APPELLATE PANEL

DECISION AND ORDER

OF THE

S. C. WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0506205

ALEXANDER GUICE — **EMPLOYEE, CLAIMANT/APPELLANT,**

vs.

U.S. FOOD SERVICE, INC., — **EMPLOYER,**

AND

GALLAGHER BASSETT SERVICES, INC., — **CARRIER, DEFENDANTS/RESPONDENTS.**

Appellate Panel Review held in Columbia, South Carolina, on May 21, 2013, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed 7-17, 2013

APPEARANCES: This matter was decided without oral arguments pursuant to Reg. 67-701

Claimant/Appellant pro se

Defendants/Respondents represented by Erin L. Hantske, Esquire, Charleston, South Carolina

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STATEMENT OF THE CASE

The Appellant alleges sustaining injury to his low back, right knee, and neck by accident arising out of and in the course and scope of his employment with Respondents on or about May 5, 2005, when he was allegedly involved in a motor vehicle accident. At the time of his alleged accident, Appellant had an average weekly wage of $1,154.00, and a corresponding compensation rate of $592.56 (maximum compensation rate for injuries sustained in 2005). Appellant was treated by Dr. Allen Tamadon, who opined that Appellant reached maximum medical improvement on October 27, 2005, and assigned a 5% medical impairment rating to the whole person.

Subsequent to Appellant's release at maximum medical improvement, the parties entered into a Settlement Agreement and Release resolving Appellant's South Carolina Workers' Compensation File No. 0506205 on a full and final clincher basis for a lump sum payment of $20,000.00. This Settlement Agreement was approved by the South Carolina Workers' Compensation Commission on January 5, 2006. Thereafter, the file was closed with the South Carolina Workers' Compensation Commission pursuant to a filed Form 19.

Appellant then filed a Form 50/Hearing Request dated December 7, 2012 and an Amended Form 50/Hearing Request on January 5, 2013, under the same Workers' Compensation Commission file number, 0506205, alleging a date of accident of May 5, 2005, and injury to the back, neck and right knee. Appellant requested additional medical examination and treatment for the alleged injuries, temporary total disability benefits from November 2, 2006 through the present and permanent partial disability benefits. Respondents timely filed a Form 51 denying any entitlement to additional medical care or treatment, temporary total disability benefits, or permanent disability benefits based upon the parties' previous Settlement Agreement to clincher

the claim approved by the South Carolina Workers' Compensation Commission on January 5, 2006. A hearing was scheduled for March 28, 2013 in Summerville, South Carolina before Commission Susan S. Barden. Prior to the scheduled hearing, Appellant submitted two motions: one requesting a telephonic hearing, and the other requesting a change of jurisdiction. On February 22, 2013, Commissioner Barden issued the following Order:

> **Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006. A Form 19 was submitted by Defendants as well.**
>
> **In January 2013, Claimant filed a Form 50 relating to the claim (WCC No. 0506205) which he previously settled.**
>
> **As this case was settled on a Full and Final basis on or about January 6, 2006, Claimant's hearing request is hereby denied, and the hearing set for March 28, 2013 in Summerville, South Carolina is cancelled. Further, any and all motions filed pertaining to WCC No. 0506205 are hereby dismissed as well.**
>
> **AND IT IS SO ORDERED.**

Within the statutory period, the pro se Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties. Appellant requested this matter be heard without oral arguments. All proferred testimony has been taken. Such, together with all documentary evidence, has been delivered to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following:

1. "Did Commissioner Susan S. Barden have proper jurisdictional authority to make any judgments regarding WCC No. 0506205?"
2. "Was Commissioner Barden's Order invalid due to no regulatory or statutory grounds stated to support canceling the hearing?"
3. "Did the Order signed by Commissioner Barden on 02/22/13 violate Rule 5(b)(3) SCRCP?"

4. "Did the Order signed by Commissioner Barden on 02/22/13, with respect to cancelling the hearing, violate Rule 7(b)(1) SCRCP?"

5. "Did Commissioner Barden's Order dated 02/22/13 violate the Appellant's Right to a Hearing?"

6. "Was the Appellant subjected to a conspiracy involving Commissioner Barden, Virginia L. Crocker, Judicial Director, and Erin L. Hantske, Esquire, the Representative for the Respondent?"

7. "Is Commissioner Barden's conduct subject to be reported to the South Carolina Ethics Commission IAW Rule 501(3)(D)(1) SCACR with respect to the Order dated 02/22/13?"

In an Appellant Review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1995), review the Award, weigh the evidence as presented, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

After careful review in the instance case, the Commission, by unanimous vote, has determined that the Single Commissioner's Order was correct in its entirety. Accordingly, the Appellate Panel has issued a **FULL AFFIRMATION** of the Single Commissioner's Order.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, we, the Appellate Panel, issue the following Order:

1. Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006. A Form 19 was submitted by Defendants as well.

2. In January 2013, Claimant filed a Form 50 relating to the claim (WCC No. 0506205) which he previously settled.

3. As this case was settled on a Full and Final basis on or about January 6, 2006, Claimant's hearing request is hereby denied, and the hearing set for March 28, 2013 in Summerville, South Carolina was appropriately cancelled. Further, any and all motions filed pertaining to WCC No. 0506205 are hereby dismissed as well.

CONCLUSIONS OF LAW

Under the South Carolina Workers' Compensation Act and other applicable law, it is the determination and conclusion of the Appellate Panel that:

1. Pursuant to S.C. Reg. 67-801, Claimant settled his claim (WCC No. 0506205) through a Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission on January 5, 2006.
2. Pursuant to S.C. Code Reg. 67-801(E), the Employer and the Insurance Carrier are relieved from any further responsibility for payment of compensation or medical expenses, and by signing the Full and Final Settlement Agreement which was approved by the South Carolina Workers' Compensation Commission, the Claimant does not have the right to ask for additional payments in the future. As such, the hearing request and motions of the Claimant were appropriately denied.

ORDER

IT IS THEREFORE ORDERED that the Order of the Single Commissioner is hereby **FULLY AFFIRMED** and the above Findings of Fact and Conclusions of Law are the decision of the Workers' Compensation Commission.

AND IT IS SO ORDERED.

Commissioner Andrea C. Roche

Commissioner Melody James

Commissioner Avery Wilkerson, Chair

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this d... served this order in the above entitled action upon... parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 17 day of July, 2013

By Valerie St. Peter

Administrative Assistant to the Commissioner

Alexander Guice (Reg & Cert)

Erin L. Hartske