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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
Appellate Panel

Appellate Case Number 2019-001944

Mary Hickman, Employee, Appellant,

v.

Ruiz Foods, Employer, and
Safety National Casualty Corporation
C/O York Risk Services Group, Carrier, Respondents.

AMENDED FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. **Whether or not the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment;**
2. **Whether or not the Appellant reached maximum medical improvement on September 28, 2017;**
3. **Whether or not the Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof; and**
4. **Whether or not the Appellant is entitled to any additional medical treatment.**

STATEMENT OF THE CASE

The Appellant suffered on-the-job injuries during the evening hours of August 22, 2016, when she slipped and fell in an accumulation of water and oil on the floor of her worksite. The incident was admitted by the Respondents. The Appellant states that she fell onto her right side, striking some metal trays with her right arm and head as she fell to the floor. She complained of pain and bruising to the right upper arm, right lateral knee, midline thoracolumbar region and right scalp. She was treated at the KershawHealth Medical Center on August 23, 2016, she was seen on August 23, 2016, by Keith Farrell, APRN, at McLeod Occupational Health for injuries diagnosed as follows:

1. Contusion of right upper arm
2. Abrasion of right upper arm
3. Contusion of scalp
4. Contusion of right knee
5. Strain of muscle and tendon of back wall of thorax

Her activity restrictions "General: Seated duty only, Rotate stand/walk/sit as needed for comfort PRN."

(R. p. 148; *App. APA 1*, p. 1; R. pp. 175-176; *App. APA 2*, pp. 28-29).

On March 23, 2017, the Appellant was seen by Dr. Scott B. Boyd at Lexington Brain and Spine Institute for a “workman’s comp evaluation regarding a fall that occurred at work (Ruiz Foods) 08/22/2016. Since that time she has had a considerable amount of pain in the right side of her low back that extends into the buttock with tingling and numbness down the side of the right leg to the foot. The pain in her back is constant. Her leg symptoms are intermittent. Activity tends to aggravate her symptoms overall. She denies any left leg symptoms. She tried to work but was unable to do so. She was unable to tolerate light duty as well. They sent her to physical therapy but that seemed to aggravate her symptoms. An MRI scan was then ordered which showed some abnormalities prompting visit today. She has not been to pain management.” Dr. Boyd’s Assessment follows. “Low back and right leg pain in her lower radicular pattern. She states this has occurred since her described work injury. She exhibits quite a bit of pain and Waddell signs. Her MRI scan does show a facet effusion on the right at L5-S1. I don’t believe any of this surgical and she was not able to tolerate physical therapy. Therefore I have recommended referral to pain management to consider further treatment is likely to include facet blocks or epidural sterile injections. Once again I do not believe that there is a surgical alternatives here so I will release her to pain management and keep her out of work until they’re evaluation.” Dr. Boyd wrote the Appellant out of work from March 23, 2017, until she could be evaluated by pain management. (R. pp. 235-236, 238; *App. APA 5*, pp. 118-121)

Appellant was referred to Dr. Steven B. Storick of Midlands Orthopaedics and Neurosurgery on May 2, 2017, for evaluation of her right knee, right arm/elbow, back and head.

His Discussion Notes Follow:

Ms. Hickmon presents with multiple complaints from her work-related injury that seemed to be improving except for her persistent right low back pain. She only

occasionally has pain down the right leg and numbness in the foot. The patient had no neurological deficits and did not appear myelopathic. Her physical exam due to mostly localized tenderness. The lumbar MRI findings were most degenerative of uncertain age. Patient has significant elevated Oswestry and verbal pain scores. Her old medical records were also reviewed indicating issues with chronic back pain and headaches. Conservative treatments would be the most appropriate. The patient reports minimal physical therapy for her back and the previous treatments most focused on over-the-counter medication if needed. I would expect she should be at maximum medical improvement when she completes physical therapy. Ms. Hickmon described working at a food processing plant where she is a “stacker” moving tortillas from one line to another for 9 hours a day. Once she is at MMI, I believe she should be capable of returning to that type of work. She will follow-up when she completes physical therapy. The patient may return to work in sedentary duty for now. Treatment plan was reviewed with Ms. Hickmon. All of my opinions are based upon a reasonable degree of medical certainty.

On June 20, 2017, Dr. Storick recorded the following Discussion Notes:

Overall the patient has improved with conservative treatments. She will need to continue with her daily home exercises for her back. The patient is capable of returning back to work without restrictions. She will not need long-term medications and should utilize OTC as needed. The patient may need to see an orthopedist regarding the popping and pain in the right knee. Using the AMA Guides to the evaluation of Permanent Impairment, Fifth Edition, the patient has a 2% whole body impairment lumbar spine based on the low back pain and lumbar spondylosis. She is to follow up as needed. Treatment plan was reviewed with the patient. All my opinions are based upon a reasonable degree of medical certainty.

(R. pp. 239, 242, 249-250; *App. APA 6*, pp. 122, 125, 132-133)

The Appellant was seen by Dr. W. S. (Bill) Edwards, Jr., Spine Surgeon, of Pee Dee Orthopaedic Associates, P.A., on September 28, 2017, on referral for a Lumbar Independent Medical Evaluation; the chief complaint being low back pain and right leg pain. In pertinent part, Dr. Bill Edwards’ History of Present Illness is as follows:

The 50 year old black female sustained a work related injury in August of 2016 on her job as a food process worker at Ruiz Foods. She noted the immediate onset of pain in her back without any dermatomal pattern of pain in legs but states that she injured her right knee at the same time. Symptoms have improved from that standpoint though her back continues to bother her significantly. She was seen at Occupational Medicine Clinic at McLeod initially and physical therapy

was started and subsequently was referred to Dr. Scott Boyd in Columbia who did not feel she was a surgical candidate and referred her to Pain Management under the direction of Dr. Storick. Conservative treatment has consisted of physical therapy and medication and initially she was out of work for awhile but has been on a light duty environment since that time. She was felt to be at maximum medical improvement by Dr. Storick on June 20, 2017 and was felt by him to have no specific need for restrictions for her back. He opined that she had 2% whole person impairment of her body related to her low back injury. She denies any previous problems related to her spine. Her continued pain has been localized in the low back area radiating to the right leg though she admits that her knee has improved. She describes some paresthesias in the right foot and ankle since this injury that have not improved. She drives approximately one hour each way to work which she feels aggravates her symptoms at times....

DISCUSSION:

Patient does not appear to be at maximum medical improvement. A new MRI should probably be obtained to determine if any localized treatment at L4-5 on the right side could be offered such as an epidural steroid injection. I made no reappointment to see her but I will be happy to assume her care if the involved parties desire and I will be happy to help facilitate obtaining a new MRI scan and therapeutic injection before final statements are made.

(R. pp. 260-261; *App. APA 8, pp. 143-144*)

On February 15, 2018, the Appellant was seen by Dr. Willie S. Edwards of McLeod Spine Center. Dr. Edwards recorded the following under his Spine Notes: “Patient presents with back pain radiating down bilateral lower extremities she states she has been experiencing these symptoms since August 2016 when she had a fall at work. She describes her symptoms as a numbness sensation radiating down both of her lower extremities to her toes with the right side being much worse than her left. She states her symptoms are aggravated with extended walking, standing and better with heat. She did previously undergo physical therapy which offered her no relief. She does continue her work as a food process worker at Ruiz foods. She rates the severity of her condition as an 8 out of 10.” Dr. Black provided the Appellant with a brace to assist with her discomfort and recommended epidural injections to assist with her discomfort in the lower extremities.

Dr. Edward's notes from Appellant's follow-up visit with him on March 15, 2018, states: "Patient presents in follow-up with continued complaints of back pain radiating down both of her extremities. Upon her last visit she was provided with a brace which she does wear she states provides her some relief when walking for any extended period of time. We did also refer her for an injection which unfortunately has not been completed at this time. She states her symptoms are constant and worsening in nature."

Pursuant to referral by Dr. Edwards, the Appellant was administered an epidural steroid injection on April 18, 2018, by Dr. Anthony W. Alexander of McLeod Physician Associates. Dr. Alexander's notes reflect the following: "The patient presents today to undergo her first transforaminal epidural steroid injection. The patient rates her low back pain as a 10/10 and right leg to the toe pain 10/10. ..." (R. pp. 251, 253, 256, 258; *App. APA 7, pp. 134, 136, 139, 141*)

On July 10, 2018, the Appellant was seen by Dr. Leonard Forrest of the Southeastern Spine Institute on referral for an Independent Medical Evaluation. The pertinent part of his notes follow:

Today I had an opportunity evaluate Ms. Mary Hickman. ... She presents at this time with pain that is in her low back and right buttock.

Ms. Hickman relates the onset of her symptoms to a work injury that occurred 08/22/16. She states she was working for Ruiz Foods and walking around a corner when she slipped and fell hard. She relates there was water and oil on the ground. She recalls falling onto her low back and buttock area onto a brick and concrete surface. Ms. Hickman relates that, in addition to falling onto her back, her arm somehow got caught. She relates having an injury to her right shoulder and she also reports that her head hit the ground. She also had pain in the right knee following this incident.

Ms. Hickman relates initially being treated in the safety office at work with ice, and she recalls being sent home from work. Ms. Hickman reports that the following day her symptoms were more prominent. She was directed to go to McLeod occupational health. She subsequently had treatment for the shoulder

and knee as well as her back. Her treatment included primarily physical therapy. She relates having one recent injection procedure done. Prior to that injection, she was having leg pains in addition to the pains in her back and buttock. She reports that the injection procedure resolved the leg pains. However, she remains with prominent pain in her low back and right buttock. Ms. Hickman relates she has been offered surgery by a doctor and she would like to understand her other options.

Currently, Ms. Hickman reports pain in the low back and buttocks. The pain includes aching, burning, and pins and needles. Her level of pain currently varies from 6 to 10 on a scale of 0 to 10. Walking, standing, and lifting make her symptoms feel worse. Sitting with a pillow behind her back, and also lying down with a pillow under her legs are helpful. Medication is also helpful.

Prior to the injury 08/22/16, Ms. Hickman recalls having a couple of episodes of low back pain. By her recollection, the symptoms she had in the past before this accident were primarily in the middle part of the low back and not the right side or right buttock. She recalls having an injection procedure done in approximately 2013. She does not recall any other treatment that was needed. She relates that, prior to the incident 08/22/16, she was asymptomatic and working 8 to 10 hours a day.

...

Ms. Hickman relates that, following her injury in August 2016, she was off work for approximately one month. She then went back to light duty work. She reports that, over the interval following that, she has worked light duty, but needed to be off work at times. She relates that, since this past March, she has been off work entirely.

...

... She has tenderness over the low back and right buttock including over the right S1 joint. Stress of the right S1 joint reproduces some of her symptoms. No tenderness over the midback, upper back, or neck. ...

Ms. Hickman has had 2 lumbar MRI scans done. The first was done in January 2017 and the second one was done in October 2017. I reviewed both studies and also have the official reports from the radiologist for both. The January 2017 study shows facet arthropathy with effusion at L5-S1 on the right. There is facet arthropathy present L-5, right greater than left, also. At that time there was marrow edema in the L4 and L5 pedicles on the right. The study from October 2017 continues to show significant facet arthropathy. The radiologist reports a disc bulge at L3-4 and a listhesis at L4-5 on this October study. I don't see anything significant in this regard or significantly different comparing the two studies.

Impression:

Ms. Hickman has pain in her low back, particularly on the right side, and also her right buttock. She also had pain down the right leg, but she had good improvement with these leg symptoms following a lumbar transforaminal injection that was recently done. To a reasonable degree of medical certainty, Ms. Hickman's low back and buttock pains were caused by the 08/22/16 incident.

With regard to the scan findings, the likelihood is that the facet arthropathy predated the 08/22/16 work incident, but the incident aggravated this condition causing the facet effusion as well as the edema that was seen on the initial MRI in January 2017. Her most recent MRI done in October shows less of the acute findings, but the significant facet arthropathy in the low lumbar spine, particularly on the right, persists. To a reasonable degree of medical certainty, the incident caused an injury to the low lumbar spine including an aggravation of the underlying spondylosis changes.

I also suspect that there may have been an injury to the S1 joint as a result of the 8/22/16 incident.

In my opinion, Ms. Hickman is not at maximal medical improvement.

Recommendation:

Ms. Hickman states she has been discussing surgery with Dr. Edwards. Dr. Edwards' notes, that are available to me, don't discuss surgery, but my opinion is that surgery may prove to be needed, including potentially a two level fusion. However, I don't believe that we know this will be necessary, or will be the best treatment, yet. Ms. Hickman has only had a single injection procedure done to date, and, according to my review, this was a transforaminal injection. This type of injection is best for treating the associated leg symptoms as opposed to treatment for the back and buttock pain. Indeed, Ms. Hickman relates she did have good improvement of her leg symptoms from this injection.

At this time, my specific recommendation for Ms. Hickman is to initiate treatment for the back with an intralaminar epidural injection. If she does not respond adequately to one or two such injections, I would recommend proceeding with treatment of the lumbar facet joints, possibly bilaterally, but particularly the right L45(sic) and L5S1 facets. Also, to my exam, there is a likelihood that the S1 joint was injured, and is a contributing factor to Ms. Hickman's symptoms at the present time, as well. As such, an S1 injection should be a consideration for treating that component of her symptoms. Of note, spine surgery won't address the S1 joint at all.

Ms. Hickman has been off work recently. She reports her activities have been very limited by her pain. She notes she cannot even go to church now. I

recommend Ms. Hickman continue to be off work. With treatment, ideally she will improve functionally as well as symptomatically.

...
(R. pp. 262-264; *App. APA 9, pp. 145-147*)

Dr. Forrest also completed Form 14B, Physician's Statement, dated August 5, 2018, in which he diagnosed Appellant's injury as significant aggravation of facet joints based upon facet effusion and edema and disc bulging; injury to the low back at right SI joint, right buttock, leg and back; and determined that she sustained a permanent physical impairment of 14% medical impairment to the low back and SI joint; and that as a result of the injury, the Appellant was disabled from meaningful gainful employment. He recommended additional treatment in the form of injections and possible surgery that would tend to lessen the period of disability or maintain the current level of function.

(R. p. 265; *App. APA, Exhibit A*)

Appellant filed Form 50, Request For Hearing, dated June 20, 2018, claiming injury to her right knee, back, right forearm, elbow and head, seeking additional medical treatment, and temporary total disability benefits. (R. p. 118)

Respondents' Form 51, Employer's Answer To Request for Hearing, was filed July 20, 2018, asserting *inter alia* that the Appellant's current condition is not related to her work accident, denied that she is entitled to additional medical treatment and denied that she is totally disabled as a result of her compensable injury. (R. p. 119)

The case was heard on September 24, 2018, in Florence, South Carolina, before Single Commissioner Avery B. Wilkerson, Jr., who filed his Decision and Order on January 4, 2019, ordering:

That Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment;

That Appellant reached maximum medical improvement on September 28, 2017;

That Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof; and

That the Appellant is not entitled to any additional medical treatment.
(R. pp. 8-16)

On January 23, 2019, Appellant filed Form 30, Request for Commission Review. (R. p. 120) The Appellate Panel Review was held in Columbia, South Carolina, on April 29, 2019, before Commissioners Melody James, Aisha Taylor and Susan Barden. The Appellate Panel's Decision and Order filed October 28, 2019, Ordered as follows:

That the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment;

That the Appellant reached maximum medical improvement on September 28, 2017;

That Appellant's current condition of her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof; and

That Appellant is not entitled to any additional medical treatment.
(R. pp. 1-6)

Appellant filed Notice of Appeal to this Court on November 22, 2019.

STANDARD OF REVIEW

The Standard of Review in this case is set forth by the Administrative Procedures Act, S.C. Code Ann. 1-23-310, et seq. (2005). "The Appellate Panel is the ultimate fact finder in Workers' Compensation cases and is not bound by the single commissioner's findings of fact." The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Hall v. United Rentals, Inc., 371 S.C. 69, 80, 636 S.E.2d 876, 882 (Ct. App. 2006). (*Internal cites omitted*) However, its findings must be supported by substantial

evidence. “This Court’s review is, therefore, limited to determining whether the Appellate Panel’s decision is unsupported by substantial evidence or controlled by an error of law.” Mungo v. Rental Uniform Service of Florence, Inc., 383 S.C. 270, 277, 678 S.E.2d 825, 829 (Ct. App. 2009); reh’g denied June 25, 2009, cert. denied April 8, 2010. “Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached.” Mungo, 383 S.C. at 279, 678 S.E.2d at 830.

STATEMENT OF FACTS

The Appellate Panel affirmed in part and reversed in part the Single Commissioner’s Decision and Order. A careful review of the differences between the Findings of Fact in the Decision and Order of the Single Commissioner dated January 4, 2019, and the Decision and Order of the Appellate Panel filed six (6) months later on October 28, 2019 are as follows:

Findings 1 – 4 in both Decisions and Orders are the same.

Finding 5 in the Single Commissioner’s Decision

Based on the greater weight of the evidence by all doctors including her IME doctor, **there is no mention of injuries** to the Claimant’s head, right forearm or should(*sic*), right knee, or right leg.

Finding 5 in the Appellate Panel’s Decision:

Based on the greater weight of the evidence by all doctors including Claimant’s IME doctor, **any injury** to the head, right forearm or shoulder, right knee, or right leg **resolved**

Finding 6 in the Single Commissioner’s Decision

Claimant provided two different testimonies depending on who was asking her the questions. Claimant was clear in her answers when asked by her attorney, and unclear and **prone to rambling** when asked by the Defense. Until recently everything had cleared up except her back pain. (R. p. 44, ln. 4-8, p. 47, ln. 2-10, p. 51, ln.15-20, p. 73, ln. 14 – p. 74, ln. 2, p. 74, ln. 19-25, p. 75, ln. 18 p. 76, ln. 2, p. 86, ln. 18 – p. 87, ln. 3; *Hearing Tr. Pp. 26 Ln. 4-8; Pp.29 Ln. 2-10; Pp. 33 Ln. 15-20; Pp. 55 Ln. 14 – Pp. 56 Ln. 2; Pp. 56 Ln. 19-25; Pp. 57 Ln. 18 – Pp. 58 Ln. 2; Pp. 68 Ln. 18 – Pp.69 Ln. 3)*

Finding 6 in the Appellate Panel's Decision

Claimant provided two different testimonies depending on who was asking her the questions. Claimant was clear in her answers when asked by her attorney, and **unclear** when asked by the Defense. Until recently everything had cleared up except her back pain. (R. p. 44, ln. 4-8, p. 47, ln. 2-10, p. 51, ln.15-20, p. 73, ln. 14 – p. 74, ln. 2, p. 74, ln. 19-25, p. 75, ln. 18 p. 76, ln. 2, p. 86, ln. 18 – p. 87, ln. 3; *Hearing Tr. Pp. 26 Ln. 4-8; Pp. 29 Ln. 2-10; Pp. 33 Ln. 15-20; Pp. 55 Ln. 14 – Pp. 56 Ln. 2; Pp. 56 Ln. 19-25; Pp. 57 Ln. 18 – Pp. 58 Ln. 2; Pp. 68 Ln. 18 – Pp.69 Ln. 3*)

Findings 7 and 8 in both Decisions and Orders are the same.

Finding 9 in the Single Commissioner's Decision

I do not find the testimony by the Claimant consistent with the medical evidence presented at the hearing. (R. p. 73, ln. 4- p. 74, ln. 2; *Hearing Tr. Pp. 55, Ln. 4 - Pp. 56 Ln. 2*) **Based on the request of Defense**, I do not find the Claimant to be credible or truthful with her testimony.

Finding 9 in the Appellate Panel's Decision

I do not find the testimony by the Claimant consistent with the medical evidence presented at the hearing. (R. p. 73, ln. 4- p. 74, ln. 2; *Hearing Tr. Pp. 55, Ln. 4 - Pp. 56 Ln. 2*) We do not find the Claimant to be credible or truthful with her testimony.

Findings 10, 11, 12, and 13 in both Decisions and Orders are the same.

Finding 14 in the Single Commissioner's Decision

All issues currently suffered by the Claimant are not related to the workers compensation case of August 22, 2016. This is based on the greater weight of the evidence.

Finding 14 is omitted from the Appellate Panel's Decision.

Appellant respectfully suggests that the purported reversal of the Single Commissioner's Decision and Order by the Appellate Panel reflects an absence of a substantive review of the case and that the review, on appeal to the Full Commission, resulted in a mere "cleaning up" of his Findings of Fact by the Appellate Panel.

With regard to the Appellate Panel's affirmance of the Single Commissioner's acrimonious characterization of the Appellant as providing "two different testimonies depending upon who was asking her the questions", that she "was not honest in her medical history at the IME with Dr. Edwards," and the blatant statement that "[w]e do not find the Claimant to be

credible or truthful with her testimony,” Appellant urges the Court to consider the citations to excerpts from the Transcript of Record of the September 24, 2018, hearing, consider the psychological position of the Appellant in discussions with Respondent’s doctors and under cross examination by Respondent’s counsel, and make its independent assessment of what transpired in this case.

Dr. Boyd noted in his report that “[s]he exhibits quite a bit of pain and Waddell signs.” (R. pp. 235-237; *App. APA 5*, pp. 118-121) Dr. Storick reported that the [p]atient has significant elevated Oswestry and verbal pain scores.” (R. pp. 239, 242, 249-250; *App. APA 6*, pp. 122,125, 132-133) Together with the Appellate Panel’s finding of a lack of credibility and dishonesty on the part of the Appellant, its finding that she reached MMI on September 28, 2017, and Ordering that she is not entitled to any additional medical treatment despite the documentation that she continues to complain of pain and seeks medical help long thereafter, this Court may look beyond the Decision and Order to the substantial evidence in the record.

The Decision and Order is unsupported by the evidence in the record. To the extent the Appellate Panel bases its findings and conclusions upon the reported “elevated Oswestry and verbal pain scores” and the fact that “[s]he exhibits quite a bit of pain and Waddell signs” opined by its physicians, such reliance is in error. Suspected malingering or exacerbated pain in a worker’s compensation claimant is addressed in our case law. Likewise, the same applies to prior events that might have led to the existence of pre-existing conditions. “A work-related accident which aggravates or accelerates a pre-existing condition, infirmity, or disease is compensable. A condition is compensable unless it is due solely to the natural progression of a pre-existing condition. It is no defense that the accident, standing alone, would not have caused

the claimant's condition, because the employer takes the employee as it finds him or her.”
Hargrove v. Titan Textile Co. 360 S.C. 276, 295, 599 S.E.2d 604, 613 (Ct. Appeal 2004).

ARGUMENT

1. **Whether or not the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment**

The Appellate Panel determined that the Appellant suffered a compensable injury to only her back for which she received all appropriate medical treatment.

Appellant asserts that there is substantial evidence in the record that, in addition to the compensable injury to her back, she suffered compensable injuries to her right knee, right forearm, elbow and head as set forth in her Form 50, Employee's Notice of Claim and Request for Hearing filed September 29, 2016, and in her Form 50 filed June 25, 2018. (R. pp. 17, 118.) These injuries are referenced in the records, history, and notes from each of the medical providers from August 23, 2016, the date of the accident, and continuing throughout this process. She was seen on August 23, 2016, by Keith Farrell, APRN, at McLeod Occupational Health for injuries diagnosed as:

1. Contusion of right upper arm
2. Abrasion of right upper arm
3. Contusion of scalp
4. Contusion of right knee
5. Strain of muscle and tendon of back wall of thorax

(R. pp. 148, 175-176; *App. APA 1, p. 1; App. APA 2, pp. 28-29*).

On March 23, 2017, the Appellant was seen by Dr. Scott B. Boyd for a “workman's comp evaluation regarding a fall that occurred at work (Ruiz Foods) 08/22/2016. Since that time she has had a considerable amount of pain in the right side of her low back that extends into the buttock with tingling and numbness down the side of the right leg to the foot. The pain in her back is constant. Her leg symptoms are intermittent. Activity tends to aggravate her symptoms

overall. She denies any left leg symptoms. She tried to work but was unable to do so.” Dr. Boyd noted: “Low back and right leg pain in her lower radicular pattern. She states this has occurred since her described work injury. She exhibits quite a bit of pain and Waddell signs.” (R. pp. 235-238; *App. APA 5, pp. 118-121*)

Appellant was referred to Dr. Steven B. Storick on May 2, 2017, for evaluation of her right knee, right arm/elbow, back and head. His Discussion Notes reflect that:

Ms. Hickmon presents with multiple complaints from her work-related injury that seemed to be improving except for her persistent right low back pain. She only occasionally has pain down the right leg and numbness in the foot. ...

On June 20, 2017, Dr. Storick recorded in his Discussion Notes that “The patient may need to see an orthopedist regarding the popping and pain in the right knee.”

(R. pp. 239, 242, 249-250; *App. APA 6, pp. 122, 125, 132-133*)

The Appellant was seen by Dr. W. S. (Bill) Edwards, Jr., on September 28, 2017, on referral for a Lumbar Independent Medical Evaluation; the chief complaint being low back pain and right leg pain. The pertinent part of Dr. Bill Edwards’ History of Present Illness follows:

The 50 year old black female sustained a work related injury in August of 2016 on her job as a food process worker at Ruiz Foods. She noted the immediate onset of pain in her back without any dermatomal pattern of pain in legs but states that she injured her right knee at the same time. Symptoms have improved from that standpoint though her back continues to bother her significantly. Her continued pain has been localized in the low back area radiating to the right leg though she admits that her knee has improved. She describes some paresthesias in the right foot and ankle since this injury that have not improved. She drives approximately one hour each way to work which she feels aggravates her symptoms at times....

(R. pp. 260-261; *App. APA 8, pp. 143-144*)

On February 15, 2018, the Appellant was seen by Dr. Willie S. Edwards who recorded the following under his Spine Notes: “Patient presents with back pain radiating down bilateral lower extremities she states she has been experiencing these symptoms since August 2016 when

she had a fall at work. She describes her symptoms as a numbness sensation radiating down both of her lower extremities to her toes with the right side being much worse than her left. She states her symptoms are aggravated with extended walking, standing and better with heat. She rates the severity of her condition as an 8 out of 10.” Dr. Black provided the Appellant with a brace to assist with her discomfort and recommended epidural injections to assist with her discomfort in the lower extremities.

Dr. Edward’s notes from Appellant’s follow-up visit with him on March 15, 2018, states: “Patient presents in follow-up with continued complaints of back pain radiating down both of her extremities. Upon her last visit she was provided with a brace which she does wear she states provides her some relief when walking for any extended period of time. She states her symptoms are constant and worsening in nature.”

Pursuant to referral by Dr. Edwards, the Appellant was administered an epidural steroid injection on April 18, 2018, by Dr. Anthony W. Alexander whose notes reflect the following: “The patient presents today to undergo her first transforaminal epidural steroid injection. The patient rates her low back pain as a 10/10 and right leg to the toe pain 10/10. ...” (R. pp. 251, 253, 256, 258; *App. APA 7, pp. 134, 136, 139, 141*)

On July 10, 2018, the Appellant was seen by Dr. Leonard Forrest. The pertinent part of his notes follows:

Ms. Hickman relates the onset of her symptoms to a work injury that occurred 08/22/16. She states she was working for Ruiz Foods and walking around a corner when she slipped and fell hard. She relates there was water and oil on the ground. She recalls falling onto her low back and buttock area onto a brick and concrete surface. Ms. Hickman relates that, in addition to falling onto her back, her arm somehow got caught. She relates having an injury to her right shoulder and she also reports that her head hit the ground. She also had pain in the right knee following this incident.

....

She subsequently had treatment for the shoulder and knee as well as her back. Her treatment included primarily physical therapy. She relates having one recent injection procedure done. Prior to that injection, she was having leg pains in addition to the pains in addition to the pain in her back and buttock. She reports that the injection procedure resolved the leg pains.

.....

She also had pain down the right leg, but she had good improvement with these leg symptoms following a lumbar transforaminal injection that was recently done.

Recommendation:

Indeed, Ms. Hickman relates she did have good improvement of her leg symptoms from this injection.

(R. pp. 262-264; *App. APA 9, pp. 145-147*)

2. Whether or not the Appellant reached maximum medical improvement on September 28, 2017

Following the finding of the Single Commissioner, the Appellant Panel concurred with his finding in giving greater weight to Dr. Scott Boyd and Dr. Bill Edwards over Dr. Leonard Forrest's opinion. The Appellate Panel found that the Appellant reached maximum medical improvement ("MMI") as of Dr. Bill Edwards' last medical report on September 28, 2017.

(Single Commissioner's Decision And Order, dated January 4, 2019, Findings of Fact No. 10-11; (R. p. 15). Appellate Panel' Decision And Order, dated October 28, 2019, Findings of Fact No. 10-11; R. p. 4)

"MMI is a term used to indicate that a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. ... MMI is a factual determination left to the discretion of the [Appellate] [P]anel." Hall, at 371 S.C. 89, 636 S.E.2d 887. Appellant respectfully asserts that the Appellate Panel erred in deciding that Appellant reached MMI on September 28, 2017. Notwithstanding the medical notes and opinions of Dr. Forrest and the other treating physicians who determined that the Appellant could benefit from further medical care and treatment and, therefore, had not reached MMI, the Appellate Panel chose to give greater weight to Dr. Boyd and to Dr. Bill Edwards.

According to the Appellate Panel, MMI was reached as of Dr. Edwards' last medical report on September 28, 2017. The history recorded by Dr. Edwards on the 28th of September 2017 directly contradicts such a finding. His notes from this particular visit states that "her work-related injury seemed to be improving **except for her persistent right low back pain.** She only occasionally has pain down the right leg and numbness in the foot." The patient reports minimal physical therapy for her back and the previous treatments most focused on over-the-counter medication if needed. I would expect she **should** be at maximum medical improvement **when she completes physical therapy. ... Once she is at MMI,** I believe she should be capable of returning to that type of work. She will follow-up when she completes physical therapy. The patient may return to work in **sedentary duty for now.** (Emphasis added) Clearly, Dr. Edwards did not find her to be at MMI on September 28, 2017, based upon the terminology used in his history. Additionally, she was to see him after she completed physical therapy and in the interim, he restricted her to sedentary duty. The following excerpt from his records on September 28, 2017, is called to the attention of this panel.

DISCUSSION:

Patient does not appear to be at maximum medical improvement. A new MRI should probably be obtained to determine if any localized treatment at L4-5 on the right side could be offered such as an epidural steroid injection. I made no reappointment to see her but I will be happy to assume her care if the involved parties desire and I will be happy to help facilitate obtaining a new MRI scan and therapeutic injection before final statements are made. (Emphasis Added)

(R. pp. 260-261; *App. APA 8*, pp. 143-144)

"Generally, even though a claimant has reached maximum medical improvement (MMI), if additional medical care or treatment would "tend to lessen the period of disability," then the Appellate Panel may be warranted in requiring such treatment to at least maintain the claimant's degree of physical impairment." Hall, at 371 S.C. 82, 636 S.E.2d 883.

Considering the fact that the Appellate Panel gives the greater weight to Dr. Bill Edwards, and uses the date of his last visit with her as the basis for finding that the Appellant has reached MMI, it is inconceivable and a travesty of the Worker's Compensation Act, case law, and Commission Regulations how the findings of the Single Commissioner and Appellate Panel can be reconciled with the established law governing MMI in this case.

3. Whether or not the Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof

The Appellate Panel determined that the Appellant's current condition to her back is unrelated to her compensable accident sustained on August 22, 2016, as Appellant failed to meet her burden of proof.

"The findings of an administrative agency are presumed correct and will be set aside only if unsupported by substantial evidence. ... Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." (Internal Cites Omitted) Hall, 371 S.C. 80, 636 S.E.2d 882.

Appellant submits that the record is replete with substantial evidence that the current condition of her back is related to the compensable accident she sustained on August 22, 2016. First, the back was an admitted compensable injury as a result of the slip and fall accident on August 22, 2016. Second, any questions concerning the causal connection between Appellant's continuing disability resulting from the injury to her back and the subject slip and fall is addressed in the record. She has suffered pain in the right side of her lower back and buttocks continuously since the accident. Prior to the accident, she did not complain of back pain, worked

her regular hours, and did not miss work on account of back pain. (R. p. 37, ln. 15 – 38, ln. 9, p. 263; Tr. p. 19, ln. 15 – p. 20, ln. 9; App. APA 9, p. 146)

Appellant was seen on February 15, 2018, by Dr. Willie S. Edwards. Under his Spine Notes, Dr. Willie S. Edwards wrote the following: “Patient presents with back pain radiating down bilateral lower extremities she states she has been experiencing these symptoms since August 2016 when she had a fall at work. She describes her symptoms as a numbness sensation radiating down both of her lower extremities to her toes with the right being much worse than her left. . . . She rates the severity of her condition as an 8 out of 10.” Dr. Black provided the Appellant with a brace to assist with her discomfort and recommended epidural injections to assist with her discomfort in the lower extremities.”

The back problems have continued, have become more severe and, Appellant contends, are compensable as a disability for which she should be compensated and provided appropriate medical treatment.

4. Whether or not the Appellant is entitled to any additional medical treatment.

The Appellate Panel ordered that the Appellant is not entitled to any additional medical treatment.

Appellant argues that the record before this Panel proves that the injuries she sustained as a result of the admitted accident on August 22, 2016, arose out of and in the course of her employment consisted of injuries to her right knee, back, right forearm, shoulder and head. These injuries are referenced in the forms generated by the Appellant and records, history, and notes from each of the medical providers from the date of the accident and continuing throughout this process.

Dr. Edward's notes from Appellant's follow-up visit with him on March 15, 2018, states: "Patient presents in follow-up with continued complaints of back pain radiating down both of her extremities. Upon her last visit she was provided with a brace which she does wear she states provides her some relief when walking for any extended period of time. We did also refer her for an injection which unfortunately has not been completed at this time. She states her symptoms are constant and worsening in nature."

The Appellant was administered an epidural steroid injection as late as April 18, 2018, by Dr. Anthony W. Alexander of McLeod Physician Associates. Dr. Alexander's notes reflect the following: "The patient presents today to undergo her first transforaminal epidural steroid injection. The patient rates her low back pain as a 10/10 and right leg to the toe pain 10/10. ..."
(R. pp. 251, 253, 256, 258; *App. APA 7, pp. 134, 136, 139, 141*)

On July 10, 2018, the Appellant was seen by Dr. Leonard Forrest of the Southeastern Spine Institute on referral for an Independent Medical Evaluation. The pertinent part of his notes follow:

Today I had an opportunity evaluate Ms. Mary Hickman. ... She presents at this time with pain that is in her low back and right buttock.

Ms. Hickman relates the onset of her symptoms to a work injury that occurred 08/22/16. She states she was working for Ruiz Foods and walking around a corner when she slipped and fell hard. She relates there was water and oil on the ground. She recalls falling onto her low back and buttock area onto a brick and concrete surface. Ms. Hickman relates that, in addition to falling onto her back, her arm somehow got caught. She relates having an injury to her right shoulder and she also reports that her head hit the ground. She also had pain in the right knee following this incident.

Ms. Hickman relates initially being treated in the safety office at work with ice, and she recalls being sent home from work. Ms. Hickman reports that the following day her symptoms were more prominent. She was directed to go to McLeod occupational health. She subsequently had treatment for the shoulder and knee as well as her back. Her treatment included primarily physical therapy. She relates having one recent injection procedure done. Prior to that injection,

she was having leg pains in addition to the pains in her back and buttock. **She reports that the injection procedure resolved the leg pains.** However, she remains with prominent pain in her low back and right buttock. Ms. Hickman relates she has been offered surgery by a doctor and she would like to understand her other options.

Currently, Ms. Hickman reports pain in the low back and buttocks. The pain includes aching, burning, and pins and needles. Her level of pain currently varies from 6 to 10 on a scale of 0 to 10.


The substantial evidence in the record supports Appellant's entitlement to additional medical treatment. Dr. Alexander's note reflects that **her leg condition improved but only after she was administered epidural injections.**(Emphasis supplied) (R. pp. 262-264, *App. APA 9, pp. 145-147*)

Appellant respectfully submits that the facts surrounding her injuries, the medical records, and the well-documented medical history constitutes substantial evidence in the record to show that she is entitled to additional medical treatment.

CONCLUSION

For the foregoing reasons, Appellant prays that this Court reverse the Decision and Order of the Appellate Panel, Order that the injuries she sustained to her right knee, back, right forearm, elbow and head are compensable injuries; Order that she be awarded appropriate additional continuing treatment for these injuries; and Order that she be awarded temporary total disability compensation for her injuries as provided by the Workers Compensation Act.

Sumter, South Carolina
May 11, 2020


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May 12 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From The
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
Appellate Panel

Appellate Case No. 2019-001944

Mary Hickman, Employee, Appellant,

v.

Ruiz Foods, Employer, and
Safety National Casualty Corporation
C/O York Risk Services Group, Carrier, Respondents.

AMENDED CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Amended Final Brief of Appellant complies with Rule 211(b), SCACR.

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May 11, 2020