was related to Kami Phillips with Claimant thereafter being told she needed to see a doctor, which she rejected. *See Hearing Transcript*, P. 28, ll. 12-14. Claimant contacted Kami Phillips later by text message advising that she was “going to stay out today and see how I feel on Monday.” *See Hearing Transcript*, P. 30, l. 21.

After the episode of June 15, 2022, Claimant reported that she felt her arm has gotten worse. Specifically, she claimed she cannot do her job and cannot work overtime because of her arm. Prior to June 15, 2022, Claimant testified to having been working without restrictions though it was noted that this decision was made after she explained to her doctor, Dr. Pill, that the light duty work she had been doing was “more harsh than the work that I do, the folding.” *See Hearing Transcript*, P. 33, ll. 12-17. In fact, Claimant testified that while on light duty on November 16, 2021, she was having issues with both arms. The issues became so severe Claimant testified to having to receive a cortisone shot in her left shoulder right before returning to regular duty work. *See Hearing Transcript*, P. 36, ll. 8-19.

On cross-examination Claimant acknowledged that she had an incident in 2019 that resulted in her beginning to have issues in 2020. The left shoulder issues eventually prompted an MRI in 2021, which she noted revealed a “complete tear ... of my left shoulder.” *See Hearing Transcript*, P. 41, ll.

1-15. Claimant testified she was recommended for surgery but did not pursue that treatment because of the location as they wanted to perform the procedure in Easley and she preferred to stay in Greenville. *See Hearing Transcript*, P. 41, ll. 16-20. Based on her location preference she was referred to Dr. Pill. Prior to the right shoulder injury in September of 2021, she testified to having attempted to schedule the left shoulder surgery “three times or two times with Dr. Pill. And then the one time with her, but I already told them before I left the office that I didn’t want to have surgery down at Easley Baptist -- Hospital.” *See Hearing Transcript*, P. 42, ll. 1-11. During the Hearing Claimant was presented with a document from page 37 Claimant’s APA, which noted “left shoulder was already hurting from non-Cintas-related injury.” While Claimant refuted writing that statement or telling the author of the form anything about her left shoulder hurting, she did have an opportunity to read the statement before signing.

Claimant further testified that she had, prior to June 15, 2022, mostly stopped doing activities that required overhead lifting because her arm would be bothering her. It was due to this issue that she “would try to stay out of that range of my arm bothering me.” *See Hearing Transcript*, P. 44-45, ll. 16-25, 1-3. In fact, Claimant admitted that after being diagnosed with the rotator cuff tear she would generally have problems reaching overhead. Finally, Claimant acknowledged that the form at page 65 of Claimant’s APA referenced, only “lifting above head” as the description of injury, which Claimant corrected as being lifting “over my shoulder.” Despite not having personally written the form herself she admitted she had a chance to review the form for accuracy and/or make changes before signing but did not make any. *See Hearing Transcript*, P. 48-49, ll. 24-25, 1-21.

Based upon the evidence received and produced at the hearing, the undersigned Commissioner finds the following facts based upon the preponderance of the evidence:

V. FINDINGS OF FACT

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.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

VI. CONCLUSIONS 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.

Based upon the above Statement of Case, Evidence of the Case, Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER


Based on the foregoing, it is hereby:

IT IS, THEREFORE, ORDERED that Claimant's claim for injuries to her left shoulder and left arm is denied.

IT IS FURTHER ORDERED that Defendants are not responsible for payment of any temporary total disability compensation or medical treatment associated with the June 15, 2022 work incident.

No hearing costs or penalties are assessed in this matter.

AND SO IT IS ORDERED.



Commissioner Aisha Taylor

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.

April 18, 2023

By: Renee Smith, Administrative Assistant to Commissioner Taylor

Order Served via Email 4-18-23:

Lola S. Richey lolarichey@bellsouth.net

Matthew C. LaFave matt@crowelafave.com