

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Aisha Taylor; The Honorable Melody L. James and
The Honorable Cynthia C. Dooley.

SCWCC File No.: 1817617

Florence Sutton,

Claimant,

v.

SC Dept. of Mental of Health,

Employer,

and

State Accident Fund,

Carrier,

Defendants.

RECEIVED

SEP 26 2024

SC Court of Appeals

AFFIRMED

Hearing held in Richland County, South Carolina,
on July 15, 2024

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

Appearances: Paula Howker Amick, Esq., of George Sink, PA, appeared on
behalf of Claimant/Appellant.

Nicolas L. Haigler, Esq., of Robinson Gray Stepp & Laffitte,
LLC, appeared on behalf of Defendants/Respondents.

Court Reporter: Amber Scarborough, 1230 Richland St, Columbia, SC 29201,
803-252-3445, contact@creelreporting.com.

Filed: September 19, 2024

I. STATEMENT OF THE CASE

Florence Sutton (Claimant) filed a Form 50, Notice of Claim, on August 9, 2019. Claimant asserted that on November 5, 2018, she sustained injuries to her right arm, right shoulder, right hand, and neck while attending to a patient for the SC Dept. of Mental Health (Employer). Claimant did not request a Hearing at that time. Claimant subsequently filed a Form 50, Request for Hearing, on September 20, 2019.

Employer and the State Accident Fund (Carrier) (hereinafter collectively known as "Defendants") filed a Form 51, Answer to Request for Hearing, on October 9, 2019. Defendants admitted the injuries to Claimant's right upper arm, right shoulder and right hand, but denied injuries to all other body parts.

Prior to their responsive pleading, Defendants filed a Form 15, Temporary Compensation Report. This report noted Claimant's Temporary Total Disability (TTD) compensation became effective on November 6, 2018.

Defendants agreed through a Consent Order approved by the Commission on November 21, 2019, to provide Claimant with "the cervical MRI recommended by Dr. Da Silva, as well as an evaluation and causally related treatment for the neck". Defendants further agreed to pay Claimant "any back and future-owed temporary total disability based on work restrictions imposed by authorized treating physicians once her leave is exhausted, per Claimant's election pursuant to S.C. Code Ann. § 8-11-145".

Claimant filed a Form 50, Request for Hearing, on August 18, 2022. Claimant asserted the same injuries as she did on her prior Form 50s, but admitted that she had now reached maximum medical improvement (MMI). Claimant sought ongoing medical treatment, as needed, for such additional time as will tend to lessen the period of disability. Claimant also sought a permanent total disability determination.

Defendants filed a Form 51, Answer to Request for Hearing, on September 23, 2022. Defendants admitted the injuries to Claimant's right shoulder and neck, but denied injuries to all other body parts.

Pursuant to S.C. Code Regs. § 67-1802, the Commission notified the parties on September 27, 2022, that Claimant's claim for permanent total disability was subject to mandatory mediation prior to a hearing.

Defendants filed a Form 21, Request for Hearing, on April 10, 2023. Defendants sought a finding that Claimant reached MMI on August 4, 2020. Defendants further sought a permanency determination and a credit for the overpayment of TTD benefits paid to Claimant from her date of MMI. Claimant filed a response on April 27, 2023, reiterating that Claimant's claim was subject to mandatory mediation before a Hearing could go forward.

The parties mediated this claim on May 2, 2023. The claim resulted in an impasse, per the Form 70, Mediator's Report. As a result, the Notice of Hearing setting this matter on the parties' Forms 50, 51 and 21 was issued setting this matter for instant Hearing on June 14, 2023.

Defendants filed a Form 58, Pre-Hearing Brief, on May 30, 2023. Defendants still admitted the injury to Claimant's neck, but now denied the injury to Claimant's right shoulder. Defendants asserted that through the course of discovery, Claimant's preexisting right shoulder condition was revealed.

Claimant filed a Form 58, Pre-Hearing Brief, on June 4, 2023. Claimant asserted that Defendants should be estopped from now denying the injury to her right shoulder.

The Hearing went forward as scheduled and the Single Commissioner determined, *inter alia*:

[C]laimant is entitled to 23% permanent partial disability to the back, or Thirty-Four Thousand Seven Hundred Forty-Seven and 71/100 (\$34, 747.71) Dollars. [C]laimant is not entitled to further benefits with regard to her right shoulder as the right shoulder is not a compensable body part. [D]efendants are entitled to terminate TTD benefits effective August 18, 2022, the date on which Defendants requested a Hearing, and are

entitled to a credit for all TTD benefits paid after this date.¹ [C]laimant is not entitled to further medical treatment for the neck or right shoulder.

(Single Commissioner's Decision and Order filed on March 6, 2024, p. 19.)

Full Commission Review

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on appeal by Claimant. Within the statutory period, Claimant filed a Form 30, Request for Commission Review. Accordingly, the parties presented for oral arguments before the Appellate Panel on July 15, 2024.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

The [Single Commissioner] has carefully considered all the evidence presented by the parties in this claim, including the medical records and exhibits properly included by the parties through APA Submissions, and the depositions of Dr. LaMotta, Dr. Nahigian and Dr. DaSilva. From this evidence, **IT IS FOUND AS A FACT THAT:**

1. I find Claimant sustained a compensable injury to her neck. This Finding is based upon a stipulation of the parties.
2. I find Claimant has an average weekly wage of \$755.34, with a corresponding compensation rate of \$503.59.
3. I find Claimant underwent conservative treatment for her neck with Dr. Wetzel and Dr. DaSilva, received surgical consultations from Dr. Brown and Dr. LaMotta. Both Brown and LaMotta recommended and offered surgery to Claimant. Claimant declined surgery on each occasion. This Finding is based upon Defendants' APA, pp. 31-97 and the

¹ The Single Commissioner's Decision and Order filed on March 6, 2024, contained a scrivener's error. The applicable sentence(s) in the Order should state: "Defendants are entitled to terminate TTD benefits effective August 18, 2022, the date on which Claimant requested a Hearing and admitted to being at MMI. Defendants are entitled to a credit for all TTD benefits paid after this date." (Order p. 19.)

testimony of Claimant and Dr. LaMotta.

4. I find Claimant reached MMI as to her neck on August 4, 2020. This Finding is based on Dr. Brown's impairment rating of 15% to claimant's whole person due to her neck injury, which was adopted by Dr. LaMotta, and Claimant's refusal of further recommended treatment for her neck. This Finding is based upon Defendants' APA, pp. 31-97 and the testimony of Claimant and Dr. LaMotta.
5. I find Claimant sustained 23% permanent partial disability to the back, because the back is the scheduled member most closely associated with the neck and spine under § 42- 9-30. (See Claimant's Hearing Testimony, Claimant's Deposition Testimony, Defendants' APA p. #101-102.)
6. I find Claimant reached MMI as to her right shoulder on March 30, 2022. This Finding is based on Dr. Nahigian's Form 14B. However, because of the records and medical testimony relating to Claimant's previous injury to her shoulder, which Claimant denied both to Dr. Armsey and in her testimony, I find that Claimant has not met the burden of proof to show that her work accident caused or exacerbated her preexisting injury to her right shoulder. (See Claimant's Hearing Testimony, Claimant's Deposition Testimony, Claimant's APA p. #211, Dr. DaSilva's Deposition Testimony, Dr. LaMotta's Deposition Testimony, Dr. Nahigian's Deposition Testimony.)
7. I find that because Claimant is currently at Maximum Medical Improvement for each body part in question, Defendants may stop payments of Temporary Total Disability. (See Defendants' APA p. #101-102, Claimant's APA p. #211.)
8. I find Claimant has not met the burden of proof to show she is permanently and totally disabled. Claimant refused treatment to her neck which was presumably geared to

lessen her period of disability and, moreover, has permanent restrictions as it pertains to her only compensable body part, the neck. (See Claimant's Hearing Testimony, Claimant's Deposition Testimony, Dr. DaSilva's Deposition Testimony, Dr. LaMotta's Deposition Testimony, Dr. Nahigian's Deposition Testimony, and Defendants' APAs.)

9. I find Defendants are entitled to a credit for Temporary Total Disability payments made after August 18, 2022, the date on Defendants' request for a Hearing on this matter.² This finding is based upon the greater weight of the evidence in the record.
10. I find Claimant is not entitled to further medical treatment for the neck, her only compensable injury, as none was recommended by Dr. LaMotta. This Finding is based upon Defendants' APA, pp. 31-97.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of [the Single] Commissioner that:

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant-Employer was a covered employer.
2. Pursuant to § 42-1-160, Claimant sustained a compensable injury to the neck.
3. Pursuant to § 42-1-160 and § 42-9-35, Claimant did not meet her burden of proving she sustained an injury by accident or aggravation of a preexisting condition with regard to her shoulder, and therefore, is not entitled to benefits under the Act for her alleged shoulder injury.
4. Pursuant to § 42-9-30, Claimant sustained 23% permanent partial disability to the back.

² *Id.* at n.1.

5. Pursuant to § 42-9-260 and *Curriel v. Environmental Management Services*, 376 S.C. 23 (2007), Defendants are entitled to terminate temporary total disability benefits and are entitled to a credit for TTD benefits paid after August 18, 2022, the date on Defendants' request for a hearing.³
6. Pursuant to § 42-15-60, Claimant is not entitled to further medical treatment for the neck.
7. Pursuant to §§ 42-9-10 and 42-9-30, Claimant is not permanently and totally disabled.

III. ISSUES ON APPEAL

1. Did the Single Commissioner err in finding the Claimant failed to establish a compensable injury to her right shoulder?
2. Did the Single Commissioner err in failing to find Defendants equitably estopped from now denying the shoulder claim?
3. Did the Commissioner err in failing to apply the doctrine of estoppel by laches to Defendants' late denial of she shoulder claim?
4. Did the Single Commissioner err in failing to award additional benefits including disability pursuant to Claimant's right shoulder claim?
5. Did the Commissioner err in finding Claimant reached MMI as to her neck on August 4, 2020?
6. Did the Single Commissioner err in finding Claimant reached MMI as to her shoulder on March 30, 2022?
7. Did the Single Commissioner err in finding Claimant was not totally and permanently disabled as a result of her injuries?
8. Did the Single Commissioner err in finding Claimant was not entitled to any additional or

³ *Id.* at n.1.

future treatment?

9. Did the Single Commissioner err in finding Claimant sustained only 23% permanent partial disability to her back?
10. Did the Single Commissioner err in awarding Defendants a credit for TTD benefits paid after August 18, 2022.

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 the respective Appellant and Respondent 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.

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

FINDINGS OF FACT

1. We find Claimant sustained a compensable injury to her neck. This Finding is based upon a stipulation of the parties.
2. We find Claimant has an average weekly wage of \$755.34, with a corresponding compensation rate of \$503.59.
3. We find Claimant underwent conservative treatment for her neck with Dr. Wetzel and Dr. DaSilva, received surgical consultations from Dr. Brown and Dr. LaMotta. Both Brown and LaMotta recommended and offered surgery to Claimant. Claimant declined surgery on each occasion. This Finding is based upon Defendants' APA, pp. 31-97 and the

testimony of Claimant and Dr. LaMotta.

4. We find Claimant reached MMI as to her neck on August 4, 2020. This Finding is based on Dr. Brown's impairment rating of 15% to claimant's whole person due to her neck injury, which was adopted by Dr. LaMotta, and Claimant's refusal of further recommended treatment for her neck. This Finding is based upon Defendants' APA, pp. 31-97 and the testimony of Claimant and Dr. LaMotta.
5. We find Claimant sustained 23% permanent partial disability to the back, because the back is the scheduled member most closely associated with the neck and spine under § 42- 9-30. (See Claimant's Hearing Testimony, Claimant's Deposition Testimony, Defendants' APA p. #101-102.)
6. We find Claimant reached MMI as to her right shoulder on March 30, 2022. This Finding is based on Dr. Nahigian's Form 14B. However, because of the records and medical testimony relating to Claimant's previous injury to her shoulder, which Claimant denied both to Dr. Armsey and in her testimony, We find that Claimant has not met the burden of proof to show that her work accident caused or exacerbated her preexisting injury to her right shoulder. (See Claimant's Hearing Testimony, Claimant's Deposition Testimony, Claimant's APA p. #211, Dr. DaSilva's Deposition Testimony, Dr. LaMotta's Deposition Testimony, Dr. Nahigian's Deposition Testimony.)
7. We find that because Claimant is currently at Maximum Medical Improvement for each body party in question, Defendants may stop payments of Temporary Total Disability. (See Defendants' APA p. #101-102, Claimant's APA p. #211.)
8. We find Claimant has not met the burden of proof to show she is permanently and totally disabled. Claimant refused treatment to her neck which was presumably

geared to lessen her period of disability and, moreover, has permanent restrictions as it pertains to her only compensable body part, the neck. (See Claimant's Hearing Testimony, Claimant's Deposition Testimony, Dr. DaSilva's Deposition Testimony, Dr. LaMotta's Deposition Testimony, Dr. Nahigian's Deposition Testimony, and Defendants' APAs.)

9. We find Defendants are entitled to a credit for Temporary Total Disability payments made after August 18, 2022, the date on which Claimant requested a Hearing and admitted to being at MMI.⁴ This finding is based upon the greater weight of the evidence in the record.
10. We find Claimant is not entitled to further medical treatment for the neck, her only compensable injury, as none was recommended by Dr. LaMotta. This Finding is based upon Defendants' APA, pp. 31-97.

CONCLUSIONS OF LAW

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant-Employer was a covered employer.
2. Pursuant to § 42-1-160, Claimant sustained a compensable injury to the neck.
3. Pursuant to § 42-1-160 and § 42-9-35, Claimant did not meet her burden of proving she sustained an injury by accident or aggravation of a preexisting condition with regard to her shoulder, and therefore, is not entitled to benefits under the Act for her alleged shoulder injury.
4. Pursuant to § 42-9-30, Claimant sustained 23% permanent partial disability to the back.
5. Pursuant to § 42-9-260 and *Curriel v. Environmental Management Services*, 376 S.C. 23

⁴ Id. at n. 1.

(2007), Defendants are entitled to terminate temporary total disability benefits and are entitled to a credit for TTD benefits paid after August 18, 2022, the date Claimant requested a Hearing and admitted to being at MMI.⁵

6. Pursuant to § 42-15-60, Claimant is not entitled to further medical treatment for the neck.

7. Pursuant to §§ 42-9-10 and 42-9-30, Claimant is not permanently and totally disabled.

ORDER

THEREFORE IT IS HEREBY ORDERED that the Decision of the Single Commissioner filed in the above-captioned matter on March 6, 2024, is hereby **AFFIRMED**.

ACCORDINGLY:

IT IS FURTHER ORDERED Claimant is entitled to 23% permanent partial disability to the back, or Thirty-Four Thousand Seven Hundred Forty Seven and 71/100 (\$34, 747.71) Dollars.

IT IS FURTHER ORDERED that Claimant is not entitled to further benefits with regard to her right shoulder as the right shoulder is not a compensable body part.

IT IS FURTHER ORDERED that Defendants are entitled to terminate TTD benefits effective August 18, 2022, the date on which Claimant requested a Hearing and admitted to being at MMI. Defendants are entitled to a credit for TTD benefits paid after this date.⁶

IT IS FURTHER ORDERED that Claimant is not entitled to further medical treatment for the neck or right shoulder.

AND SO IT IS ORDERED.

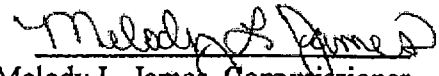
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⁵ *Id.* at n. 1.

⁶ *Id.*



Aisha Taylor, Commissioner



Melody L. James, Commissioner



Cynthia C. Dooley, Commissioner