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SC Court of Appeals

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

APPELLATE PANEL DECISION AND ORDER

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

SCWCC File Nos.: 1523225 & 1608417

Samantha Gooding-Newton,

Claimant,

v.

Jasper County,

Employer,

and

SC Association of Counties SIF,

Carrier,

Defendants.

AFFIRMED IN PART AND VACATED IN PART

Hearing held in Richland County, South Carolina,
on June 17, 2024

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

Appearances: Catherine Meehan, Esq., of Steinberg Law Firm, LLC, appeared
on behalf of Claimant/Respondent.

William H. Lyon, Esq., of Wilson Jones Carter & Baxley, P.A.,
appeared on behalf of Defendants/Appellants.

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

Filed: November 20, 2024

I. STATEMENT OF THE CASE

On August 3, 2021, a hearing was held before a Single Commissioner to determine the compensability of Samantha Gooding-Newton's (Claimant's) claims under the Act.¹ Claimant asserted that on August 27, 2015, she sustained an injury by accident to her right knee arising out of and in the course and scope of her employment. (WCC File No.: 1523225.) Claimant asserted that on June 22, 2016, she aggravated the preexisting condition to her right knee, and sustained separate injuries to her left knee and left wrist arising out of and in the course and scope of her employment. (WCC File No.: 1608417.) Claimant further asserted that she was not at maximum medical improvement (MMI) for her injuries. Claimant sought a medical evaluation and causally related medical treatment. Claimant also sought reimbursement for past, and coverage for ongoing, causally related medical expenses. Claimant lastly sought past temporary total disability (TTD) benefits, a permanency determination and all other applicable benefits under the Act.

Jasper County (Employer) and SC Association of Counties SIF. (Carrier) (hereinafter collectively known as "Defendants") denied both of Claimant's claims. Defendants asserted Claimant's injuries were not causally related to her work-related accidents on August 27, 2015, or June 22, 2016. Defendants contended that the evidence indicated Claimant injured her right knee after falling at home. Defendants further contended that the evidence indicated Claimant's subsequent bilateral knee injuries were the result of a preexisting condition that was of conflicting origin. Defendants sought a finding that Claimant's injuries were not compensable. In the alternative, Defendants sought a finding that Claimant's compensable injuries were limited to her left knee. In the other alternative, Defendants sought a finding that Claimant's injury to her right knee was limited

¹ On May 5, 2021, the Commission granted Claimant's motion to consolidate WCC File Nos. 1523225 and 1608417 "for purposes of discovery, mediation and any future hearings, as consolidation is in the best interests of the parties and judicial economy." (WCC Motion Order filed on May 5, 2021.)

to her work-related accident on August 27, 2015; and Claimant's injury to her left knee was limited to her work-related accident on June 22, 2016.

The Single Commissioner determined, *inter alia*:

[Claimant] sustained a compensable injury by accident to her right knee arising out of and in the course and scope of her employment with Employer on August 27, 2015 (WCC File No. 1523225) and a compensable aggravation of a preexisting condition to her right knee in addition to separate compensable left knee and left wrist injuries arising out of and in the course and scope of her employment with Employer on June 22, 2016 (WCC File No. 1608417). [D]efendants shall be responsible for any and all medical treatment provided to Claimant related to her compensable injuries, and also including all medication expenses and mileage. [C]laimant is totally and permanently disabled as a result of a destruction of her earning capacity and therefore, Claimant is entitled to an award of 500 weeks of compensation at the compensation rate of \$535.74 from Defendants. [C]laimant shall receive a lump sum award of the total and permanent disability benefits with allocation language. [C]laimant shall receive ongoing medical treatment in order to maintain her level of function and thereby tending to lessen her period of disability to include treatment, viscosupplementation injections to bilateral knees, steroid injections to bilateral knees, right total knee replacement surgery, and follow-up care as recommended by Dr. Leland Stoddard, all of which shall remain the responsibility of Defendants including reimbursement to Claimant for mileage and medications. [C]laimant is entitled to lifetime causally related reasonable and necessary medical treatment pursuant to § 42-15-60 (C) for her right knee, left knee, and left wrist, including, but not limited to, viscosupplementation injections of her bilateral knees, steroid injections of her bilateral knees, and right total knee replacement surgery without regard to any limitation in the Act including the maximum compensation limit.

(Single Commissioner's Decision and Order filed on February 13, 2024, pp. 28-29.)

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on appeal by Defendants. Within the statutory period, Defendants filed a Form 30, Request for Commission Review. Accordingly, the parties presented for oral arguments before the Appellate Panel on June 17, 2024.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

Based upon the stipulations, the testimony of witnesses, and the APA submissions, the [Single] Commissioner makes the following findings of fact as required by S.C. Code Ann. § 42-17-40:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Samantha Gooding-Newton as Employee/Claimant and Jasper County as Employer and SC Association of Counties SIF as Carrier, Defendants.
2. That Claimant is fifty-three years old. She is married with two children, ages sixteen (16) and thirty (30).
3. That Claimant has worked in corrections for twenty years, and in corrections for Jasper County since October 2000. Claimant began working for Jasper County as an officer and received numerous promotions over the years to lance corporal, then corporal, then sergeant, and finally captain. (Hr'g Tr. pp. 21-23, 86.)
4. That Claimant was an employee of the above-named Employer on and prior to August 27, 2015, on which date she sustained a compensable injury by accident to her right knee arising out of and in the course and scope of her employment, and proper notice was given to the Employer. This finding is based on the preponderance of the evidence in the record including the Form 12A, First Report of Injury, filed by Defendants, and an Incident Report dated August 27, 2015. (Cl. Ex. A, pp. 167-68; Cl. Ex. B, pp. 169-72; Cl. Ex. J, pp. 324-26.) In addition, Claimant's supervisor, Mr. Arthur Benjamin, testified he was on notice of Claimant's August 27, 2015 right knee injury and even initialed the Form 12A dated August 27, 2015. Mr. Benjamin testified he

completed the Form 12A on the date of injury, August 27, 2015, and that it had his signature on it. (Benjamin Dep., Nov. 26, 2019, 17:1-15, 18:25-19: 1, 20: 13-15.) The Form 12A is dated August 27, 2015 and notes the date of injury as "08/27/2015" and the date Employer was notified as "08/27/2015." The Form details the incident noting "I Captain Newton did fall while I was in the Intake area subduing an inmate while he was being combative . . . I caught him and we both slammed into the nurse station where my knee hit first, then falling to the ground with the inmate, causing more damage to my knee." (Cl. Ex. A, p. 168.) The Form 12A notes the affect body part is "Knee (rt)." (Cl. Ex. A, p. 168.) Based on this preponderance of the evidence, Defendants' Notice defense fails.

5. That Claimant did not receive accurate information regarding her right to medical treatment under workers' compensation and ultimately treated on her own for her right knee injury from October 26, 2015 through May 26, 2016, during which time she underwent right knee arthroscopy and physical therapy. Claimant continued to have complaints of pain in her right knee during this time and a subsequent MRI revealed fragmentation of the lateral meniscus as well as a possible stress fracture. Dr. Stoddard recommended a second surgery. (Cl. APA #2, p. 36.)

6. That Claimant had returned to work pending the results of the second MRI from her 2015 right knee injury, and unfortunately, had a second compensable work injury on June 22, 2016, where she injured her bilateral knees and left wrist. Again, the Employer completed a Form 12A, and this time, the Employer sent Claimant for medical treatment at Coastal Carolina Medical Center. (Cl. Ex. C; Cl. APA #3.) At the initial visit with Coastal Carolina Medical Center on June 27, 2016, the hospital referred Claimant back to Dr. Stoddard for further treatment of her work-related injuries. (Hr'g Tr. 47:2-21.) Defendants denied Claimant further treatment following the initial medical visit to Coastal Carolina Medical Center for her work-related injuries. (Hr'g Tr. 48: 11-16.)

7. That Claimant ultimately returned to Dr. Stoddard for evaluation of her bilateral knees on July 1, 2016. At that visit, Dr. Stoddard performed a right knee injection. Dr. Stoddard opined Claimant contused both knees and aggravated arthritis in her right knee. Although Claimant had previously scheduled her recommended surgery for the right knee, Dr. Stoddard moved up the date for that surgery due to the aggravation caused by Claimant's work-related June 22, 2016 fall. (Cl. APA #2, p. 39.) The second right knee surgery was performed on July 13, 2016. (Cl. APA #2, p. 40.)

8. I find Claimant sustained a compensable injury to her right knee on August 27, 2015 (WCC File No. 1523225) and a compensable aggravation of a preexisting condition to her right knee on June 22, 2016 (WCC File No. 1608417). In addition, Claimant sustained separate injuries to her left knee and left wrist during the June 22, 2016 work injury. This finding is based on the preponderance of the evidence as a whole including the medical opinion of Dr. Leland Stoddard. (Cl. APA #2, p. 112; Cl. APA #6; Dr. Stoddard Dep., June 22, 2021.)

9. Claimant is at [MMI] for her work injuries as of March 31, 2021 per the medical opinion of Dr. Stoddard who opined Claimant sustained 15% permanent impairment to her right lower extremity and 10% permanent impairment to her left lower extremity. Dr. Stoddard also opined Claimant had permanent work restrictions to include no kneeling, squatting, climbing, or standing for long periods of time. Dr. Stoddard noted Claimant would require ongoing treatment in the form of viscosupplementation shots to bilateral knees, steroid injections to her bilateral knees, and a total knee replacement on her right knee. (Cl. APA#2, p. 112; Cl. APA #6, pp. 165-66; Dr. Stoddard Dep., June 22, 2021.)

10. That Claimant was terminated by Jasper County on July 8, 2016 due to the additional time needed for treatment of her June 22, 2016 work injuries, and although she has now been released with permanent work limitations, Jasper County does not have light duty work available

for Claimant nor has any ever been offered. (Cl. APA #6, p. 166; Dr. Stoddard Dep. 19:23-20:2; Benjamin Dep., Jan. 29, 2020, 27: 6-11; Cl. Ex. H, p. 253; See Dr. Stoddard Dep. 33:4-12; Hr'g Tr. 55:13-25; Def Ex. M, pp. 433-34.) Claimant did not receive any workers' compensation checks while she was out of work for either of her work-related injuries. (Hr'g Tr. 56:7-8.)

11. That David Price, M. Ed, CRC performed a vocational evaluation in this matter. He opined with a reasonable degree of vocational certainty Claimant is permanently and totally disabled as a result of her work-related injuries. (Cl. Ex. I.)

12. That Claimant testified credibly at the hearing. She has been out of work since July 8, 2016 and has not received any compensation from her Employer. (Hr'g Tr. 56:7-8.) Both of her knees continue to bother her although the right hurts significantly worse than the left. Claimant has trouble completing most of her activities of daily living including cooking and other housework, which she used to enjoy. In addition, she no longer goes on motorcycle rides as she did before the work injuries, and she is unable to walk for exercise or ride bikes with her children as a result of her work injuries. (Hr'g Tr. pp. 52-55.)

13. That Claimant was unable to work from the date of her first work-related right knee surgery on January 21, 2016 through April 27, 2016, and she did not receive any temporary total disability benefits or workers' compensation benefits during this time.

14. That Claimant returned to work on April 28, 2016 and worked until her second work-related accident on June 22, 2016. She has been unable to work as a result of her work-related injuries since June 22, 2016. She has received no temporary total disability benefits or workers' compensation benefits of any kind since that time.

15. That Claimant was a captain at the Jasper County Detention Center at the time of her work-related injuries. The 30(b)(6) representative, Arthur Benjamin, testified Claimant was second

in command at the Detention Center and he was Claimant's immediate supervisor in both August 2015 and June 2016. Mr. Benjamin testified the job duties of a captain at the Detention Center include the ability to subdue inmates and intervene if any physical altercations break out. (Benjamin Dep., Nov. 26, 2019, 10:23-25, 11:20-23.) Mr. Benjamin testified Claimant was trustworthy, hardworking, and "an outstanding employee." (Benjamin Dep., Nov. 26, 2019, 12:8- 13.) He testified Claimant had no physical problems performing her job before August 2015. (Id. at 12:1-7.) Mr. Benjamin testified Jasper County does not have light duty work. (Benjamin Dep., Jan. 29, 2020, 27:7-8; Cl. Ex. H, p. 253.)

16. That the permanent physical restrictions issued by the authorized treating physician will not allow Claimant to return to her job with Employer. (Record as a whole.)

17. I find Claimant is permanently and totally disabled pursuant to S.C. Code Ann. § 42-9-1 O(A). This finding is based on the preponderance of the evidence as a whole including Claimant's bilateral knee injuries; Claimant's permanent impairment to her bilateral knees; Claimant's permanent work restrictions, which the Employer cannot accommodate; the vocational opinion of David Price, M.Ed, CRC; and the deposition testimony of Dr. Stoddard (specifically pp. 30-33.)

18. That Claimant is entitled to the commuted value of 500 weeks of benefits, 416.7513 weeks, which at her compensation rate of \$535.74 per week, totals \$223,270.34. Claimant is entitled to receive her award of total disability payable in a lump sum commuted to present value. It is in the best interest of Claimant the award be paid in a lump sum. There is no prejudice shown to Defendants to pay the award in a lump sum. Furthermore, Claimant's lump sum award should be allocated in her best interest as follows:

a) One Hundred Forty-Four Thousand Six Hundred Seventy Dollars and Forty-Five Cents (\$144,670.45) future disability benefits at the rate of Four Hundred Twenty-Six Dollars and Forty-Five Cents (\$426.45) per month for a period of 28.27 years (Claimant's life expectancy pursuant to S.C. Code

Ann. §19-1-150), commencing per the Order, pursuant to Sciarotta v. Bowen, 837 F. 2d 135 (3rd Cir. 1988), See also on remand: 735 F. Supp. 148 (D.N.J. 1989); See also on remand: 735 F. Supp. 148 (D.N.J. 1989); James v. Anne's Inc., 390 S.C. 188, 701 S.E.2nd 730 (2010); as well as the provisions of the South Carolina Workers' Compensation Act, as interpreted by the Courts of the State of South Carolina to include Utica- Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 730 (2010).

For ERISA and social security disability purposes and any and all other disability policies, these settlement funds are to be apportioned for the entire life span of Samantha Gooding-Newton;

b) Seventy-Four Thousand Four Hundred Twenty-Three Dollars and Forty-Five Cents (\$74,423.45) to Claimant's attorneys as attorneys' fees;

c) Four Thousand One Hundred Seventy-Six Dollars and Forty-Four Cents (\$4,176.44) to reimburse Claimant and her attorney for costs and expenses incurred in the prosecution of this claim.

19. That Claimant established by a preponderance of the evidence her entitlement to ongoing future medical treatment. The medical treatment awarded is causally related treatment pursuant to § 42-15-60. This includes viscosupplementation injections to her bilateral knees, steroid injections to her bilateral knees, right total knee replacement surgery, and follow-up care from Dr. Leland Stoddard.

20. That Claimant is entitled to receive ongoing medical treatment, bilateral knee viscosupplementation injections, bilateral knee steroid injections, right total knee replacement surgery, and follow-up care from Dr. Leland Stoddard in order to maintain her level of function and thereby tend to lessen her period of disability. Since Claimant is deemed to be totally and permanently disabled, Claimant is entitled to medical treatment related to her injuries during her lifetime, without any regard to limitations in the Act or the maximum compensation limit. The medical treatment, viscosupplementation injections to bilateral knees, steroid injections to bilateral

knees, right total knee replacement surgery, and follow-up care from Dr. Leland Stoddard related to her injuries shall remain the responsibility of Defendants, including reimbursements to Claimant for mileage and medications.

CONCLUSIONS OF LAW

Based upon the findings of fact set forth above, the [Single] Commissioner makes the following conclusions of law as required by S.C. Code Ann. § 42-17-40:

1. Claimant must establish facts that entitle her to an award by the preponderance of the evidence. Walsh v. U.S. Rubber Co., 120 S.E.2d 685 (S.C. 1961); Herndon v. Morgan Mills, Inc., 143 S.E.2d 376 (S.C. 1965). Claimant has met her burden of proving her claim by the preponderance of the evidence.

2. Under S.C. Code Ann. § 42-1-130, Claimant was an employee, and under S.C. Code Ann. § 42-1-140, Defendant-Employer was an employer covered under the Act at the time of Claimant's injuries.

3. Under S.C. Code Ann. § 42-1-160, Claimant established by the preponderance of the evidence that she sustained a compensable injury by accident to her right knee arising out of and in the course and scope of her employment with Employer on August 27, 2015 (WCC File No. 1523225) and a compensable aggravation of a preexisting condition to her right knee arising out of and in the course and scope of her employment with Employer on June 22, 2016 (WCC File No. 1608417). In addition, Claimant sustained separate compensable injuries to her left knee and left wrist arising out of and in the course and scope of her employment with Employer on June 22, 2016.

4. Under S.C. Code Ann. § 42-15-20, Claimant gave timely and proper notice of her injuries on both dates of accident (August 27, 2015 and June 22, 2016) to Employer.

5. Under S.C. Code Ann. § 42-15-40, Claimant timely filed her claims within two (2) years of each of her accidents.
6. Under S.C. Code Ann. § 42-1-40, Claimant had an average weekly wage of \$803.57 making the compensation rate \$535.74 applicable to this claim.
7. Under S.C. Code Ann. § 42-15-60, Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries, and medications related to her injuries, which tends to effect a cure, provide relief, and/or tends to lessen Claimant's period of disability through March 31, 2021, the date Claimant reached [MMI]. Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999).
8. Under S.C. Code Ann. § 42-15-60, Defendants are responsible for all past causally-related medical treatment Claimant has received for her work-related right knee, left knee, and left wrist injuries to date per the South Carolina Workers' Compensation Fee Schedule.
9. Pursuant to S.C. Code Ann. § 42-15-60, Defendants are responsible for any causally related out of pocket expenses incurred by Claimant to date.
10. Pursuant to Regulation 67-1601, Claimant is entitled to reimbursement from Defendants for causally related travel expenses.
11. Under S.C. Code § 42-9-10(A), Claimant is totally and permanently disabled and is therefore entitled to 500 weeks of compensation benefits. Total disability does not require complete helplessness. The generally accepted test of total disability is the inability to perform services other than those that are so limited in quality, dependability, and quantity that a reasonably stable market for them does not exist. Wynn v. Peoples Natural Gas Co. of S.C., 238, S.C. 1, 118 S.E. 2d 812 (1961); Coleman v. Quality Concrete Products, Inc., 245 S.C. 625, 142 S.E.2d 43 (1965); Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 88 S.E.2d 581 (1955); Stephenson

v. Rice Svcs., Inc., 323 S.C. 113, 473 S.E.2d 699 (1999).

12. Under S.C. Code Ann. § 42-15-60(C), Claimant is entitled to lifetime medical treatment in the form of viscosupplementation injections for both knees, steroid injections for both knees, and right total knee replacement surgery without any regard to any limitation in the Act including the maximum compensation limit.

13. Claimant's award of total and permanent disability shall be reduced to present value and paid in a lump sum, with allocation language. This is in the best interest of Claimant. Defendants offered no evidence that it would [sic] prejudicial to have the award paid in a lump sum with allocation language. Use of allocation language does not change the commuted lump value of the award based on the 500 week maximum compensation Defendants must pay to Claimant.

14. Under § 42-9-301, the Commission has the authority to award lump sum payments and to fix, establish, or otherwise ascertain such payments along with allocation language as allowed under Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955); James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010). Under Regulation 67-1605(E)(5), it is appropriate for the Carrier to receive a discount as calculated therein.

The Act must be given liberal construction in furtherance of the beneficial purpose for which it was designed. Carter v. Penney Tire & Recapping Co., 261 S.C. 341, 349, 200 S.E.2d 64, 67 (1973). The allocation, appropriation, or distribution of an award is in accordance with the purpose of the Act, which is to protect workers, to create and preserve rights of employees who are injured, to aid injured workers in providing for themselves, and to offer some degree of security regarding the necessities of life. The Act is to be given a liberal construction in furtherance of its purpose. Id. Without the allocation language as allowed under Utica-Mohawk

Mills and James v. Anne's Inc., there would be prejudice to Claimant, who potentially would lose certain other benefits, thereby producing a negative result to the injured worker, which would be contrary to the beneficial purposes of the Act. The award of a lump sum and the use of allocation language for the monies received pursuant to the Order does not create a new right nor does it increase or decrease the award to be received by Claimant or the amount to be paid by Defendants. These are funds which Claimant is entitled to under the Act, and such lump sum and allocation merely assists Claimant in achieving the primary purpose of the Act. Hooks v. Southern Bell Telephone & Telegraph Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986).

Furthermore, under § 42-3-180, the Commission is to resolve all questions under the Act, if not settled by agreement of the parties. There is no exception in § 42-3-180 which would preclude the Commission from determining the propriety of a lump sum award with allocation language.

III. ISSUES ON APPEAL

1. Whether the Hearing Commissioner erred as a matter of fact and law in finding Claimant sustained a compensable injury to her right knee on August 27, 2015 and provided notice of the injury within the statutory period as such finding is not supported by the greater weight of the evidence in the record. (FF #4.) (CL #1.)

2. Whether the Hearing Commissioner erred as a matter of fact and law in finding Claimant sustained compensable injuries to her bilateral knees and left wrist on June 22, 2016 as such finding is not supported by the greater weight of the evidence in the record. (FF#6.)

3. Whether the Hearing Commissioner erred in finding Claimant sustained a compensable injury to her right knee on August 27, 20215 and a compensable aggravation of her preexisting right knee condition with separate injuries to her left knee and left wrist on June 16,2016 as such finding is not supported by the greater weight of the evidence in the record and relies on

speculation and conjecture. (FF #8.) (CL #3.)

4. Whether the Hearing Commissioner erred as a matter of fact in finding Claimant reached MMI for her work injuries on March 31,2021 as such finding is not supported by the evidence in the record or applicable law. (FF #9.) (CL #7.)

5. Whether the Hearing Commissioner erred in finding Claimant testified credibility at the hearing as the evidence in the record does not substantiate this finding. (FF #12.)

6. Whether the Hearing Commissioner erred as a matter of law and fact in finding the permanent restrictions issued by the treating physicians will not allow Claimant to return to work with the employer and that she is permanently and totally disabled under § 42-9-10(A) as such finding is not supported by the greater weight of the evidence in the record. (FF #17) (CL #11.)

7. Whether the Hearing Commissioner erred as a matter of law and fact in finding that Claimant established by a preponderance of the evidence her entitlement to ongoing future medical treatment to include viscosupplementation injections, steroid injections, and right total knee replacement. (FF #19.)

8. Whether the Hearing Commissioner erred as a matter of fact and law in finding Claimant is entitled to ongoing future medical treatment pursuant to § 42-15-60 for her lifetime as this finding is not supported by the evidence in the record. (FF #20.) (CL #12.)

9. Whether the Hearing Commissioner erred as a matter of fact and law in finding Claimant did not receive accurate information regarding her right to medical treatment under workers' compensation as this finding is not supported by the evidence in the record. (FF #5.)

10. Whether the hearing Commissioner erred in finding Dr. Stoddard moved up the date for her right knee surgery due to the aggravation caused by Claimant's work-related June 22,2016 fall as this finding is not supported by the evidence in the record. (FF #7.)

11. Whether the hearing Commissioner erred as a matter of law and fact in finding that

Claimant was unable to work as a result of her right knee injury from January 21, 2016 - April 27, 2016, as such finding is not supported by the greater weight of the evidence in the record. (FF #13.)

12. Whether the Hearing Commissioner erred in finding Claimant was unable to work as a result of her work related injuries since June 22, 2016 as such finding is not supported by the greater weight of the evidence in the record. (EF #14.)

13. Whether the Hearing Commissioner erred as a matter of fact and law in finding Claimant provided timely notice under § 42-15-20 of the August 27, 2015 accident as such finding is not supported by the evidence in the record. (CL #4.)

14. Whether Hearing Commissioner erred as a matter of fact and law in finding Claimant is entitled to all medical treatment related to her injuries through March 31, 2021 as such finding is not supported by the greater weight of the evidence in the record. (CL #7.)

15. Whether the Hearing Commissioner erred in finding Claimant is entitled to past causally related medical treatment as this finding is not supported by the greater weight of the evidence and applicable law. (CL #8.)

16. Whether the Hearing Commissioner erred as matter of law and fact in finding Defendants are responsible for past causally related medical treatment, out of pocket medical expenses, and reimbursement for travel expenses. (CL #9.)

17. Whether the Hearing Commissioner allowed the evidence in the case to become stale by delaying issuing an Order for 925 days after the date of the hearing.

18. Whether the Hearing Commissioner erred as a matter of law in consolidating these claims, (WCC Nos. 1523225 & 1608417), as each claim involved denied injuries with different dates of injury, different injuries, alleged, and separate defenses raised. (WCC Motion Order filed on May 5, 2021.)

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 IN PART and VACATE IN PART** the Decision and Order of the Single Commissioner filed on February 13, 2024.

APA SUBMISSIONS

The APA Submissions listed on the Single Commissioner's Decision and Order, filed on February 13, 2024, contained a scrivener's error under **Defendants' Exhibit G**. The error being that that Exhibit G is listed as beginning on page 401 and concluding on page 406. Accordingly, the Appellate Panel amends the APA Submissions listed on the above-referenced Decision and Order as follows:

EXHIBIT	PROVIDER	DATED	PAGES
G.	General Incident Report	8/27/2015	397-398

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

FINDINGS OF FACT

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Samantha Gooding-Newton as Employee/Claimant and Jasper County as Employer and SC Association of Counties SIF as Carrier, Defendants.

2. That Claimant is fifty-three years old. She is married with two children, ages sixteen (16) and thirty (30).

3. That Claimant has worked in corrections for twenty years, and in corrections for Jasper County since October 2000. Claimant began working for Jasper County as an officer and received numerous promotions over the years to lance corporal, then corporal, then sergeant, and finally captain. (Hr'g Tr. pp. 21-23, 86.)

4. That Claimant was an employee of the above-named Employer on and prior to August 27, 2015, on which date she sustained a compensable injury by accident to her right knee arising out of and in the course and scope of her employment, and proper notice was given to the Employer. This finding is based on the preponderance of the evidence in the record including the Form 12A, First Report of Injury, filed by Defendants, and an Incident Report dated August 27, 2015. (Cl. Ex. A, pp. 167-68; Cl. Ex. B, pp. 169-72; Cl. Ex. J, pp. 324-26.) In addition, Claimant's supervisor, Mr. Arthur Benjamin, testified he was on notice of Claimant's August 27, 2015 right knee injury and even initialed the Form 12A dated August 27, 2015. Mr. Benjamin testified he completed the Form 12A on the date of injury, August 27, 2015, and that it had his signature on it. (Benjamin Dep., Nov. 26, 2019, 17:1-15, 18:25-19: 1, 20: 13-15.) The Form 12A is dated August 27, 2015 and notes the date of injury as "08/27/2015" and the date Employer was notified as "08/27/2015." The Form details the incident noting "I Captain Newton did fall while I was in the Intake area subduing an inmate while he was being combative . . . I caught him and we both slammed into the nurse station where my knee hit first, then falling to the ground with the inmate, causing more damage to my knee." (Cl. Ex. A, p. 168.) The Form 12A notes the affect body part is "Knee (rt)." (Cl. Ex. A, p. 168.) Based on this preponderance of the evidence, Defendants' Notice defense fails.

5. That Claimant did not receive accurate information regarding her right to medical treatment under workers' compensation and ultimately treated on her own for her right knee injury from October 26, 2015 through May 26, 2016, during which time she underwent right knee arthroscopy and physical therapy. Claimant continued to have complaints of pain in her right knee during this time and a subsequent MRI revealed fragmentation of the lateral meniscus as well as a possible stress fracture. Dr. Stoddard recommended a second surgery. (Cl. APA #2, p. 36.)

6. That Claimant had returned to work pending the results of the second MRI from her 2015 right knee injury, and unfortunately, had a second compensable work injury on June 22, 2016, where she injured her bilateral knees and left wrist. Again, the Employer completed a Form 12A, and this time, the Employer sent Claimant for medical treatment at Coastal Carolina Medical Center. (Cl. Ex. C; Cl. APA #3.) At the initial visit with Coastal Carolina Medical Center on June 27, 2016, the hospital referred Claimant back to Dr. Stoddard for further treatment of her work-related injuries. (Hr'g Tr. 47:2-21.) Defendants denied Claimant further treatment following the initial medical visit to Coastal Carolina Medical Center for her work-related injuries. (Hr'g Tr. 48: 11-16.)

7. That Claimant ultimately returned to Dr. Stoddard for evaluation of her bilateral knees on July 1, 2016. At that visit, Dr. Stoddard performed a right knee injection. Dr. Stoddard opined Claimant contused both knees and aggravated arthritis in her right knee. Although Claimant had previously scheduled her recommended surgery for the right knee, Dr. Stoddard moved up the date for that surgery due to the aggravation caused by Claimant's work-related June 22, 2016 fall. (Cl. APA #2, p. 39.) The second right knee surgery was performed on July 13, 2016. (Cl. APA #2, p. 40.)

8. We find Claimant sustained a compensable injury to her right knee on August 27, 2015 (WCC File No. 1523225) and a compensable aggravation of a preexisting condition to her

right knee on June 22, 2016 (WCC File No. 1608417). In addition, Claimant sustained separate injuries to her left knee and left wrist during the June 22, 2016 work injury. This finding is based on the preponderance of the evidence as a whole including the medical opinion of Dr. Leland Stoddard. (Cl. APA #2, p. 112; Cl. APA #6; Dr. Stoddard Dep., June 22, 2021.)

9. That Claimant testified credibly at the hearing. She has been out of work since July 8, 2016 and has not received any compensation from her Employer. (Hr'g Tr. 56:7-8.) Both of her knees continue to bother her although the right hurts significantly worse than the left. Claimant has trouble completing most of her activities of daily living including cooking and other housework, which she used to enjoy. In addition, she no longer goes on motorcycle rides as she did before the work injuries, and she is unable to walk for exercise or ride bikes with her children as a result of her work injuries. (Hr'g Tr. pp. 52-55.)

10. That Claimant was unable to work from the date of her first work-related right knee surgery on January 21, 2016 through April 27, 2016, and she did not receive any temporary total disability benefits or workers' compensation benefits during this time.

11. That Claimant returned to work on April 28, 2016 and worked until her second work-related accident on June 22, 2016. She has been unable to work as a result of her work-related injuries since June 22, 2016. She has received no temporary total disability benefits or workers' compensation benefits of any kind since that time.

12. That Claimant was a captain at the Jasper County Detention Center at the time of her work-related injuries. The 30(b)(6) representative, Arthur Benjamin, testified Claimant was second in command at the Detention Center and he was Claimant's immediate supervisor in both August 2015 and June 2016. Mr. Benjamin testified the job duties of a captain at the Detention Center include the ability to subdue inmates and intervene if any physical altercations break out. (Benjamin

Dep., Nov. 26, 2019, 10:23-25, 11:20-23.) Mr. Benjamin testified Claimant was trustworthy, hardworking, and "an outstanding employee." (Benjamin Dep., Nov. 26, 2019, 12:8- 13.) He testified Claimant had no physical problems performing her job before August 2015. (Id. at 12:1-7.) Mr. Benjamin testified Jasper County does not have light duty work. (Benjamin Dep., Jan. 29, 2020, 27:7-8; Cl. Ex. H, p. 253.)

13. We find that pursuant to S.C. Code Regs. § 67-1802, Claimant's claim for permanent and total disability arises under S.C. Code Ann. § 42-9-10, and is therefore subject to mandatory mediation prior to a hearing.

14. Accordingly, we find that the Single Commissioner's findings as to permanency are **VACATED**.

15. We find that Claimant's medical benefits shall remain in effect during the pendency of the parties' mandated mediation.

16. Accordingly, we find that Defendants are responsible for all past, causally related medical treatment that Claimant has received for her work-related right knee, left knee, and left wrist injuries to date, per the South Carolina Workers' Compensation Fee Schedule.

17. We find that Claimant is entitled to receive ongoing, causally related medical treatment in order to maintain her level of function and thereby tending to lessen her period of disability including, bilateral knee viscosupplementation injections, bilateral knee steroid injections, right total knee replacement surgery, and follow-up care from Dr. Leland Stoddard, all of which shall remain the responsibility of Defendants, including reimbursement to Claimant for mileage and medications, until further order of the Commission.

18. We find that Defendants are responsible for any causally related out of pocket expenses incurred by Claimant until further order of the Commission.

19. We find that Claimant is entitled to reimbursement from Defendants for causally related travel expenses until further order of the Commission.

CONCLUSIONS OF LAW

1. Claimant must establish facts that entitle her to an award by the preponderance of the evidence. Walsh v. U.S. Rubber Co., 120 S.E.2d 685 (S.C. 1961); Herndon v. Morgan Mills, Inc., 143 S.E.2d 376 (S.C. 1965). Claimant has met her burden of proving her claim by the preponderance of the evidence.

2. Pursuant to S.C. Code Ann. § 42-1-130, Claimant was an employee, and under S.C. Code Ann. § 42-1-140, Defendant-Employer was an employer covered under the Act at the time of Claimant's injuries.

3. Pursuant to S.C. Code Ann. § 42-1-160, Claimant established by the preponderance of the evidence that she sustained a compensable injury by accident to her right knee arising out of and in the course and scope of her employment with Employer on August 27, 2015 (WCC File No. 1523225) and a compensable aggravation of a preexisting condition to her right knee arising out of and in the course and scope of her employment with Employer on June 22, 2016 (WCC File No. 1608417). In addition, Claimant sustained separate compensable injuries to her left knee and left wrist arising out of and in the course and scope of her employment with Employer on June 22, 2016.

4. Pursuant to S.C. Code Ann. § 42-15-20, Claimant gave timely and proper notice of her injuries on both dates of accident (August 27, 2015 and June 22, 2016) to Employer.

5. Pursuant to S.C. Code Ann. § 42-15-40, Claimant timely filed her claims within two (2) years of each of her accidents.

6. Pursuant to S.C. Code Ann. § 42-1-40, Claimant had an average weekly wage of \$803.57 making the compensation rate \$535.74 applicable to this claim.

7. Pursuant to S.C. Code Regs. § 67-1802, Claimant's claim for permanent and total disability arises under S.C. Code Ann. § 42-9-10, and is therefore subject to mandatory mediation prior to a hearing. Accordingly, the Single Commissioner's conclusions as to permanency are **VACATED**.

~~8. Pursuant to S.C. Code Ann § 42-15-60, Claimant's causally-related medical benefits shall remain in effect during the pendency of the parties' mandated mediation.~~

9. Pursuant to S.C. Code Ann § 42-15-60, Defendants are responsible for all past, causally related medical treatment Claimant has received for her work-related right knee, left knee, and left wrist injuries to date per the South Carolina Workers' Compensation Fee Schedule.

10. Pursuant to S.C. Code Ann § 42-15-60, Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries, and medications related to her injuries, which tends to effect a cure, provide relief, and/or tends to lessen Claimant's period of disability until further order of the Commission. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999).

11. Pursuant to S.C. Code Ann. § 42-15-60, Defendants are responsible for any causally related out of pocket expenses incurred by Claimant until further order of the Commission.

12. Pursuant to S.C. Code Regs. § 67-1601, Claimant is entitled to reimbursement from Defendants for causally related travel expenses until further order of the Commission.

ORDER

THEREFORE IT IS HEREBY ORDERED that the above-referenced Decision and Order of the Single Commissioner filed on February 13, 2024, is hereby **AFFIRMED IN PART AND VACATED IN PART**.

ACCORDINGLY:

IT IS FURTHER ORDERED that Claimant sustained a compensable injury by accident to her right knee arising out of and in the course and scope of her employment with Employer on August 27, 2015 (WCC File No. 1523225) and a compensable aggravation of a preexisting condition to her right knee in addition to separate compensable left knee and left wrist injuries arising out of and in the course and scope of her employment with Employer on June 22, 2016 (WCC File No. 1608417).

IT IS FURTHER ORDERED that Claimant's claim for permanent and total disability is subject to mandatory mediation prior to a hearing.

IT IS FURTHER ORDERED that the Single Commissioner's findings and conclusions as to permanency are **VACATED**.

IT IS FURTHER ORDERED that Claimant's medical benefits shall remain in effect during the pendency of the parties' mandated mediation.

IT IS FURTHER ORDERED that Defendants are responsible for all past, causally related medical treatment that Claimant has received for her work-related right knee, left knee, and left wrist injuries to date, per the South Carolina Worker's Compensation Fee Schedule.

IT IS FURTHER ORDERED that Claimant is entitled to receive ongoing, causally related medical treatment in order to maintain her level of function and thereby tending to lessen her period of disability including, bilateral knee viscosupplementation injections, bilateral knee steroid injections, right total knee replacement surgery, and follow-up care as recommended by Dr. Leland

Stoddard, all of which shall remain the responsibility of Defendants, including reimbursement to Claimant for mileage and medications, until further order of the Commission.


IT IS FURTHER ORDERED Defendants are responsible for any causally related out of pocket expenses incurred by Claimant until further order of the Commission.

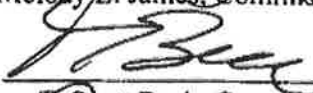
~~**IT IS FURTHER ORDERED** that Claimant is entitled to reimbursement from Defendants~~
for causally related travel expenses until further order of the Commission.


IT IS FURTHER ORDERED that the APA submissions listed for this claim are **AMENDED** as set forth above.

AND SO IT IS ORDERED.

_____ (date)
Columbia, SC


Melody L. James, Commissioner


T. Scott Beck, Commissioner


Gene McCaskill, Commissioner

Order Served via email:

<p>William H. Lyon Wilson Jones Carter & Baxley, PA whlyon@wjcblaw.com</p>	<p>Catherine D. Meehan The Steinberg Law Firm, LLP cmeehan@steinberglawfirm.com</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 November 20, 2024

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **1523225 & 1608417**

Carrier File #: _____

Carrier Code #: _____

Employer FEIN #: _____

Claimant's Name: **Samantha Gooding-Newton**

Employer's Name: **Jasper County**

Address: _____

Address: _____

City: _____ State: _____ Zip: _____

City: _____ State: _____ Zip: _____

Home Phone: () - _____ Work Phone: () - _____

Insurance Carrier: _____

Preparer's Name: _____ Law Firm: _____ Preparer's Phone #: () - _____

THIS MATTER was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference. The Commissioners considered the matter and ordered the matter handled in the following manner:

1. DISPOSITION

- Administrative Appeal.** This action came before the Commission on Appeal of an Administrative Order. The appeal is:
- Dismissed as Interlocutory
 - Set for Oral Argument before the:
 - Hearing Commissioner
 - Jurisdictional Commissioner
 - Full Commission.

See Section II for additional information.



Motion to Reconsider

This action came before the Commission on a motion. The pending motion is:

- Granted
- Denied
- Dismissed
- Remanded for Hearing before the:
 - Hearing Commissioner
 - Jurisdictional Commissioner
- Preserved for Hearing before the:
 - Hearing Commissioner
 - Jurisdictional Commissioner
 - Full Commission.
- Other

See Section II for additional information.

- Appeal.** This action came before the Commission on Appeal from a Single Commissioner Decision & Order. The issues have been heard and a decision rendered. See Section II for additional information. This matter is hereby:

Remanded to take such action and enter an Order consistent with the Commissions' directive. (**CHECK APPLICABLE BOX**):

Remanded to the Panel as indicated below

____ Barden
____ Beck

____ James
____ Campbell
____ McCaskill

____ Taylor
____ Wilkerson

- Remanded to the Hearing Commissioner
- Remanded to the Jurisdictional Commissioner

Other: _____
 Oral Argument to be held by the Panel or En Banc

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Commission:

I. ORDER INFORMATION

This order ends does not end the case.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT

This action came to trial or hearing before the Commission. The issues have been heard and a decision rendered.

AND IT IS SO ORDERED.


**T. Scott Beck, Chairman
For the Commission**

Columbia, South Carolina

12/16/24 Date

CONCURRING:

NOT PARTICIPATING:

DISSENTING:

Commissioner T. Scott Beck
Commissioner Cindy Dooley
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Michael Campbell
Commissioner Gene McCaskill

X

II. CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE-ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This _____ day of _____, 2024.

By: _____
SCWCC Judicial Department

Judicial Conference Order

<u>Served via E-Mail:</u>	
William H. Lyon, Esquire whlyon@wicblaw.com	
Catherine D. Meehan, Esquire cmeehan@steinberglawfirm.com	

Brief Served via USPS:

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).

December 16, 2024

By: Valerie D. Deller, Judicial Department