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Oct 25 2024

State of South Carolina
Workers' Compensation Commission **SC Court of Appeals**

APPELLATE PANEL DECISION AND ORDER

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

SCWCC File No.: 1925084

Christina Walthour,

Claimant,

v.

Remedy Intelligent Staffing, Inc.,

Employer,

and

XL Insurance America, Inc.,

Carrier,

Defendants.

AFFIRMED WITH AMENDMENTS

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

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

Appearances: James G. Christmas, Esq., of Christmas Law Firm, appeared on
behalf of Claimant/Respondent.

Michael Patterson, Esq., of Mingledorff & Patterson, appeared
on behalf of Defendants/Appellants.

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

Filed:

October 3, 2024

I. STATEMENT OF THE CASE

On November 29, 2023, a hearing was held before a Single Commissioner to determine the compensability of Christina Walthour's (Claimant's) claim under the Act. Claimant asserted she sustained injuries on July 11, 2019, to her head, cervical spine, right shoulder, right upper extremity radiculopathy, right wrist, right hand, right fingers, right thumb, left shoulder, left upper extremity radiculopathy, left wrist, left hand, left fingers, left thumb, thoracic spine, lumbar spine, right hip, right lower extremity radiculopathy, left hip and left lower extremity radiculopathy while pulling down pallets for Remedy Intelligent Staffing (Employer). Claimant admitted she had reached maximum medical improvement (MMI) for her injuries. Claimant sought past Temporary Total Disability (TTD) benefits for a period to be determined by the Commission. Claimant further sought a permanent partial or total disability determination and wage loss award.

Employer and XL Insurance America, Inc. (Carrier) (hereinafter collectively known as "Defendants") denied Claimant's injuries arose out of or in the course and scope of her employment on July 11, 2019. Defendants asserted Claimant's alleged injuries were the result of preexisting conditions and not caused or aggravated by her duties for Employer. Defendants further asserted Claimant's injuries were the result of a motor vehicle accident (MVA). Defendants sought a finding that Claimant's alleged injuries were not compensable. In the alternative, Defendants sought a finding that Claimant's MVA was an intervening accident which broke the causal chain. In the other alternative, Defendants sought a finding that Claimant was only entitled to medical benefits from the date of the accident through July 16, 2019, when she returned to work.¹

The Single Commissioner determined, *inter alia*:

Claimant shall be entitled to, and Defendants shall pay, past, continuing and, future medical care and treatment for Claimant's neck and back, including, not limited to,

¹ Claimant's employment was subsequently terminated by Employer on August 11, 2019.

fusions surgery at Claimant's C3-4 level and repeat diagnostic imaging as recommended by board-certified neurosurgeon Dr. DeHoll. [C]laimant is entitled to, and Defendants shall pay Claimant temporary total disability benefits from her last date of work with her Employer through the present and continuing until further Order of this Commission. [C]laimant is not at maximum medical improvement; therefore, it is premature to determine the issue of permanent disability, so it shall be held in abeyance at this time.

(Single Commissioner's Decision and Order filed on April 16, 2024, p. 14.)

Appellate Panel Review

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 before the Appellate Panel on July 15, 2024.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

Based upon the greater weight of the evidence, including the testimony of the witnesses, medical reports, and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission file relative to this claim and the credibility of all the evidence and testimony submitted, [the Single] Commissioner, therefore, makes the following Findings of Fact:

1. That Claimant and Employer were subject to the South Carolina Workers' Compensation Act at the time of Claimant's accidental injury.

2. That the relationship of employer/employee existed between Claimant and Employer at the time of Claimant's accidental injury.
3. That Claimant has no previous workers' compensation claims.
4. That on or about July 11, 2019, Claimant sustained compensable injuries by accident to her neck at C3-4, C4-5, C5-6, and C6-7, with a myelopathic spinal cord injury and radicular symptoms that affect her bilateral shoulders, bilateral upper extremities, bilateral hands,

and bilateral fingers, which I find is supported by the greater weight of the evidence including, but not limited to: board-certified treating neurosurgeon, Dr. DeHoll, opinion to a reasonable degree of medical certainty that Claimant's neck injuries, including injuries to her C3-4, C4-5, C5-6 and C6-7, were caused by and/or aggravated by her July 11, 2019 accident at work (CIm. APA 1: 1; DeHoll Depo. Tr. 8-9: 25-7); board-certified physical medicine and rehabilitation specialist, Dr. Patel, opines that Claimant sustained a work-related injury to her cervical spine as a result of her work accident that have caused neurological deficits in both of Claimant's upper extremities including sensory and motor weakness, as well as hyperactive reflexes (CIm. APA 2: 2; Patel Depo. Tr. 37: 9-23); and (3) authorized treating physician, Dr. Kim, opines that Claimant was injured at work on July 11, 2019, and that her pain and symptoms in her lumbar spine were caused by and/or aggravated by her work accident. (CIm. APA 4: 1).

5. That Defendants proffered no medical opinion to a reasonable degree of medical certainty from any doctor with a differing opinion regarding causation in this case and proffered no medical opinion from any doctor that Claimant's injuries came from anywhere other than from her work-related accident that occurred on July 11, 2019.
6. That Claimant timely gave notice of her injury by accident to her Employer promptly in accordance with the Act, which I find is supported by the greater weight of the evidence including, but not limited to: Employer's "Workplace Injury Triage & Reporting Confidential: Incident Report," which was filled out on July 12, 2019, within eleven (11) hours of Claimant's work accident and stated that Claimant had injuries to her back and left shoulder. (CIm. APA 11: 1-3).
7. That Claimant is credible and credibly testified at the hearing of this case.
8. That Claimant underwent neck surgery, during which board-certified treating neurosurgeon Dr. DeHoll fused Claimant's neck at C4-5, C5-6, and C-7 because of her work injury. (CIm.

APA 1: 17-18).

9. That Claimant appeared to the [Single] Commissioner to be in genuine discomfort at the hearing.
10. That Claimant shall be entitled to, and Defendants shall pay, past, continuing, and future medical care and treatment for Claimant's neck and back, including, but not limited to, fusion surgery at Claimant's C3-4 level and repeat diagnostic imaging as recommended by board-certified neurosurgeon Dr. DeHoll. (Clm. APA 1: 1; DeHoll Depo. Tr. 9-10: 20-10).
11. That Claimant is adamant in her testimony that she would like additional future medical treatment and surgery, so I find it reasonable for Claimant to have a C3-4 fusion with Dr. DeHoll, as it would tend to lessen Claimant's period of disability and that Dr. DeHoll shall assume Claimant's medical care and treatment until further Order of the Commission.
12. That Claimant's average weekly wage is \$402.91, with a corresponding compensation rate of \$268.60.
13. That Claimant is entitled to, and Defendants shall pay Claimant, temporary total disability benefits from her last date of work with her Employer through the present and continuing until further Order of this Commission.
14. That Claimant is not time-barred or barred by the doctrines of waiver, estoppel, and laches. I base this finding on the greater weight of the evidence, pleadings, and testimony given in this case, as well as South Carolina law, including, but not limited to, Claimant's filing of a Form 50 (Request for Hearing) on May 26, 2021; Claimant's and Defendants' joint filing of a Consent Order for the conduction of additional discovery on October 13, 2021; Claimant's filing of a Form 50 (Request for Hearing) on October 28, 2021; Claimant's filing of a Form 58 (Pre-Hearing Brief) on January 21, 2022; Claimant's filing of a Form 50 (Request for Hearing) on September 1, 2023; Defendants' filing of a Form 51 (Answer to Request for Hearing) on September 29, 2023; Claimant's Filing of a Form 58 (Pre-Hearing Brief) on

November 14, 2023; Defendants' filing of a Form 58 (Pre- Hearing Brief) on November 21, 2023; Defendants' filing of an Amended Form 58 (Pre-Hearing Brief) on November 28, 2023; and Defendants' filing of a Motion to Postpone Hearing on November 28, 2023.

15. That Claimant did not suffer an intervening accident that would break the causal connection of her work-related injuries being related to her work-related accident. I base this finding on the greater weight of the evidence, testimony, and medical opinions given in this case, as well as the lack of opposing medical evidence in that Defendants failed to proffer any opinion from any doctor to support their argument on this issue.
16. That Claimant is not at maximum medical improvement; therefore, it is premature to determine the issue of her permanent disability, so it shall be held in abeyance at this time.

CONCLUSIONS OF LAW

1. That this case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That S.C. Code Ann. § 42-1-40 is applicable in defining "average weekly wages."
3. That S.C. Code Ann. § 42-1-100 is applicable in defining "compensation."
 4. That S.C. Code Ann. § 41-1-120 is applicable in defining "disability."
 5. That S.C. Code Ann. § 42-1-130 is applicable in defining "employee."
 6. That S.C. Code Ann. § 42-1-140 is applicable in defining "employer."
 7. That S.C. Code Ann. § 42-1-150 is applicable in defining "employment."
 8. That S.C. Code Ann. § 42-1-160 is applicable in defining "injury" and "personal injury."
 9. That S.C. Code Ann. § 42-15-60 is applicable in determining "medical, surgical, hospital, and other treatment."
 10. That S.C. Code Ann. § 42-70-40 is applicable in "governing the conduct of hearing

and rendering of awards."

III. ISSUES ON APPEAL

Defendants/Appellants

1. Whether the Commissioner erred in denying Defendants motion for postponement and/or continuance.
2. Whether the Commissioner erred in holding the record open for specific discovery only.
3. Whether the Commissioner erred by failing to find the claim was barred by the doctrine of waiver and laches.
4. Whether the Commissioner erred by finding Claimant credible.
5. Whether the Commissioner erred by finding Claimant suffered a compensable injury.
6. Whether the Commissioner erred by finding Claimant suffered a compensable injury to her cervical spine.
7. Whether the Commissioner erred by finding any portion of the claim compensable after July 16, 2019.
8. Whether the Commissioner erred by finding Claimant is entitled to back TTD benefits.
9. Whether the Commissioner erred by finding Claimant is entitled to ongoing TTD benefits.
10. Whether the Commissioner erred by finding Claimant is entitled to the payment of past medical treatment.
11. Whether the Commissioner erred by finding Claimant is entitled to future medical treatment pursuant to the South Carolina Workers' Compensation Act.
12. Whether the Commissioner erred by finding Claimant suffered an injury to her neck on July 11, 2019, when there is no contemporaneous subjective or objective evidence Claimant suffered an injury to her neck on July 11, 2019.
13. Whether the Commissioner erred by failing to find Claimant deprived Defendants of their statutory right to control medical treatment under § 42-15-80 of the South Carolina Code

of Laws, as amended, the South Carolina Workers' Compensation Act, and the South Carolina Workers' Compensation Regulations.

14. Whether the Commissioner erred in relying on any statements of causation from Dr. DeHoll when Dr. DeHoll testified that he did not have a recollection of how Claimant was injured when filling out the questions.
15. Whether the Commissioner erred by failing to find Claimant violated § 42-15- 60(B)(3) of the South Carolina Code of Laws, as amended.
16. Whether the Commissioner erred in finding Claimant was not at maximum medical improvement.

IV. DECISION OF THE APPELLATE PANEL

Appeal of Single Commissioner's Decision and Order

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.

After careful review of the Requests for Review in the instant case, including review of the entire record and upon consideration of the memoranda and arguments of the parties, the Appellate Panel ~~Affirm with Amendments the Decision and Order of the Single Commissioner filed on April 16, 2024.~~

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 Claimant and Employer were subject to the South Carolina Workers' Compensation

Act at the time of Claimant's accidental injury.

2. That the relationship of employer/employee existed between Claimant and Employer at the time of Claimant's accidental injury.
3. That Claimant has no previous workers' compensation claims.
4. That on or about July 11, 2019, Claimant sustained compensable injuries by accident to her neck at C3-4, C4-5, C5-6, and C6-7, with a myelopathic spinal cord injury and radicular symptoms that affect her bilateral shoulders, bilateral upper extremities, bilateral hands, and bilateral fingers, which we find is supported by the greater weight of the evidence including, but not limited to: board-certified treating neurosurgeon, Dr. DeHoll, opinion to a reasonable degree of medical certainty that Claimant's neck injuries, including injuries to her C3-4, C4-5, C5-6 and C6-7, were caused by and/or aggravated by her July 11, 2019 accident at work (CIm. APA 1: 1; DeHoll Depo. Tr. 8-9: 25-7); board-certified physical medicine and rehabilitation specialist, Dr. Patel, opines that Claimant sustained a work-related injury to her cervical spine as a result of her work accident that have caused neurological deficits in both of Claimant's upper extremities including sensory and motor weakness, as well as hyperactive reflexes (CIm. APA 2: 2; Patel Depo. Tr. 37: 9-23); and (3) authorized treating physician, Dr. Kim, opines that Claimant was injured at work on July 11, 2019, and that her pain and symptoms in her lumbar spine were caused by and/or aggravated by her work accident. (CIm. APA 4: 1).

5. That Defendants proffered no medical opinion to a reasonable degree of medical certainty from any doctor with a differing opinion regarding causation in this case and proffered no medical opinion from any doctor that Claimant's injuries came from anywhere other than from her work-related accident that occurred on July 11, 2019.
6. That Claimant timely gave notice of her injury by accident to her Employer promptly in accordance with the Act, which we find is supported by the greater weight of the evidence

including, but not limited to: Employer's "Workplace Injury Triage & Reporting Confidential: Incident Report," which was filled out on July 12, 2019, within eleven (11) hours of Claimant's work accident and stated that Claimant had injuries to her back and left shoulder. (Clm. APA 11: 1-3).

7. That Claimant is credible and credibly testified at the hearing of this case.
8. That Claimant underwent neck surgery, during which board-certified treating neurosurgeon Dr. DeHoll fused Claimant's neck at C4-5, C5-6, and C-7 because of her work injury. (Clm. APA 1: 17-18).
9. That Claimant appeared to the Single Commissioner to be in genuine discomfort at the hearing.
10. That Claimant shall be entitled to, and Defendants shall pay, past, continuing, and future medical care and treatment for Claimant's neck and back, including, but not limited to, fusion surgery at Claimant's C3-4 level and repeat diagnostic imaging as recommended by board-certified neurosurgeon Dr. DeHoll. (Clm. APA 1: 1; DeHoll Depo. Tr. 9-10: 20-10).
11. That Claimant is adamant in her testimony that she would like additional future medical treatment and surgery, so we find it reasonable for Claimant to have a C3-4 fusion with Dr. DeHoll, as it would tend to lessen Claimant's period of disability and that Dr. DeHoll shall assume Claimant's medical care and treatment until further Order of the Commission.
12. That Claimant's average weekly wage is \$402.91, with a corresponding compensation rate of \$268.60.
13. That Claimant is entitled to, and Defendants shall pay Claimant, temporary total disability benefits from her last date of work with her Employer through the present and continuing until further Order of this Commission.
14. A party asserting laches must meet a tripartite element test, to wit: (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d

525, 528 (1988). Further, each matter must be reviewed on its own facts when determining if laches is present. *Richey v. Dickenson*, 359 S.C. 609, 611, 598 S.E. 2d 307, 309 (S.C. Ct. App. 2004). We find the greater weight of the evidence indicates no unreasonable delay by Claimant in this matter. We base this finding on the pleadings, and testimony given in this case, as well as South Carolina law, including, but not limited to, the date of Claimant's work-related accident, Claimant's filing of a Form 50 (Request for Hearing) on May 26, 2021; Claimant's and Defendants' joint filing of a Consent Order for the conduction of additional discovery on October 13, 2021; Claimant's filing of a Form 50 (Request for Hearing) on October 28, 2021; Claimant's filing of a Form 58 (Pre-Hearing Brief) on January 21, 2022; Claimant's filing of a Form 50 (Request for Hearing) on September 1, 2023; Defendants' filing of a Form 51 (Answer to Request for Hearing) on September 29, 2023; Claimant's Filing of a Form 58 (Pre-Hearing Brief) on November 14, 2023; Defendants' filing of a Form 58 (Pre- Hearing Brief) on November 21, 2023; Defendants' filing of an Amended Form 58 (Pre-Hearing Brief) on November 28, 2023; and Defendants' filing of a Motion to Postpone Hearing on November 28, 2023.

In *Richey*, there was a continuous eleven year delay. *Id.* at pp. 308-309. Contrary to the facts in *Richey*, we find there is no material prejudice to Defendants shown in the instant matter. Neither party indicates that their file or their client's file is missing; neither party indicated they could not access medical records; there is not an indication that there are missing medical records or providers that did not respond; and there is not an indication that practices or doctors are unavailable. We, therefore, find Claimant is not barred by the doctrine of waiver, estoppel, and laches.

15. That Claimant did not suffer an intervening accident that would break the causal connection of her work-related injuries being related to her work-related accident. We base this finding on the greater weight of the evidence, testimony, and medical opinions given in this case,

as well as the lack of opposing medical evidence in that Defendants failed to proffer any opinion from any doctor to support their argument on this issue.

16. That Claimant is not at maximum medical improvement; therefore, it is premature to determine the issue of her permanent disability, so it shall be held in abeyance at this time.

CONCLUSIONS OF LAW

1. That this case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That S.C. Code Ann. Section 42-1-40 is applicable in defining "average weekly wages."
3. That S.C. Code Ann. § 42-1-100 is applicable in defining "compensation."
4. That S.C. Code Ann. § 41-1-120 is applicable in defining "disability."
5. That S.C. Code Ann. § 42-1-130 is applicable in defining "employee."
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7. That S.C. Code Ann. § 42-1-150 is applicable in defining "employment."
8. That S.C. Code Ann. § 42-1-160 is applicable in defining "injury" and "personal injury."
9. That S.C. Code Ann. § 42-15-60 is applicable in determining "medical, surgical, hospital, and other treatment."
10. That S.C. Code Ann. § 42-70-40 is applicable in "governing the conduct of hearing and rendering of awards."

11. South Carolina jurisprudence has routinely recognized that the doctrine of laches is applicable to workers' compensation proceedings. See, e.g., *Muir v. C.R. Bard, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Mid-State Trust, II v. Wright*, 323 S.C. 303, 474 S.E.2d

421 (1996). “The inquiry into the applicability of laches is highly fact-specific and each case must be judged by its own merits.” *Emery v. Smith*, 361 S.C. 207, 216, 603 S.E.2d 598, 602 (Ct. App. 2004) (citation omitted). A party asserting laches must meet a tripartite element test, to wit: (1) delay, (2) unreasonable delay, and (3) prejudice. *Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988).

12. The question of laches is largely a factual one, so each case must be judged on its own merits. *Richey v. Dickenson*, 359 S.C. 609, 611, 598 S.E. 2d 307, 309 (S.C. Ct. App. 2004).

ORDER

IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed on April 16, 2024, is **Affirmed with Amendments**.

Accordingly:

IT IS FURTHER ORDERED that Claimant shall be entitled to, and Defendants shall pay, past, continuing, and future medical care and treatment for Claimant’s neck and back, including, but not limited to, fusion surgery at Claimant’s C3-4 level and repeat diagnostic imaging as recommended by board-certified neurosurgeon Dr. DeHoll.

IT IS FURTHER ORDERED that Claimant is entitled to, and Defendants shall pay Claimant temporary total disability benefits from her last date of work with Employer through the present and continuing until further Order of this Commission.

~~**IT IS FURTHER ORDERED**~~ that Claimant is not at maximum medical improvement; therefore, it is premature to determine the issue of her permanent disability, so it shall be held in abeyance at this time.

IT IS FURTHER ORDERED that Claimant’s claim is not barred by the doctrine of waiver, estoppel and laches as the greater weight of the evidence shows no unreasonable delay by Claimant. Defendants were not materially prejudiced in the course of this matter.

AND SO IT IS ORDERED.

Oct. 3, 2024 (date)
Columbia, SC

Melody L. James
Melody L. James, Commissioner

Cynthia C. Dooley
Cynthia C. Dooley, Commissioner

Aisha Taylor
Aisha Taylor, Commissioner

Order on Motion to Quash Respondent's Subpoena

<u>Served via E-Mail:</u>	
Christopher C. Mingledorff, Esquire chris@mptrial.com	
Michael Patterson, Esquire michael@mptrial.com	
James G. Christmas, Esquire gc@gchristmaslaw.com	
Robert Clyde Limehouse, III, Esquire trey@gchristmaslaw.com	

Order 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).

October 3, 2024

By: Valerie D. Deller, Judicial Department