

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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SC Court of Appeals

APPEAL FROM THE
SC WORKERS' COMPENSATION COMMISSION

(Order filed October 3, 2024
Appellate Case No. 2024-000038)

Debra Wilson, Claimant,..... Petitioner,

v.

NHC Homecare Midlands, Employer, and Premier Group
Insurance Co., Carrier,..... Respondents.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on October 3, 2024.

QUESTIONS PRESENTED

- I. Did the Court of Appeals err and violate the requirements and provisions of Art. V, §9 of the SC Constitution by dismissing the appeal as being interlocutory and not applying the binding precedents of the Supreme Court to the essential issue before the Commission for decision?

- II. Did the Court of Appeals err as a matter of law by dismissing the appeal as being interlocutory where the decision of the Full Commission Panel constituted a final decision on the right of the Appellant to an award for loss of use of the back under SC Code §42-9-30(21)?

- III. Did the Court of Appeals err by not denying the Motion to Dismiss because of the delay that will result in the final determination of benefits to the injured worker?

STATEMENT OF THE CASE

The Petitioner, Ms. Debra Wilson, originally requested a hearing to have a determination made as to her entitlement to benefits for total and permanent disability for having lost 50% or more of the functional use of her back to do work and/or her entitlement to benefits under SC Code §42-9-10 for a total loss of earning capacity due to her injuries. The initial hearing on that claim was continued and shortly thereafter within a week or so Ms. Wilson passes away. The hearing was then held on the claim pursuant to §42-9-280 on her husband, her statutory beneficiary's entitlement to scheduled benefits under SC Code §42-9-30(21) for loss of use of the "back" with her position being that she had sustained a 50% or greater loss of use of the "back" and was entitled to an award for total and permanent disability under that Code Section as a scheduled member award.

Although having paid for an evaluation and for treatment in reference to problems in her upper "back" (neck/cervical spine), in addition to the substantial treatment provided for both of her wrists including carpal tunnel surgeries on both wrists, and for her lower "back" (lumbar spine) which included injections, physical therapy, and medications for her problems in the low "back", the Respondents at hearing took the position that they admitted the injury to the low "back" but denied responsibility for injuries as a result of the upper "back".

After hearing, the Hearing Commissioner issued his decision on December 24, 2021 finding that the Petitioner had sustained a greater than 50% disability to her back and awarding her statutory beneficiary an Award for permanent and total disability under SC Code §42-9-30(21). (Ex. "A"). The Respondents appealed that Award to the Full Commission and the Full Commission Panel by Order dated June 9, 2023, over a year and a half (1 1/2) after the Hearing Commissioner's original decision, vacated the decision and remanded the case back to the Hearing Commissioner. (Ex. "B").

In that decision, after reciting the Hearing Commissioner's Findings of Fact and Conclusions of Law and the issues raised on appeal, the Panel of the Full Commission on p. 9 under their "**DECISION**" part of the decision, presumably a review, found:

"From our review of the Hearing Commissioner's decision, this Panel cannot determine whether or not the Single Commissioner used facts from the neck in its determination of disability under SC Code Ann. §42-9-30(21) (1976)." (Emp. add.)

The Commission Panel vacated the decision in part and remanded back to the Hearing Commissioner and quoting from the Order:

"IT IS ORDERED that the Panel vacates the determination of the disability to the Claimant's back and remands this matter to the Hearing Commissioner for an analysis and determination of disability to the back as a result of Claimant's admitted lower back injury." (Emp. add.)

Thereafter, six (6) months later, the Full Commission Panel denied the Claimant's Motion for Reconsideration. (Ex. "C").

As set forth in the Record of the SC Court of Appeals, on January 8, 2024 the Petitioner timely filed a Notice of Intent to Appeal and filed the Initial Brief of Appellant on March 14, 2024, and after two (2) motions for extension, the Respondents on June 4th filed both a Motion to Dismiss and their Initial Brief.

Subsequently, two (2) months later, the Court of Appeals issued its decision granting the Motion to Dismiss the appeal as being interlocutory. The Petitioner filed a Petition for Rehearing on August 29, 2024 raising those same issues in the Petition for Rehearing asking in the Conclusion:

“Wherefore, the Petitioner respectfully asks for reconsideration and rehearing on the basis that Judge Vinson overlooked the finality of the decision on the issue of an award for the **back** and the finality of the decision in general under our case law and that this Commission Panel’s Remand Order is unlike the vast majority of the cases where there is a remand.

Judge Vinson and the Court also overlooked or failed to consider the issue that yes this matter can be remanded and then can be addressed after the remand, but by doing so even though it is a final decision on the issue of the award to the back, it would result in a tremendous amount of delay in a final decision being reached on the Petitioner’s entitlement to benefits.” (Emp. add.)

The Court denied the Petition on October 3, 2024.

From the decisions of the Court of Appeals dismissing the appeal as being interlocutory and refusing to grant reconsideration, this Petition for a Writ of Certiorari on these

issues follows.

STATEMENT OF FACTS

An accurate statement of necessary facts is contained in Appellant's Court of Appeals Initial Brief.

ARGUMENTS

I. THE COURT OF APPEALS ERRED AND VIOLATED THE REQUIREMENTS AND PROVISIONS OF ART. V, §9 OF THE SC CONSTITUTION BY DISMISSING THE APPEAL AS BEING INTERLOCUTORY AND NOT APPLYING THE BINDING PRECEDENTS OF THE SUPREME COURT TO THE ESSENTIAL ISSUE BEFORE THE COMMISSION FOR DECISION.

Art. V, §9 of the SC Constitution establishes that the decisions of the Supreme Court are binding on the Court of Appeals as precedence. In Hilton v. Flakeboard America Ltd., 418 S.C. 245, 791 S.E.2d 719 (2016)', after citing the Administrative Procedures Act, SC Code §1-23-380(A) which provides that a preliminary, procedural or intermediary action or ruling is immediately reviewable if the review of the final Agency decision would not provide an adequate remedy, this Court held that whether an intermediate action or ruling is immediately reviewable is to be decided on a case-by-case basis, i.e., whether a review of the final decision would provide an "adequate remedy".

In Davis v. SC Dept. of Corrections, ____ S.C. ____, 2024 WL 3588952, the Court reiterated that holding and the numerous previous decisions made by the Court that an intermediate Agency action or ruling, such as where the Commission remands to a

Commissioner, is appealable only if review of the final Agency decision would not provide an "adequate remedy". In Davis, the Court held the Appellate Panel's interlocutory Order reversing the decision of the Single Commissioner was immediately appealable because a later appeal would not provide an adequate remedy.

The Court went on to note that the Court of Appeals not only had the appellate jurisdiction to evaluate whether there was a final decision by the Appellate Panel but further that even if the Agency decision were deemed interlocutory, the Court of Appeals should consider whether the intermediate review is appropriate because a later appeal following a final decision would not provide an adequate remedy. Justice Few, in a concurring opinion, also noted and again cited the Court's previous decision in Russell v. Walmart Stores, Inc., 426 S.C. 281, 826 S.E.2d 863 (2019) that an interlocutory Order of the Workers' Compensation Commission is immediately appealable because of the Commission's unreasonable delay in rendering a final decision.

Here, the Petitioner had requested an award for and the Hearing Commissioner made a scheduled member award for loss of use of the "back" under SC Code §42-9-30(21). The Hearing Commissioner awarded the Petitioner total and permanent disability for having lost 50% or greater the functional loss of

use of her "back" to do work requiring the use of her "back". On appeal, the Full Commission bifurcated the back and held:

"IT IS ORDERED that the Panel vacates the determination of the disability to the Claimant's back and remands this matter to the Hearing Commissioner for an analysis and determination of disability to the back as a result of Claimant's admitted lower back injury." (Emp. add.)

In pertinent part, the scheduled member statute, SC Code §42-9-30 provides "(21) for the loss of use of the back ...".

In the Court of Appeals' decision dismissing the appeal as being interlocutory there is simply no analysis under this Court's rulings. There is no determination made as to whether the Full Commission's decision constituted a final decision on the essential issue before the Commission for decision, which was the Petitioner's entitlement to an award for loss of use of her "back". The essential issue under SC Code §42-9-30(21) is not whether she had lost the use of part of her back but whether the evidence established she had lost 50% or greater of the use of the "back", or what percentage of loss of use of the "back" she had sustained as a result of the accident; not of her upper back (cervical), middle back (thoracic), or lower back (lumbar).

Further, there is no analysis under Davis or Hilton, supra, not only on whether or not waiting until after remand and a final decision on the erroneous decision by the Full Commission Panel constituted an adequate remedy, but also the Court of

Appeals did not consider whether or not the intermediate review was necessary because the decision of the Full Commission Panel was in violation of law. In other words, whether the Commission remand was contrary to law.

Further, the appeal involves the unambiguous language of SC Code §42-9-30(21) and the Full Commission Panel's remand is contrary to those unambiguous terms. This Court has repeatedly held that where the Appellate Court is called upon to construe the meaning of an unambiguous statute involving the construction of the statute, it is reviewed as a matter of law. Eagle Container Corp., LLC v. County of Newberry, 379 S.C. 564, 666 S.E.2d 892 (2008); Connelly v. Main St. America Group, 439 S.C. 81, 886 S.E.2d 196 (2023). Thus the Court of Appeals erred by not applying precedents of this Court to the legal issues before it and by granting the Motion to Dismiss the appeal as being interlocutory without consideration of these issues under the precedents of this Court.

Therefore, this Court should grant the Writ of Certiorari because the Court of Appeals failed to apply the decisions not only those cited above but the long standing decisions of this Court since 1877 as applied by the Court of Appeals in other cases in reference to intermediate decisions that effect the merits of the case and finally decide a legal right of the injured worker, the Petitioner in this matter.

II. THE COURT OF APPEALS ERRED AS A MATTER OF LAW BY DISMISSING THE APPEAL AS BEING INTERLOCUTORY WHERE THE DECISION OF THE FULL COMMISSION PANEL CONSTITUTED A FINAL DECISION ON THE RIGHT OF THE APPELLANT TO AN AWARD FOR LOSS OF USE OF THE BACK UNDER SC CODE §42-9-30(21).

As set forth in the Statement of the Case, the Petitioner Debra Wilson passed away shortly after the original scheduled hearing to determine what benefits she was entitled to concerning her claim. In the hearing held subsequent thereto the Petitioner requested an award for her "back" to be paid to her statutory beneficiary under SC Code §42-9-280, SC Code §42-9-30(21) and under McMahan v. SC Dept. of Educ.-Transp., 417 S.C. 481, 7980 S.E.2d 393 (SC App. 2016), reh. den., cert. den.

During the pendency of the claim the major injury was to and treatment was for the Petitioner's low back (lumbar spine) and both wrists but she did receive evaluation and treatment for her upper back/neck (cervical spine). At the hearing, Respondents took the position they had admitted injury for the low back but while admitting they had provided evaluation and some treatment for the upper back, they denied injury to the upper back. After hearing, the Hearing Commissioner issued an Award under the scheduled member award statute, SC Code §42-9-30, under subsection twenty-one (21) for loss of use of the "back" on December 24, 2021. On that "essential factual issue" for decision he made an award for total and permanent disability to the "back" due to the Petitioner having lost 50% or more of

the functional use of her "back" to do work requiring the use of the "back".

On appeal the Full Commission Panel and after setting forth the Findings of Fact and Conclusions of Law of the Hearing Commissioner and the issues raised for review, the Panel remanded the case to the Hearing Commissioner and quoting from that decision:

"IT IS ORDERED that the Panel vacates the determination of the disability to the Claimant's back and remands this matter to the Hearing Commissioner for an analysis and determination of disability to the back as a result of Claimant's admitted lower back injury." (Emp. add.)

Thus, the Full Commission vacated the Hearing Commissioner's award based on loss of use of the Petitioner's back and remanded it to the Hearing Commissioner with the instructions that he was to analyze the determination of the Award to the "back" but just that which resulted from the Petitioner's "admitted lower back injury". Therefore, the Commission specifically vacated the Award to the "back" and required the Commissioner to make an award for just the low back, which is contrary to the Award and wording of the statute.

SC Code §42-9-30 in pertinent part states: "(21) for loss of use of the back ...". (Emp. add.)

Both the Court of Appeals and this Court have over the years repeatedly held that an appeal will lie from an

interlocutory Order of the Workers' Compensation Commission where such Order affects the merits or deprives the appellant of a substantial right. Davis v. SC Dept. of Corrections, supra; Hilton v. Flakeboard America Ltd., supra; Bone v. US Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013) (Chief Justice Kittredge's concurring opinion calling for Bone to be reversed); Chastain v. Spartan Mills, 228 S.C. 61, 88 S.E.2d 836 (1955); Henderson v. Wyatt, 8 S.C. 112, (1877); Russell v. Walmart Stores, Inc., supra, (unreasonable delay and multiple remands by the Commission in the payment and provision of benefits constituted grounds to deny a Motion to Dismiss); Canteen v. McLeod Reg. Med. Ctr., 384 S.C. 617, 682 S.E.2d 504 (SC App. 2009) (where a final decision made on the brain but remanded for award on other parts, Order immediately appealable); Brown v. Greenwood Mills, 366 S.C. 379, 622 S.E.2d 546 (SC App. 2005) (occupational disease award remanded by the Circuit Court to the Commission to apportion benefits between lung disease and smoking history where remand was for allocation by the Commission, immediately appealable); Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (SC App. 1993) (Single Commissioner required claimant to elect, election made for wage loss, Full Commission affirmed denial for wage loss but remanded for a new hearing on scheduled member benefits, immediately appealable).

In addition, under Davis, Hilton and Russell the Appellate Panel Order was issued June 9, 2023, a one and a half years (1½) after the Hearing Commissioner's Award and an Order on the Motion for Reconsideration was issued on December 6, 2023; two (2) years later.

The Notice of Intent to Appeal was filed January 8, 2024 and the Initial Brief was filed March 14, 2024. After two extensions to file Respondents' Brief on June 4, 2024 the Respondents on the last day to file their Brief filed a Motion to Dismiss. A Return to Motion to Dismiss was filed on June 11, 2024. Order granting the Respondents' Motion to Dismiss was issued two (2) months later on August 14, 2024.

A review of the Order of the Court of Appeals granting the Motion to Dismiss will show that the Court did not cite any of the cases cited above in reference to whether an intermediary decision by the Commission remanding a claim for further proceedings is appealable as being a decision on the merits.

The Order does not address the "essential issue" for decision before the Commissioner as to what award the Petitioner was entitled to due to loss of use of the back under SC Code §42-9-30(21). It does not address whether the decision vacating the Hearing Commissioner's decision based on an award under that statute for loss of use of the back and remanding it to the Hearing Commissioner for him to consider only the evidence in

reference to the lower back and to make an award for the lower back constituted a final decision on the Petitioner's entitlement to an award under the statute for loss of use of the back. The statute requires an award to be made for loss of use of the back, not the lower back, the middle back or the upper back or a combination of any of those but the back as a whole to do work requiring the use of the back.

In its Order the Court cites Charlotte-Mecklenburg Hosp. Auth. v. SC Dept. of Health & Env't Control, 387 S.C. 265, 692 S.E.2d 894 (2010). However, the Order does not cite Torrence v. SC Dept. of Corrections, 433 S.C. 224, 857 S.E.2d 549 (2021) which clearly sets forth the difference between this Court's decision in Charlotte-Mecklenburg and its decision in Torrence finding one not to be a final decision on the merits and in the other finding that it constituted a final decision on the merits.

The Order also, again without citing any of the cases in reference to what intermediary decisions are on the merits versus those that are not and are not immediately appealable, cites Bone v. US Food Service, supra, but does not reference the later cases decided by this Court in Davis v. SC Dept. of Corrections, decided July 31st or Hilton v. Flakeboard America Ltd., supra, in which this Court found the Remand Order to be appealable; nor the other cases cited above decided over the

years both by this Court and the Court of Appeals to the same effect. Therefore, this Court should review the Order of Commissioner Campbell, the Order of the Full Commission Panel, SC Code §42-9-30(21), and the essential issue before the Commission for decision, grant Certiorari and determine whether or not the Full Commission's Remand Order constituted a final Order on the Petitioner's entitlement to benefits under SC Code §42-9-30(21) for loss of use of her back to do work requiring the use of her back.

III. THE COURT OF APPEALS ERRED BY NOT DENYING THE MOTION TO DISMISS BECAUSE OF THE DELAY THAT WILL RESULT IN THE FINAL DETERMINATION OF BENEFITS TO THE INJURED WORKER.

This Court in multiple different Opinions, Russell, Hilton, Davis, supra, etc., etc., and even the Court of Appeals in multiple different Opinions with ever increasing frequency lately have reminded the Commission of their responsibility to render decisions in a prompt manner so as to achieve the beneficial purposes of the Act which was in part under the "Grand Bargain" to ensure swift and sure benefits to the injured worker regardless of fault, while absolving and insulating the employer from liability for work-related injuries. Brooks v. Benore Logistics Systems, Inc., 442 S.C. 564, 900 S.E.2d 436 (2024) (footnote no. 1). This is the long forgotten grand bargain that was made in 1936 in South Carolina.

This Court should grant certiorari under its decisions in Russell v. Walmart Stores, Inc., supra; Hilton v. Flakeboard America Ltd., supra; and Davis v. SC Dept. of Corrections, supra.

In Russell, the Single Commissioner had issued his Order in August of 2013 after several remands and Appellate Panel reviews, a second Commissioner again awarded benefits for a second time on March 20, 2017. Three and a half (3 1/2) years later a second Commissioner again awarded benefits.

Then, six (6) months and basically four (4) years later, a Panel again remanded the case to a Single Commissioner. This Court found that all the delay mandated a direct decision because by not immediately hearing the appeal and remanding it to the Commission for yet more proceedings effectively denied the appellant in that case, the injured worker, of an effective remedy under law.

In this case, the Hearing Commissioner issued his decision on December 24, 2021 and the Full Commission Panel did not issue their Order until June 9, 2023, a year and a half (1 1/2) later and then took six (6) months to issue a decision on the Claimant's Motion for Reconsideration (which by the way the decision on the Motion for Reconsideration contains absolutely no Findings of Fact and Conclusions of Law on the issues raised in the Motion for Reconsideration which is a violation of

multiple statutes). Now, here the Petitioner is ten (10) months further down the road and the Petitioner is facing a remand back to the Commission that entered a Remand Order after 2 1/2 years. Thus requiring a remand from the Court of Appeals to the Full Commission, and a remand from the Full Commission to the Single Commissioner, then the Commissioner to reconsider the evidence and then, etc., etc.

As this Court stated in Russell:

"the Commission's unreasonable delay in making a final decision leaves Russell (Ms. Wilson's beneficiary) without an effective remedy on appeal from a final decision under §1-23-380. Therefore, we find the Appellate Panel's Remand Order is immediately appealable."

This Court should also grant certiorari and in its review and its consideration of these issues, should consider the absolute chilling effect and delay effect that the change in the statute providing for direct appeal to the SC Court of Appeals under SC Code §42-17-60 instead of to the local Circuit Court has had on the injured workers of our State and the devastating effect it has had on the entire workers' compensation system.

The Workers' Compensation Act originally was local and meant to be local and the Circuit Court Rules allow for an expedited hearing in the Circuit Court. There is no expedited Rule for hearing in the Court of Appeals. The normal appellate process has to take place which in and of itself results in at

least a minimum of approximately six (6) months of delay before the Record can go to the Court of Appeals for decision. The Court should look at the confabulation of the law on remand or direct appeal from the Circuit Court to Commission versus Full Commission to the Single Commissioner. It should look at the entire body of law surrounding appeals from intermediate decisions of the Workers' Compensation Commission in reference to how many appeals there were to the Circuit Court prior to the 2007 Amendment and the resolution of over 90% of those at that level versus the number of appeals now to the Court of Appeals.

The Court should also look at the entire body of law surrounding the requirement/duty/obligation of the Commission to make detailed Findings of Fact and Conclusions of Law that has been in place since the inception of the Act when this Court started reviewing the Act versus the current decisions of the Commission as to the total lack of quality and definitiveness of the Findings of Fact and Conclusions of Law that are being made. Assuming the Court reviews that body of law in reference to the issues raised in this Writ it is going to find an extreme difference in the original decisions by this Court as to what it considered to be adequate Findings of Fact on each "essential issue" before the Commission for decision versus now. It is also going to find an intermixing of the law between a remand by the Circuit Court versus an internal remand by the Commission.

In fairness to the injured worker and then to achieve the beneficial purposes of the Act this Court should look at all of that in reference to delay in providing swift and sure benefits and what Decisions are immediately appealable.

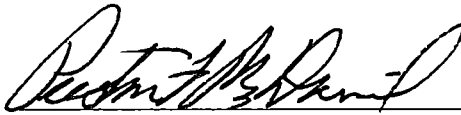
The beneficial purposes for which the Act was created to provide swift and sure benefits to the injured worker regardless of fault and the "Grand Bargain" granting absolute immunity to the employer that was made in the 1930s, this writer would submit is as dead as the workers that were killed at Chiquola Mills "Bloody Thursday", September 6, 1934. The 1936 Workers' Compensation statute being one of the consequences of and benefits made for the workers of our State out of that bloodshed. Query: Does the current morphed/warped version of the Workers' Compensation Act meet the requirements of minimum due process and will it stand the challenge of taking away a worker's constitutional right to trial by jury in exchange for swift/sure benefits.

CONCLUSION

For the foregoing reasons, this Court should grant Certiorari both as to the Court of Appeals' failure to comply with the SC Constitution Art. V, §9 by applying the precedents of this Court and review its decision granting the Motion to Dismiss the appeal as being interlocutory in that regard; and review the decision to grant the Motion to dismiss the appeal as

being interlocutory under the decisions of this Supreme Court, the decisions of the SC Court of Appeals, and the statutory law and its wording as to the essential issue before the Commission for decision; and whether or not the Full Commission Panel erred as a matter of law in rendering its decision to remand both because of delay and because it was a final decision on the Petitioner's entitlement to benefits under SC Code §42-9-30(21) for loss of use of the back.

Respectfully submitted,



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Attorneys for Petitioner

November 4, 2024

The South Carolina Court of Appeals

Debra Wilson, Claimant, Appellant,

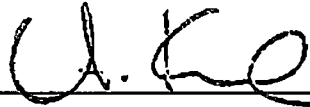
v.

NHC Homecare Midlands, Employer, and Premier Group
Insurance Co., Carrier, Respondents.


Appellate Case No. 2024-000038

ORDER

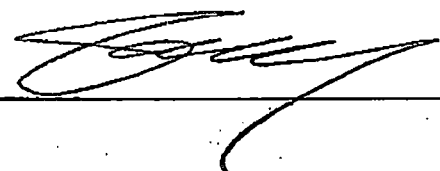
After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

FILED
Oct 03 2024

cc:

Preston F. McDaniel, Esquire
Kenneth M. Mathews, Esquire
Clarke W. McCants, III, Esquire
Clarke Wardlaw McCants, IV, Esquire

**DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1614988

Debra A. Wilson,

Claimant,

v.

NHC Homecare Midlands/ Midlands Homecare

Employer, and

Premier Group Insurance Company

Carrier, Defendants.

Hearing held in Richland County,
South Carolina on October 20, 2021

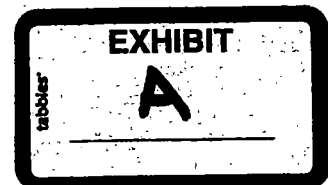
Appearances: Preston F. McDaniel, Esquire, of McDaniel Law Firm, of
Columbia for Claimant, Debra A. Wilson

Clarke McCants, IV & Clarke McCants, III, Esquires, Nance &
McCants of Aiken for Defendants, NHC Homecare and Premier Group
Insurance Company

Purpose of Hearing: To determine all issues as set forth in Forms 21, 50 & 51.

Decision and Order: By R. Michael Campbell, II, Commissioner

Filed: December 24, 2021



I. STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. Notice of the hearing was timely and properly served on all parties of interest.
2. Venue, set in Richland County, is proper.
3. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injury occurring while in employment of the Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case.
4. Claimant's average weekly wage is \$933.70 and the corresponding compensation rate is \$622.50.
5. The parties stipulated to the results of Defendants' good faith dependency investigation and that Claimant's husband, Mr. Tim Wilson, is her next of kin dependent upon her for support.
6. The Commission's file with the exception self-serving declarations and unstipulated medical reports are admitted as part of the record.

II. APA SUBMISSIONS

At the start of the Hearing, Defendants objected to Claimant's evidence of injuries to body parts other than the back as irrelevant if Claimant argues that she sustained 50% or more loss of use to the back. In response, Claimant argued that if the undersigned found that she sustained less than 50% loss of use of the back, the evidence is relevant to support an award for her additional body parts.

The following records and reports were submitted into evidence pursuant to the Administrative Procedures Act and Regulation 67-612:

Claimant's Submissions:

<u>Tab No.</u>	<u>Name of Report/Physician/ Practice</u>	<u>Date(s)</u>	<u>Page(s)</u>
1	Southeastern Spine Institute Leonard Forrest, MD	09/10/2019	1-4
2	Columbia Rehabilitation Clinic Tracy Hill, PT	09/03/2019	5-34

3	Post Trauma Resources Nick Lind, Psy.D.	06/19/2018 – 11/27/2019	35-44
4	Midlands Ortho & Neurosurgery Thomas Holbrook, MD	11/06/2017 – 01/09/2019	45-58
5	Carolinas Center for Advanced Management of Pain Y. Eugene Mironer, MD	04/29/2019	59-62
6	SC Diagnostic Imaging	10/17/2017	63-64
7	Midlands Orthopedics Coleman Fowble, MD Michael Ugino, MD David Redmond, MD Ivan LaMotta, MD Ryan Wetzell, MD Thomas Holbrook, Jr., MD	08/12/2016 – 02/26/2020	64A -146
8	Harriet Fowler, M.Ed., CRC Vocational Evaluation	11/19/2019	147-166

Defendants' Submissions:

<u>APA</u>	<u>Medical Provider</u>	<u>Dates</u>	<u>Pages</u>
1	Midlands Orthopedics & Neurosurgery	03/23/2017 – 10/14/2019	1-9
2	South Carolina Oncology Associates	7/4/2019 – 11/14/2019	10-81
3	Deposition of Leonard Forrest, M.D.	12/16/2019	82-119
4	Deposition of Michael Ugino, M.D.	2/12/2020	120-153
5	Dependency Evaluation	6/23/2020	154-206

III. STATEMENT OF THE CASE

This matter originally came before the Commission pursuant to Claimant's Form 50 filed on September 23, 2019 and Defendants' Forms 51 and 21, dated October 21, 2019 and January 31, 2020 respectively. However, due to Claimant's unrelated chronic illness and the COVID-19 pandemic, the Hearing, originally set for February 26, 2020, was postponed until the present. Initially, Claimant, a former office manager for NHC Homecare, alleged injuries to her back, buttocks (hips), legs (particularly left leg and foot), bilateral arms, and hands when she fell on her bottom rushing around a corner at work on April 27, 2016. Defendants admitted the injuries to

her back and right wrist but denied that the injuries to her neck and left wrist were causally related to the fall. Thereafter, pursuant to a September 17, 2017 Consent Order, Defendants agreed to provide an evaluation for Claimant's neck injury, the costs of a splint for her left wrist, treatment recommended by Dr. Fowble for her right wrist, and an additional medical evaluation of her lower back.

Claimant's September 23, 2019 Form 50 sought a determination that Claimant was totally and permanently disabled because she lost greater than 50% of the use of her back and suffered a total loss of earning capacity. In response, Defendants admitted that Claimant's injuries to her bilateral arms and lower back were work related, alleged that she had reached maximum medical improvement, and denied that she was permanently disabled. After the parties engaged in an unsuccessful mediation, Defendants filed their January 31, 2020 Form 21 Request to Stop Payment of Compensation. Defendants again contended that Claimant reached maximum medical improvement as of March 23, 2017, requested a determination on permanent disability benefits, and a credit for overpayment. Unfortunately, Claimant passed away from unrelated causes three days prior to the February 26, 2020 Hearing. These main issues remain ripe for adjudication with the stipulation that Mr. Tim Wilson is entitled to Claimant's permanency award as her rightful beneficiary. Accordingly, he requests a lump sum award for his wife's permanent and total disability for the 313 weeks remaining on the claim and an Order confirming that Claimant's authorized medical bills be paid through the date of her death. Defendants dispute that she is entitled to benefits for permanent and total disability.

Therefore, the issues for consideration by the undersigned at the time of the Hearing were whether claimant reached maximum medical improvement and the degree permanency, if any, Claimant sustained because of her work accident. This matter was set for a Hearing before the undersigned on October 20, 2021 in Richland County, South Carolina. Preston McDaniel, Esquire, of the McDaniel Law Firm appeared on behalf of Claimant's dependent, Mr. Tim Wilson. Clarke McCants, IV & Clarke McCants, III, Esquires, of Nance & McCants appeared on behalf of the Defendants.

IV. FINDINGS OF FACT

1. Notice of Hearing was timely and properly served on all parties of interest.

2. Venue is proper in Richland County, South Carolina.
3. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injury occurring while in the employment of the Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over the issue.
4. Claimant's average weekly wage is \$933.70 and the corresponding compensation rate is \$622.50.
5. The parties stipulated to the results of the dependency investigation and that her husband, Mr. Timothy Wilson, is Claimant's next of kin dependent upon her for support.
6. Claimant, an office manager for Defendant NHC Healthcare, sustained admitted injuries by accident arising out of and in the course of employment on April 27, 2016 when she fell on her bottom rushing around a corner at work.
7. Defendants initially provided treatment with Dr. Stacy Gallaway, an occupational therapy provider, from the day after her accident until the end of May 2016. Thereafter, Defendants provided treatment with Dr. Fowble for Claimant's lumbar spine and carpal tunnel syndrome. (Claimant's APA 7). He provided referrals to additional providers as he deemed appropriate.
8. An MRI, dated July 25, 2016, returned findings of facet arthritis at L4-5 and L5-S1. There was no significant cord compression. Dr. Fowble notes "nothing terrible." He ordered a course of physical therapy and medication. (Claimant's APA 7, p. 141-143).
9. When physical therapy failed to relieve Claimant's symptoms, Dr. Fowble ordered a lumbar epidural steroid injection, performed on October 25, 2016, followed by a facet injection, which also failed to relieve her symptoms. (Claimant's APA 7, p. 104, 125-134, 138).
10. He also ordered an EMG study to investigate the origin of Claimant's carpal tunnel symptoms and referred her to Dr. LaMotta to evaluate her L4-5 stenosis. (Claimant's APA 7, p. 125-128; Defendants' APA 1, p. 5-8).
11. Dr. LaMotta evaluated Claimant on March 23, 2017. In his opinion, she reached maximum medical improvement for her lumbar spine, did not require any additional treatment and was not a surgical candidate, did not sustain any loss of function, and could perform light

- duty work. Accordingly, he assigned a 0% impairment rating. (Claimant's APA 7, p. 111-114).
12. A repeat MRI on Claimant's lumbar spine, dated October 17, 2017, revealed degenerative changes, no acute injury to the lumbar spine, and a chronic disc herniation at L-2. (Claimant's APA 4, p. 55, 58; Claimant's APA 6, p. 63).
 13. A repeat MRI on Claimant's cervical spine, also dated October 17, 2017, revealed mild degenerative disc change, no herniation, no stenosis, and no acute bony or soft tissue injury. (Claimant's APA 4, p. 56-57; Claimant's APA 6, p. 64).
 14. Claimant's EMG study indicated moderate bilateral carpal tunnel syndrome. Her left wrist worse than her right. The test was negative for cervical radiculopathy. (Claimant's APA 7, p. 105-106, 121). Based upon the results from the EMG, Dr. Fowble recommended conservative treatment for her wrists and ordered splints. (Claimant's APA 7, p. 114-117).
 15. When conservative treatment failed, Claimant sought surgical treatment with Dr. Ugino who performed a bilateral carpal tunnel release. (Claimant's APA 6; Defendants' APA 4, p. 124).
 16. Claimant also alleged psychological injuries as a result of her work-related accident. She was treated by Dr. Lind who opined, to a reasonable degree of medical certainty, that Claimant's work accident aggravated her pre-existing anxiety and depression. According to Dr. Lind, Claimant reached MMI for her psychological injury on October 22, 2018, and sustained a 9% impairment to the brain. She required additional psychological treatment that will tend to lessen the period of her disability. (Claimant's APA 3, p. 44).
 17. Dr. Fowble opined that Claimant's bilateral carpal tunnel syndrome was most probably caused by her work-related fall and that the braces were medically necessary for pain relief. (Claimant's APA 7, p. 101).
 18. Mr. Wilson also testified that Claimant did not have any problems with he back prior to the work accident. (Hr. Tr. p. 33-34).
 19. According to Mr. Wilson, after the accident, but before her cancer diagnosis, Claimant was unable to pick up her grandchildren, unable to cook and host large family dinners unassisted and without frequent breaks, unable to carry the laundry downstairs to the washing machine, and unable to ride her motorcycle as much as she did prior to her accident because of her injuries. (Hr. Tr. p. 21-23; 26-28; 30).

20. His testimony is corroborated by Claimant's deposition testimony. During her deposition in 2018 she testified that after the accident she experienced difficulties vacuuming, was "in pain constantly with the low back," and did not think she would be able to work a full 8-hour shift bending, stooping, and lifting as her job required. (Defendants' APA 5, p. 198, 204).
21. Though Claimant sustained injuries to her bilateral hands/arms, and psyche because of the accident, her husband, Mr. Wilson, testified at the hearing that Claimant's back injury caused most of her problems functioning normally. (Hr. Tr. p. 53).
22. After Claimant's right carpal tunnel release in July 2019, she was diagnosed with Stage IV Metastatic Lung Cancer that had spread to the brain. (Defendants' APA 2). The condition was discovered after Claimant was admitted to the emergency room on August 1, 2019 for persistent stroke symptoms. (Defendant's APA 2, p. 18).
23. Claimant also treated with Dr. Holbrook for her lumbar spine injury. He did not believe Claimant would benefit from a spinal surgery. In his January 9, 2019 treatment note, he indicates that Claimant's neck pain has improved, but her low back pain remained the same. He referred her to pain management. (Claimant's APA 4, p. 49).
24. Claimant was treated by Dr. Eugene Mironer for pain management for her lumbar spine and received an injection. (Claimant's APA 5).
25. No physician opined that Claimant was candidate for spinal surgery.
26. Claimant completed a Functional Capacity Evaluation with Tracy Hill at Columbia Rehabilitation Clinic on September 3, 2019. Ms. Hill determined that Claimant could work in the limited sedentary to limited light work. She "[did] not meet the full requirements necessary for sedentary or light work." In addition, she noted her poor aerobic capacity and limited cervical and lumbar range of motion. (Claimant's APA 2, p. 5). She opined that claimant sustained 3% permanent impairment to the right hand, 5% permanent impairment to the left hand, 23% permanent regional impairment to the cervical spine, and 11% permanent regional impairment to the lumbar spine. (Claimant's APA 2, p. 33-34).
27. Claimant presented for IME with Dr. Forrest on September 9, 2019. He opined to a reasonable degree of medical certainty that Claimant's fall at work on April 27, 2016 aggravated a previously dormant lumbar spine condition. He also opined that Claimant reached maximum medical improvement and sustained a 23% regional impairment to her

- cervical spine and 11% regional impairment to her lumbar spine. He deferred to Tracy Hill's impairment rating for Claimant's carpal tunnel injuries and Dr. Lind for Claimant's psychological injuries. (Claimant's APA 1, p. 3).
28. In Dr. Forrest's opinion, Claimant is totally disabled. She has permanently lost greater than 50% use of her spine. He recommended continued pain management. Her cancer diagnosis is unrelated to her neck and back symptoms since the accident or her disability. (Claimant's APA 1, p.4; Defendants' APA 3, p. 96, ln. 14-18; p. 102-103, ln. 1-9; p. 107, ln. 10-23)).
 29. However, during his deposition, he testified that he heavily relied upon Tracy Hill's Functional Capacity Evaluation and Claimant's subjective complaints. (Defendants' APA 3, p. 96, ln. 21-25; p. 101, ln. 19-25). He also testified that Claimant did not have any limitations for completing her duties at home, but her job at NHC Homecare was demanding. (Defendants' APA 3, p. 105, ln. 11-19). Based upon the lifting restrictions in the FCE, Claimant was unable to perform all types of sedentary jobs but could perform some jobs in that category. (Claimant's APA 3, p. 114, ln. 11-18). He admitted that he was not sure what her job duties were beyond her subjective description. (Claimant's APA 3, p. 118).
 30. A vocational evaluation performed by Ms. Harriet Fowler on November 15, 2019, states that there are no jobs within Claimant's current transferrable abilities. She tested at the 4th grade level for math, 6th grade level for spelling, and read at a post-high school level. She is a high school graduate. (Claimant's APA 8, p. 147, 149; Defendants' APA 5, p. 181). Her former position as an office manager for NHC Homecare is classified as a "sedentary" job but because Claimant was working in the medical field, an office manager is considered a light physical demand level. In her opinion, to a reasonable degree of vocational certainty, Claimant was not able to maintain gainful employment. (Claimant's APA 8, p. 148, 166).
 31. Claimant testified during her deposition that her prior employment experience consisted primarily of medical office manager positions. (Defendants' APA 5, p. 182-184).
 32. Claimant received 187 weeks of temporary total disability. (Commission File).
 33. Claimant succumbed to cancer on February 23, 2021; three days prior to the original hearing.

V. CONCLUSIONS OF LAW

1. Notice of Hearing was timely and properly served on all parties in interest.
2. Venue is proper in Richland County, South Carolina.
3. South Carolina Code Ann. § 42-15-10 (2021) confers jurisdiction upon the South Carolina Workers' Compensation Commission to hear and dispose of this claim. The Claimant was hired by a South Carolina employer, was injured in South Carolina, and worked in South Carolina. As the Claimant seeks an award under the Workers' Compensation Laws of this State for injuries he sustained while employed by the Defendant, jurisdiction is proper.
4. Under S.C. Code Ann. § 42-1-130 Claimant is a covered employee.
5. Under S.C. Code Ann. § 42-1-140 Defendant is a covered employer.
6. Under S.C. Code Ann. § 42-9-280, the parties stipulated that Claimant's husband, Mr. Timothy Wilson, is entitled to receive payment of the unpaid balance of compensation as Claimant's next of kin dependent upon her for support.
7. Claimant sustained 50% or more loss of use of her back and is presumed permanently and totally disabled under S.C. Code Ann. § 42-9-30(21)(2021). The back is a scheduled injury under the Act. In cases where a claimant sustains 50% or more loss of use of the back, the injured employee is presumed permanently and totally disabled and entitled to a maximum of 500 weeks of compensation and lifetime medical benefits. S.C. Code Ann. § 42-9-30(21)(2021); S.C. Code Ann. § 42-9-10 (2021); S.C. Code Ann. § 42-15-60(C)(2021). "South Carolina courts have repeatedly considered regional impairment ratings when determining awards under 42-9-30(21)." Clemmons v. Lowe's Home Centers, Inc., 420 S.C. 282, 289 (2017)(internal citations omitted). In Clemmons, our Supreme Court awarded permanent and total disability benefits for a back injury where all impairment ratings, after conversion to regional values for the spine, were greater than 50%. Id. at 284-86. See also McMahan v. S. Carolina Dep't of Educ.-Transp., 417 S.C. 481, 491 (Ct. App. 2016) (agreeing with the treating physician's determination that the claimant sustained a 54% impairment to the whole person and was permanently and totally disabled from serious thoracic spinal injuries he sustained when a bus fell on top of him.). However, in both McMahon and Clemmons the Claimant received impairment ratings greater than 50% to the spine when converted to a regional rating.
8. Although regional impairment ratings may be a valuable consideration when determining awards under 42-9-30(21), South Carolina courts have repeatedly made clear that such a

determination is not bound by impairment ratings, but that the Commission “may find a degree of disability different from that suggested by expert testimony” Sanders v MeadWestvaco Corp., 371 S.C. 284, 292, 638 S.E.2d 66, 70. (Ct. App. 2006; *See also* Linen v. Ruscon Constr. Co., 286 S.C. 67, 68–69, 332 S.E.2d 211, 212 (1985) (finding that although expert testimony found claimant suffered from a 20–30% impairment to his back, testimony of vocational expert and claimant provided substantial evidence to affirm Appellate Panel's decision finding claimant's impairment exceeded 50%); Lyles v. Quantum Chem. Co., 315 S.C. 440, 445–46, 434 S.E.2d 292, 294–95 (Ct.App.1993) (finding, pursuant to section 42–9–30, that while expert testimony suggested claimant suffered only a 35% impairment to his back, testimony of claimant and others provided substantial evidence that claimant's impairment exceeded 50%).

9. In this case, Dr. LaMotta assigned a 0% impairment rating in 2017. However, Claimant continued treating for her back receiving pain management and injections. This rating is stale. The most current ratings for her back injuries are provided by Tracy Hill and confirmed by Dr. Forrest: 23% regional impairment to her cervical spine and 11% regional impairment to her lumbar spine for a total of 33% to the back. However, considering Claimant's education level, her physical limitations defined by the FCE, the results of the vocational evaluation,¹ Dr. Forrest's medical opinion, and relevant testimony regarding her physical limitations after the accident, Claimant has met her burden to prove that she lost greater than 50% use of her back.
10. Therefore, pursuant to S.C. Code Ann. § 42-9-280; § 42-9-30(21); and § 42-9-10(B) Claimant's dependent is entitled to receive the remaining 313 weeks of benefits in a lump sum. The calculation is as follows: 500 (max compensation) – 187 (weeks of TTD paid) = 313 weeks due. The commuted value of weeks due is: 295.7265. Therefore, 295.7265 (weeks) X \$622.50 (Compensation Rate) = \$184,089.75 (amount due).

¹ Because Claimant sustained a scheduled injury under § 42-9-30, she is not required to prove lost earnings. The vocational report in this claim is not considered as proof of lost earnings but as additional support for the effects of loss of use of her back.

ORDER

IT IS ORDERED that according to the results of a good faith dependency investigation, Mr. Tim Wilson is Claimant's next of kin dependent upon her for support.

IT IS ORDERED that Claimant sustained greater than 50% disability to her back and is permanently and totally disabled.

IT IS ORDERED that Claimant is entitled to and Defendants shall pay \$184,089.75 permanent total disability benefits.

IT IS FURTHERMORE ORDERED that Defendants will make timely payment of the aforementioned benefits to Mr. Timothy Wilson, Claimant's next of kin dependent upon her for support.

IT IS SO ORDERED!



Commissioner Mike Campbell

This 24th day of December 2021

Parties served via Email:

Preston F. McDaniel, Esquire: Preston@pfmcdlaw.com

Clarke E. McCants, IV, Esquire: clarkemccants4@gmail.com

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.

December 24, 2021

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

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

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Gene McCaskill, Melody James, and Avery B. Wilkerson, Jr.

SCWCC File No.: 1614988

Debra Wilson, Deceased,

Claimant,

v.

NHC Homecare Midlands,

Employer,

and

Premier Group Insurance Co.,

Carrier, Defendants.

VACATED IN PART AND REMANDED

Hearing held via Zoom in Richland County, South Carolina, on January 23, 2023,

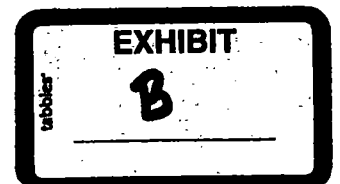
Per notice timely and properly served upon all Parties of Interest.

Appearances: Preston F. McDaniel, Esquire, of The McDaniel Law Firm,
appeared on behalf of the Claimant / Respondent

Clarke W. McCants, III and Clarke W. McCants, IV,
Nance & McCants, Attorneys at Law, appeared
on behalf of the Defendants / Appellants.

Court Reporter: Katherine Boone, Creel Court Reporting, 1230 Richland St.,
Columbia, SC 29201, 803-252-3445

Filed: June 9, 2023



I. STATEMENT OF THE CASE

The Parties were heard by Commissioner R. Michael Campbell, II, on October 20, 2021 in Columbia, South Carolina. Within the statutory period, Counsel for the Appellant filed an Application for Review in this case setting forth its reasons, a copy of which was furnished to all interested Parties prior to oral argument presented before an Appellate Panel on January 23, 2023, and comprised of Commissioner Avery B. Wilkerson, Jr., Commissioner Melody L. James and Commissioner Gene McCaskill, Chairman. All proffered testimony had been taken. Such, together with all documentary evidence, was delivered by oral argument to the individual members of the Appellate Panel convened on the aforesaid date.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

By way of the Decision and Order, filed on December 24, 2021, Commissioner Campbell found as a matter of fact the following particulars:

1. Notice of Hearing was timely and properly served on all parties of interest.
2. Venue is proper in Richland County, South Carolina.
3. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an alleged injury occurring while in the employment of the Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this matter.
4. Claimant's average weekly wage is \$933.70 and the corresponding compensation rate is \$622.50.
5. The parties stipulated to the results of the dependency investigation and that her husband, Mr. Timothy Wilson, is Claimant's next of kin dependent upon her for support.
6. Claimant, an office manager for Defendant NHC Healthcare, sustained admitted injuries by accident arising out of and in the course of employment on April 27, 2016 when she fell on her bottom rushing around a corner at work.

7. Defendants initially provided treatment with Stacy Galloway, an occupational therapy provider, from the day after her accident until the end of May 2016. Thereafter, Defendants provided treatment with Dr. Fowble for Claimant's lumbar spine and carpal tunnel syndrome (Claimant's APA 7). He provided referrals to additional providers as he deemed appropriate.

8. An MRI dated July 25, 2016, returned findings of facet arthritis at L4-5 and L5-S1. There was no significant cord compression. Dr. Fowble noted "nothing terrible." He ordered a course of physical therapy and medication (Claimant's APA 7, p. 141-143).

9. When physical therapy failed to relieve Claimant's symptoms, Dr. Fowble ordered a lumbar epidural steroid injection, performed on October 25, 2016, followed by a facet injection, which also failed to relieve her symptoms. (Claimant's APA 7, p. 104, 125-134, 138).

10. He also ordered an EMG study to investigate the origin of Claimant's carpal tunnel symptoms and referred her to Dr. LaMotta to evaluate her L4-5 stenosis (Claimant's 7, p. 125-128; Defendants' APA 1, p. 5-8).

11. Dr. Lamotta evaluated Claimant on March 23, 2017. In his opinion, she reached maximum medical improvement for her lumbar spine, did not require any additional treatment and was not a surgical candidate, did not sustain any loss of function, and could perform light duty work. Accordingly, he assigned a 0% impairment rating. (Claimant's APA 7, p. 111-114).

12. A repeat MRI on Claimant's lumbar spine, dated October 17, 2017, revealed degenerative changes, no acute injury to the lumbar spine, and a chronic disc herniation at L-2. (Claimant's APA 4, p. 55, 58; Claimant APA 6, p. 64).

13. A repeat MRI on Claimant's cervical spine, also dated October 17, 2017, revealed mild degenerative disc change, no herniation, no stenosis, and no acute bony or soft tissue injury (Claimant's APA 4, p. 56-57; Claimant's APA 6, p. 64).

14. Claimant's EMG study indicated moderate bilateral carpal tunnel syndrome. Her left wrist worse than her right. The test was negative for cervical radiculopathy. (Claimant's APA 7, p. 105-106, 121). Based upon the results of the EMG, Dr. Fowble recommended conservative treatment for her wrists and ordered splints. (Claimant's APA, p. 114-117).

15. When conservative treatment failed, Claimant sought surgical treatment with Dr. Ugino who performed a bilateral carpal tunnel release. (Claimant's APA 6; Defendants' APA 4, p. 124).

16. Claimant also alleged psychological injuries as a result of her work-related accident. She was treated by Dr. Lind who opined, to a reasonable degree of medical certainty, that Claimant's work accident aggravated her pre-existing anxiety and depression. According to Dr. Lind, Claimant reached MMI for her psychological injury on October 22, 2018, and sustained a 9% impairment to the brain. She required additional psychological treatment which will tend to lessen her disability. (Claimant's APA3, p. 44).
17. Dr. Fowble opined that Claimant did not have any problems with her back prior to the work accident. (Claimant's APA 7, p. 101).
18. Mr. Wilson also testified that Claimant did not have any problems with her back prior to the work accident. (Hr. Tr. p. 33-34).
19. According to Mr. Wilson, after the accident, but before her cancer diagnosis, Claimant as unable to pick up her grandchildren, unable to cook and host large family dinners unassisted and without frequent breaks, unable to carry the laundry downstairs to the washing machine, and unable to ride her motorcycle as much as she did prior to her accident because of her injuries. (Hr. Tr. p. 21-23; 26-28; 30).
20. His testimony is corroborated by Claimant's deposition testimony. During her deposition in 2018 she testified that after the accident she experienced difficulties vacuuming, was "in pain constantly with the low back," and did not think she would be able to work a full 8-hour shift bending, stooping, and lifting as her job required. (Defendant's APA No. 5, p. 198, 204).
21. Though Claimant sustained injuries to her bilateral hands/arms, and psyche because of the accident, her husband, Mr. Wilson, testified at the hearing that Claimant's back injury caused most of her problems functioning normally. (Hr. T. p. 53).
22. After Claimant's right carpal tunnel release in July 2019, she was diagnosed with Stage IV Metastatic Lung Cancer that had spread to her brain. (Defendants' APA 2). The condition was discovered after Claimant was admitted to the emergency room on August 1, 2019 for persistent stroke symptoms. (Defendants' APA 2, p. 18).
23. Claimant also treated with Dr. Holbrook for lumbar spine injury. He did not believe that Claimant would benefit from a spinal surgery. In his January 9, 2019 treatment note, he indicates that Claimant neck pain has improved, but her low back pain remained the same. He referred her to pain management. (Claimant's APA 4, p. 49).
24. Claimant was treated by Dr. Eugene Mironer for pain management for her lumbar spine and received an injection. (Claimant APA 5).

25. No physician opined that Claimant was candidate for spinal surgery.
26. "No. 26. Claimant completed a Functional Capacity Evaluation with Tracy Hill at Columbia Rehabilitation Clinic on September 3, 2019. Ms. Hill determined that Claimant could work in the limited sedentary to limited light work. She '[did] not meet the full requirements necessary for sedentary or light work.' In addition, she noted her poor aerobic capacity and limited cervical and lumbar range of motion. (Claimant's APA 2, p. 5). She opined that claimant sustained 3% permanent impairment to the right hand, 5% permanent impairment to the left hand, 23% permanent regional impairment to the cervical spine, and 11% permanent regional impairment to the lumbar spine. (Claimant's APA 2, p. 33-34)."
27. Claimant presented for IME with Dr. Forrest on September 9, 2019. He opined to a reasonable degree of medical certainty that the Claimant's fall at work on April 27, 2016 aggravated a previously dormant lumbar spine condition. He also opined that Claimant reached maximum medical improvement and sustained a 23% regional impairment to her cervical spine and 11% regional impairment to her lumbar spine. He deferred to Tracy Hill's impairment rating for Claimant's carpal tunnel injuries and Dr. Lind for Claimant's psychological injuries. (Claimant's APA 1, p. 3)."
28. In Dr. Forrest's opinion, Claimant is totally disabled. She has permanently lost greater than 50% use of her spine. He recommended continued pain management. Her cancer diagnosis is unrelated to her neck and back symptoms since the accident or her disability. (Claimant's APA 1, p. 4; Defendants APA 3, p. 96, In. 14-18; p. 102-103, In. 1-9; p. 107, In. 10-23)."
29. However, during his deposition, he testified that he heavily relied upon Tracy Hill's Functional Capacity Evaluation and Claimant's subjective complaints. (Defendants' APA 3, p. 96, In. 21-25; p. 101, In. 19-25). He also testified that Claimant did not have any limitations for completing her duties at home, but her job at NHC Homecare was demanding. (Defendants' APA 3, p. 105, In. 11-19). Based upon the lifting restrictions in the FCE, Claimant was unable to perform all types of sedentary jobs but could perform some jobs in that category. (Claimant's AP 2, p. 114, In. 11-18). He admitted that he was not sure what her job functions were beyond her subjective description. (Claimant's APA 3, p. 118).
30. A vocational evaluation performed by Ms. Harriet Fowler on November 15, 2019, states that there are no jobs within Claimant's current transferable abilities. She tested at the 4th grade level for math, 6th grade level for spelling, and read at a post-high school level. She is a high school graduate. (Claimant's APA 8, p. 147, 149; Defendants' APA 5, p. 181). Her former position as an office manager for NHC Homecare is classified as a "sedentary" job but because Claimant was

working in the medical field, an office manager is considered a light physical demand level. In her opinion, to a reasonable degree of vocational certainty, Claimant was not able to maintain gainful employment. (Claimant's APA 8, p. 148, 166).

31. Claimant testified during her deposition that her prior employment experience consisted primarily of medical office manager positions. (Defendants' APA, p. 182-184).

32. Claimant received 187 weeks of temporary total disability. (Commission File).

33. Claimant succumbed to cancer on February 23, 2021; three days prior to the original hearing.

Additionally, Commissioner Campbell concluded as a matter of law, the following particulars:

1. Notice of Hearing was timely and properly served on all parties of interest.
2. Venue is proper in Richland County, South Carolina.
3. South Carolina Code Ann. § 42-15-10 (2021) confers jurisdiction upon the South Carolina Workers' Compensation Commission to hear and dispose of this claim. The Claimant was hired by a South Carolina employer, was injured in South Carolina, and worked in South Carolina. As the Claimant seeks an award under the Workers' Compensation Laws of this State for injuries he sustained while employed by the Defendant, jurisdiction is proper.
4. Under S.C. Code Ann. § 42-1-130 Claimant is a covered employee.
5. Under S.C. Code Ann. § 42-1-140 Defendant is a covered employer.
6. Under S.C. Code Ann. § 42-9-280, the parties stipulated that Claimant's husband, Mr. Timothy Wilson, is entitled to receive payment of the unpaid balance of compensation as Claimant's next of kin dependent upon her for support.
7. Claimant sustained 50% or more loss of use of her back and is presumed permanently and totally disabled under S.C. Code Ann. § 42-9-30(21)(2021). The back is a scheduled injury under the Act. In cases where a claimant sustains 50% or more loss of use of the back, the injured employee is presumed permanently and totally disabled and is entitled to a maximum of 500 weeks of compensation and lifetime medical benefits. S.C. Code Ann. §

42-9-30(21)(2021); S.C. Code Ann. § 42-9-10 (2021); S.C. Code Ann. § 42-15-60 (C)(2021). "South Carolina courts have repeatedly considered regional impairment ratings when determining awards under 42-9-30(21)." Clemmons v. Lowe's Home Centers, Inc. 420 S.C. 282, 289 (2017)(internal citations omitted). In Clemmons our Supreme Court awarded permanent and total disability benefits for a back injury where all impairment ratings, after conversion to regional values for the spine, were greater than 50%. Id. at 284-86. *See also* McMahan v. S. Carolina Dep't of Educ.-Transp., 417 S.C. 481, 491 (Ct. App. 2016) (agreeing with the treating physician's determination that the claimant sustained a 54% impairment to the whole person and was permanently and totally disabled from serious thoracic spinal injuries he sustained when a bus fell on top of him.). However, in both McMahon and Clemmons the Claimant received impairment ratings greater than 50% to the spine when converted to a regional rating.

8. Although regional impairment ratings may be a valuable consideration when determining awards under 42-9-30(21), South Carolina courts have repeatedly made clear that such a determination is not bound by impairment ratings, but that the Commission "may find a degree of disability different from that suggested by expert testimony" Sanders v. MeadWestvaco Corp. 371 S.C. 284, 292, 638 S.E.2d 66, 70 (Ct. App. 2006; *See also* Linen v. Ruscon Constr. Co., 286 S.C. 67, 68-69, 332 S.E.2d 211, 212 (1985)(finding that although expert testimony found claimant suffered from a 20-30% impairment to his back, testimony of vocational expert and claimant provided substantial evidence to affirm Appellate Panel's decision finding claimant's impairment exceeded 50%); Lyles v. Quantum Chem. Co., 315 S.C. 440, 445-46, 434 S.E. 2d 292, 294-95 (Ct. App. 1993)(finding, pursuant to section 42-9-30, that while expert testimony suggested claimant suffered only a 35% impairment to his back, testimony of claimant and others provided substantial evidence that claimant's impairment exceeded 50%).

9. In this case, Dr. Lamotta assigned a 0% impairment rating in 2017. However, Claimant continued treating for her back receiving pain management and injections. This rating is stale. The most current ratings for her back injuries are provided by Tracy Hill and confirmed by Dr. Forest; 23% regional impairment to her cervical spine and 11% regional impairment to her lumbar spine for a total of 33% to the back. However, considering Claimant's education level, her physical limitations defined by the FCE, the results of the vocational evaluation, Dr. Forest's medical opinion, and relevant testimony regarding her physical limitations after the accident, Claimant has met her burden to prove that she lost greater than 50% use of her back. Because Claimant sustained a scheduled member injury under § 42-9-30, she is not required to prove lost earnings. The vocational report in this claim is not considered as proof of lost earnings but as additional support for the effects of loss of use of her back.

10. Therefore, pursuant to S.C. Code Ann. § 42-9-280; § 42-9-30(21); and § 42-9-10(B) Claimant's dependent is entitled to receive the remaining 313 weeks

of benefits in a lump sum. The calculation is as follows: 500 (max compensation) - 187 (weeks of TTD paid) = 313 weeks due. The commuted value of weeks due is 295.7265. Therefore, 295.7265 (weeks) x \$622.50 (Compensation Rate) = \$184,089.75 (amount due).

Finally, Commissioner Campbell issued the following order:

"IT IS ORDERED that according to the results of a good faith dependency investigation, Mr. Tim Wilson is Claimant's next of kin dependent upon her for support.

IT IS ORDERED that Claimant sustained greater than 50% disability to her back and is permanently and totally disabled.

IT IS ORDERED that Claimant is entitled to and Defendants shall pay \$184,089.75 permanent and total benefits.

IT IS FURTHERMORE ORDERED that Defendants will make timely payment of the aforementioned benefits to Mr. Timothy Wilson, Claimant's next of kin dependent upon her for support."

Appellants timely appealed the Decision and Order of Commissioner Campbell.

III. ISSUES ON APPEAL

By appeal, the Appellants respectfully submitted the following issues:

1. Did the Single Commissioner err in failing to set forth adequate findings of fact and conclusions of law as part of the Decision and Order for this matter?
2. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that, "[I]n Dr. Forrest's opinion, the claimant is totally disabled. She has permanently lost greater than 50% use of her spine...Her cancer diagnosis is unrelated to her neck and back symptoms since the accident or her disability."?
3. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that there were no jobs within Claimant's transferrable abilities, and that the Claimant was not able to maintain gainful employment?
4. Did the Single Commissioner err in misapprehending the existing statutory and case law regarding the application of regional impairments and values to the back, under the Act and other applicable law and regulation?
5. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the authorized treating physician's opinions in this case were

stale?

6. Did the Single Commissioner err by virtually ignoring and giving no weight to the authorized treating physician's impairment ratings in this case?
7. Did the Single Commissioner err in giving great weight to the medical opinions given by Dr. Forrest and the opinions of Ms. Hill?
8. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that Claimant was permanently and totally disabled before her death?
9. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Claimant is entitled to compensation and other benefits for permanent-total disability under the Act?
10. Did the Single Commissioner err by not concluding as a matter of law that the Claimant's claim for compensation and other benefits abated due to her death?
11. The Defendants reserve the right to further review any calculation of any award as part of this matter.

IV. DECISION OF THE APPELLATE PANEL

In an Appellate Review, the Appellate Panel shall, pursuant to S. C. Code Ann. § 42-17-50 (1976), review the Award, weigh the evidence as presented at the initial hearing 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 Hearing Commissioner.

The Claimant's neck has not been found to be compensable in this matter. There is mention in the findings of ratings and other information, such as function, with regard to the Claimant's neck.

From our review of the Hearing Commissioner's decision, this Panel cannot determine whether or not the Single Commissioner used facts from the neck in his determination of disability under S.C. Code Ann. § 42-9-30(21) (1976).

We therefore vacate the determination of disability to the Claimant's back and remand this matter to the Hearing Commissioner for an analysis and determination of disability to the back.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-130(1976), and other applicable law and regulation, the Claimant is a covered employee.
2. Pursuant to S.C. Code Ann. § 2-1-140(1976), and other applicable law and regulation, the Defendant Employer is a covered employer and the Defendant Carrier is a covered carrier.
3. The South Carolina Workers' Compensation Commission has jurisdiction over this matter.
4. Pursuant to S.C. Code Ann. § 42-9-280(1976), and other applicable law and regulation, Timothy Wilson, is the Claimant's next of kin dependent upon her for support.
5. Pursuant to S.C. Code Ann. § 42-1-160(1976), and other applicable law and regulation, the Claimant sustained an injury to her lower back, her arms and her psyche as a result of an accident arising out of and in the course of her employment with the Employer.
6. Pursuant to S.C. Code Ann. § 42-1-160(1976), and other applicable law and regulation, the Claimant's neck has not been found to be compensable as part of this matter.

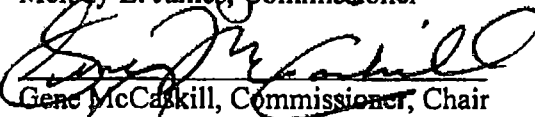
ORDER

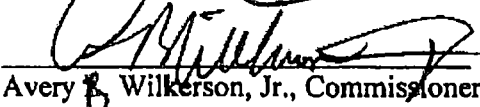
IT IS ORDERED that the Panel vacates the determination of disability to the Claimant's back, and remands this matter to the Hearing Commissioner for an analysis and determination of disability to the back as a result of the Claimant's admitted lower back injury.

AND SO IT IS ORDERED.

Columbia, South Carolina


Melody L. James, Commissioner


Gene McCaskill, Commissioner, Chair


Avery B. Wilkerson, Jr., Commissioner

Order Served via email:

<p>Preston F. McDaniel McDaniel Law Firm <u>preston@pfmcdlaw.com</u></p>	<p>Clarke W. McCants, III Clarke W. McCants, IV Nance & McCants <u>mccants3rd@aol.com</u> <u>clarkemccnats4@gmail.com</u></p>
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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 June 9, 2023

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1614988

DEBRA WILSON)

Claimant,)

v.)

NHC HOMECARE MIDLANDS)

Employer, and)

PREMIER GROUP INSURANCE CO.)

Carrier,)

Defendants.)

ADMINISTRATIVE ORDER
(Re: Motion to Reconsider)

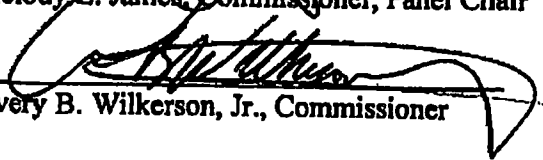
The South Carolina Workers' Compensation Commission Appellate Panel issued an appellate order, dated June 9, 2023, vacating and remanding the claim back to the hearing commissioner for a determination of disability to the back based upon the admitted lower back injury because it was unable to determine whether the single commissioner relied upon facts relating to Claimant's alleged neck injury in making the award to the back.

Thereafter, on June 14, 2023, Claimant filed a motion to reconsider, alleging that because Defendants failed to raise the issue of bifurcation of the back in their form 30 request for commission review, it is improper to consider the issue on appeal. Whereas a final decision in this case has not yet been reached, this motion is interlocutory and is therefore denied.

THEREFORE IT IS ORDERED that Claimant's motion to reconsider is denied and the instant case is remanded to the single commissioner to issue a ruling consistent with the full commission's order dated June 9, 2023.

IT IS SO ORDERED!


Melody L. James, Commissioner, Panel Chair


Avery B. Wilkerson, Jr., Commissioner

EXHIBIT

C

tabbles



Gene McCaskill, Commissioner

12/6/23 (Date)

Columbia, South Carolina

Order Served via email:

Clarke W. McCants, III Clarke W. McCants, III PC <u>mccants3rd@aol.com</u>	Preston F. McDaniel McDaniel Law Firm <u>preston@pfmcdlaw.com</u>
Clarke W. McCants, IV Clarke W. McCants, III PC <u>Clarkemccants4@gmail.com</u>	

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 December 7, 2023

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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SC Court of Appeals

APPEAL FROM THE
SC WORKERS' COMPENSATION COMMISSION

(Order filed October 3, 2024
Appellate Case No. 2024-000038)

Debra Wilson, Claimant,..... Petitioner,

v.

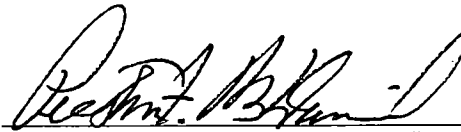
NHC Homecare Midlands, Employer, and Premier Group
Insurance Co., Carrier,..... Respondents.

PROOF OF SERVICE

I certify that I have served the **PETITION FOR WRIT OF CERTIORARI**
by depositing a copy of it in the United States Mail, postage
prepaid, on October 29, 2024, addressed as follows:

Clark W. McCants, III, Esquire
Clark Wardlaw McCants, IV, Esquire
MCCANTS & MCCANTS
Post Office Box 2881
Aiken, SC 29802

Honorable Jenny A. Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211



Preston F. McDaniel, #3770
SC Bar #3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

Kenneth M. Mathews, #3683
MATHEWS LAW FIRM
Post Office Box 7335
Columbia, SC 29202
(803) 252-1242

Attorneys for Petitioner

Dated: November 4, 2024

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 35 years.

Preston F. McDaniel

Telephone (803) 771-7211

Daniel E. Peagler

Facsimile (803) 252-0709

November 4, 2024

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NOV 06 2024

SC Court of Appeals

~~HAND DELIVERED~~

Honorable Patricia A. Howard
Clerk of Court
SC Supreme Court
1231 Gervais Street
Columbia, South Carolina 29211

RE: Debra Wilson v. NHC Homecare Midlands
SC Court of Appeals Case No. 2024-000038

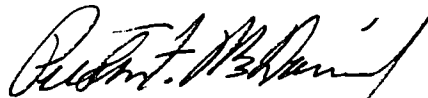
Dear Ms. Howard:

Please find attached our **PETITION FOR WRIT OF CERTIORARI** for filing with the Court in regards to the above referenced matter, along with the required \$250.00 filing fee. I would appreciate your returning the clocked-in copy to the courier.

By copy of this letter, I am serving the SC Court of Appeals and Counsel for Respondents with a copy of same.

I hope this is sufficient for filing with the Court; however if you require anything further, please do not hesitate to contact me.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosures

cc: Kenneth M. Mathews, Esquire
Clark W. McCants, III, Esquire
Clark Wardlaw McCants, IV, Esquire
SC Court of Appeals ✓

+McDaniel Law Firm
ATTORNEYS and COUNSELORS AT LAW
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Columbia, South Carolina 29201



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SC Court of Appeals

Jenny Kitchings, Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

