

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Gene McCaskill; The Honorable T. Scott Beck; and
The Honorable Gene McCaskill.

SCWCC File No.: 2116149

Aswan Holmes,

Claimant,

v.

Beaufort County School District,

Employer,

and

Beaufort County Schools,

Carrier,

Defendants.

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SC Court of Appeals

AFFIRMED

Appellate Panel Review held by Vote on the Record,
on August 26, 2024

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

Appearances: Mario A. Pacella, Esq., of Strom Law, represents
Claimant/Appellant.

Anne V. Noonan, Esq., on behalf of Wilson Jones Carter &
Baxley, P.A., represents Defendants/Respondents.

Filed: November 1, 2024

I. STATEMENT OF THE CASE

On August 29, 2023, a hearing was held before a Single Commissioner to determine Claimant's entitlement to continued benefits under the Act. Aswan Holmes (Claimant) sustained an admitted injury within the course and scope of her employment on October 21, 2021, when she slipped and fell on a wet floor. Although admitted, the parties disputed the nature and extent of Claimant's injury. Claimant asserted she sustained injuries to her head/brain, left shoulder, right hip, neck, back, right-sided pain, and anxiety-related issues. Beaufort County School District (Employer) and Beaufort County Schools (Carrier) (hereinafter collectively known as "Defendants") asserted the nature and extent of Claimant's injuries could not be ascertained as she has been non-compliant with medical treatment. Claimant's Temporary Total Disability (TTD) benefits became effective on December 6, 2021.

Claimant sought a finding as to whether she had reached maximum medical improvement (MMI); received appropriate medical care; had (pursuant to § 42-15-60(A)) circumstances justifying the refusal of certain medical testing; is entitled to a permanency award, and if she was determined to have a permanent disability, if additional medical care would tend to lessen her period of disability.

Defendants sought a timely adjudication of the compensability of Claimant's claim, and whether Claimant is entitled to continued benefits under the Act. Defendants specifically sought a finding that Claimant had reached MMI and a determination that Claimant was not permanently disabled.

The Single Commissioner determined, *inter alia*:

"[C]laimant is at maximum medical improvement as of February 8, 2023. [C]laimant is not entitled to additional medical treatment as it would not tend to lessen her period of disability. [C]laimant is not to receive an award for causally related permanent disability." (Single

Commissioner's Decision and Order filed on May 30, 2024, p. 10.)

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. Claimant did not request her appeal be heard by way of oral argument. Therefore, the Appellate Panel held this review by vote on the record on August 26, 2024.

II. SINGLE COMMISSIONER FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. I find Claimant sustained a minor compensable injury to her brain pursuant to S.C. Reg. 67-1101, as a result of a concussion she sustained on October 21, 2021. Claimant's initial diagnosis was post-concussion syndrome with no loss of consciousness.
2. Claimant's complaints of pain and other symptoms throughout her body began to increase over the following year. Defendants continued to provide causally related medical treatment and evaluations with specialists to try to lessen Claimant's period of disability.
3. Claimant argues her co-morbid anxiety has intermingled with her work injury, which makes it extremely difficult for Claimant to undergo various treatment modalities including VNG testing and an MRI.
4. Defendants argue Claimant is not entitled to additional medical treatment as multiple treating physicians have opined all testing to date has been normal and there is evidence of self-limiting, malingering, and exaggerating. Specifically, both Dr. Burkhill and Dr. Wagner have opined Claimant is exaggerating her symptoms and have placed her at maximum medial

improvement with a 0% permanent impairment rating. Dr. Christian opined Claimant's symptoms were self-limited just six weeks after the original injury. Dr. Wagner noted Claimant's testing was inconsistent with her high level of education. He ultimately released Claimant at maximum medical improvement and although he did recommend additional testing, Claimant has refused to attend.

5. Claimant testified on her own behalf at the hearing. She has advanced-level degrees and has worked in education and leadership for over 25 years. She testified [that she] continues to have 4-5 headaches per day for at least 20 minutes per occurrence. She testified she now has pain in her head and throughout her entire body that she attributes to her fall.
6. I find Claimant's testimony is unreliable and not supported by a greater weight of the medical evidence in the record.
7. I find Claimant is at maximum medical improvement as of February 8, 2023, according to the medical opinion of Dr. Wagner.
8. There is no evidence in the record that Claimant is not at maximum medical improvement.
9. Likewise, at the time of the hearing, no treating physician has indicated there is additional medical treatment that would tend to lessen her period of disability.
10. There is no medical evidence in the record that causally relates Claimant's current symptoms to her fall in 2021.
11. The overwhelming majority of the medical evidence in the record supports a finding that Claimant is malingering and exaggerating her symptoms. As such, I cannot rely on her testimony to make any award of causally related permanent disability.
12. All claims for additional benefits are denied.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, Claimant did suffer a fall by accident arising out of and in the course and scope of her employment on October 21, 2021.
3. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until February 8, 2023, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of her disability.
4. Under § 42-9-30, Claimant has sustained no permanent partial disability as a result of this work accident.

ORDER

IT IS HEREBY ORDERED that Claimant is at maximum medical improvement as of February 8, 2023.

IT IS FURTHER ORDERED that Claimant is not entitled to additional medical treatment as it would not tend to lessen her period of disability.

IT IS FURTHER ORDERED that Claimant is not to receive an award for causally related permanent disability.

IT IS FURTHER ORDERED that all claims for additional benefits are denied.

AND SO IT IS ORDERED.

No hearing costs are assessed in this instance.

III. ISSUES ON APPEAL

1. Whether the Single Commissioner erred with respect to Factual Findings 4 and 6 and Conclusions of Law 3 and 4 in concluding Claimant's testimony was unreliable and not supported by the greater weight of the evidence where Claimant's documented anxiety symptoms impaired her ability to attend and submit to medical appointments and medical procedures.
2. Whether the Single Commissioner erred with respect to Factual Findings 4, 6 and 7 and Conclusions of Law 3 and 4 in concluding Claimant reached MMI where she was medically unable to attend medical appointments and medical procedures necessary for the conclusion as to whether additional medical care would lessen the period of disability.
3. Whether the Single Commissioner erred with respect to Factual Findings 7,8, 9, 10, and 11 and Conclusions of Law 3 and 4 in concluding Claimant had no impairment where the evidence showed consistent symptoms with respect to the brain, left shoulder, right hip, neck, back and right-sided pain that have not been treated.

IV. DECISION OF THE APPELLATE PANEL

In an application for review pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel shall review the Award, and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award by making its own Findings of Fact and its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

Claimant did not request her appeal be heard by way of oral argument. Therefore, having considered the appellate briefs of the parties and viewing the record as a whole, the Appellate Panel does hereby fully **AFFIRM** the Decision and Order of the Single Commissioner filed on May 30, 2024.

APA SUBMISSIONS

The APA Submissions listed on the Single Commissioner's Decision and Order filed on May 30, 2024, contained scriveners' errors under Claimant's APA 1 (incorrect date range) and Defendants' APA 12 (not listed). Accordingly, the Appellate Panel amends the APA Submissions listed on the above-referenced Decision and Order as follows:

The following medical reports and exhibits were submitted on behalf of Claimant pursuant to the Administrative Procedures Act:

	Physician	Practice	Dates of Service	Page Numbers
1.		Beaufort Memorial Hospital	10/21/21-6/19/22	335-353

The following medical reports and exhibits were submitted on behalf of Defendants pursuant to the Administrative Procedures Act:

	Physician	Practice	Dates of Service	Page Numbers
1.	Records of Mark Wagner, PHD		2/8/23	1-19
2.		Records of Charleston ENT & Allergy	1/25/21-12/8/21	20-30
3.		Records of BenchMark PT	2/24/22-3/3/22	31-44
4.		Records of Coastal Neurology	11/29/21-1/25/22	45-49
5.		Records of Pain Specialists of Charleston	2/17/22-4/20/23	50-84
6.		Records of optimorthopedics	8/22/22	85-86
7.		Records of Beaufort Memorial Express Care	10/22/21-1/21/22	87-102
8.		Beaufort County EMS	2/23/22-6/19/22	103-109
9.		Beaufort Memorial Hospital	11/25/04-6/19/22	110-270

10.		Trident Health System	2/25/22	271-283
11.		Charleston County EMS	2/25/22	284-289
12.		Beaufort Memorial Lady's Island Internal Medicine	6/26/19/-6/19/20	290-322

	Exhibits	Date of Report	Page Numbers
A.	Email from Nurse Case Manager		323-326
B.	Screenshots of Book Signing		327-334

ORDER

THEREFORE IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on May 30, 2024, is fully **AFFIRMED**.

ACCORDINGLY:

IT IS FURTHER ORDERED that Claimant is at maximum medical improvement as of February 8, 2023.

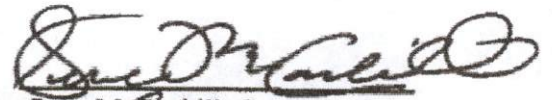
IT IS FURTHER ORDERED that Claimant is not entitled to additional medical treatment as it would not tend to lessen her period of disability.

IT IS FURTHER ORDERED that Claimant is not to receive an award for causally related permanent disability.

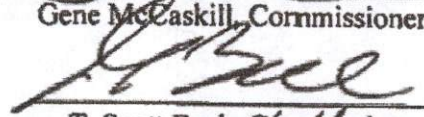
IT IS FURTHER ORDERED that all claims for additional benefits are denied.

AND SO IT IS ORDERED.

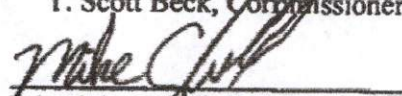
_____ (date)
Columbia, SC



Gene McCaskill, Commissioner



T. Scott Beck, Commissioner



R. Michael Campbell, Commissioner