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SC Court of Appeals

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

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable R. Michael Campbell; The Honorable Cynthia C. Dooley; and The Honorable Melody L. James.

SCWCC File No.: 0606817

Sharonda Love,

Claimant/Appellant,

v.

Fresenius Medical Care Holding,

Employer,

and

American Casualty Co. of Reading, Pennsylvania.,

Carrier,

Defendants/Respondents.

AFFIRMED

Hearing held in Richland County, South Carolina,
on February 10, 2025

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

Appearances: David V. Benson, Esq., of Elrod Pope Law Firm, appeared on behalf of Claimant/Appellant.

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

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

Filed: April 7, 2025

I. STATEMENT OF THE CASE

Single Commissioner Review

Claimant sustained an admitted injury to her back on April 21, 2006. The parties agreed by Consent Order dated May 16, 2013, that Claimant would receive causally related medical treatment and provisions for retained hardware.

Defendants asserted Claimant made her final causally related medical appointment on October 14, 2022. Claimant asserted she had been speaking directly with the insurance adjuster regarding the claim and requesting additional medical treatment after October 14, 2022.

Claimant filed a Form 50, Hearing Request, on March 15, 2024, requesting additional medical treatment for her back pursuant to the Consent Order. Claimant maintained the Consent Order granted her medical treatment for life. Defendants maintained the Consent Order only allowed medical treatment as recommended by the authorized treating physician and pursuant to S.C. Ann. §42-15-60(B)(3), and because there was a lapse in treatment of more than one year, Claimant was no longer entitled to medical treatment under the terms of the Consent Order.

On May 7, 2024, a hearing was held before a Single Commissioner to determine the issues set forth on the parties' Forms 50 and 51.

The Single Commissioner concluded, *inter alia*:

[C]laimant is not entitled to continued causally related medical treatment as there was a lapse in treatment of more than one year and [C]laimant did not make reasonable attempts to obtain further treatment.

[C]laimant has failed to meet her burden of proving her entitlement to additional medical benefits under the Act.

(Single Commissioner's Decision and Order filed on November 13, 2024, p. 7.)

The Single Commissioner ordered, *inter alia*:

[C]laimant is not entitled to further medical treatment for her admitted work accident pursuant to the Consent Order.

(Single Commissioner's Decision and Order filed on November 13, 2024, p. 7.)

Appellate Panel Review

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on appeal by Claimant (Appellant). Within the statutory period, Appellant filed a Form 30, Request for Commission Review. Accordingly, the parties presented before the Appellate Panel on February 10, 2025.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

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

1. Claimant sustained a compensable injury to her back, which was resolved through Consent Order in 2016 [sic]. (Defendants Ex. 1).
2. Per the Consent Order, Claimant was entitled to additional causally related medical treatment as well as provisions for her retained hardware. (Defendants Ex. 1).
3. Defendants assert that Claimant's last causally related medical treatment occurred in 2022 with a chiropractic visit. They assert that as of the date of the hearing, over one year has passed without seeking additional medical treatment, and thus, Claimant is no longer entitled to future medical treatment under Section 42-15-60. This Finding is based on the testimony of Claimant.
4. Claimant asserts she has been speaking directly with the adjuster regarding settling her claim and believed she had requested additional medical treatment as well. This Finding is based on the testimony of Claimant.
5. Claimant requested the medical record to be held open to submit documentation of her email correspondence with the adjuster, which was granted.
6. On May 13, 2024, Claimant, through counsel, submitted a Supplemental APA submission, which purported to show correspondence between Claimant and Defendants regarding Claimant's right to additional medical treatment.

7. Upon review of the [Single Commissioner], the correspondence is between Claimant and a third-party company, EthosRisk, which is not the insurance company or the employer, nor any other agent thereof. Moreover, it does not even reference treatment, but a "well check." (Claimant Ex. 1-7, pp. 71-78).
8. I find the Consent Order does not give Claimant additional time to request medical treatment. Although Claimant could have been entitled to medical treatment for her lifetime, she did not comply with the provisions of Section 42-15-60 with regard to the requirement of annual medical treatment.
9. I find that Claimant did not make reasonable attempts to obtain further treatment or modality from an authorized physician in compliance with Section 42-15-60. Claimant's correspondence was with EthosRisk, a third party, and did not reference treatment.
10. Claimant has failed to meet her burden of proving her entitlement to additional medical benefits under the Act.
11. No hearing costs are assessed.

CONCLUSIONS OF LAW

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

1. Pursuant to Section 42-15-60, Claimant is not entitled to continued causally related medical treatment as there was a lapse in treatment of more than one year and Claimant did not make reasonable attempts to obtain further treatment.
2. Therefore, Claimant has failed to meet her burden of proving her entitlement to additional medical benefits under the Act.

III. ISSUES ON APPEAL

1. Did the Hearing Commissioner err in Finding of Fact 7 by finding EthosRisk is not the insurance carrier, or any agent thereof, when evidence was not presented by Respondents that EthosRisk was not the insurance carrier or an agent thereof?
2. Did the Hearing Commissioner err in Finding of Fact 8 in finding Appellant was not entitled to lifetime medical benefits in spite of the clear wording of the original unappealed Order?

3. Did the Hearing Commissioner err in Finding of Fact 8 that Appellant did not comply with Section 42-15-60 when the Order clearly provides for lifetime medical benefits?
4. Did the Hearing Commissioner err in Finding of Fact 9 in finding Appellant did not make reasonable attempts to obtain further treatment when this finding is not supported by testimony and is against the greater weight of the evidence?
5. Did the Hearing Commissioner err in Findings of Facts 7-10 that Appellant did not meet her burden of proof when the Order clearly states she has lifetime medical benefits and Respondents did not follow the Order and provide her with a Medicare Set Aside Agreement (MSA)?
6. Did the Hearing Commissioner err in finding Appellant had not met her burden when the Order provides the only way Respondents can absolve themselves of lifetime medical benefits is by providing an MSA which was not done?
7. Did the Hearing Commissioner err in finding Appellant was not entitled to lifetime medical benefits when Section 42-15-60(B)(3)(a) provided for lifetime medical benefits, because the Order clearly provides for lifetime medical benefits?

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.

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 does hereby fully **AFFIRM** the Decision and Order of the Single Commissioner filed on November 13, 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. Appellant sustained a compensable injury to her back, which was resolved through Consent Order in 2013. (Defendants/Respondents Ex. 1).
2. Per the Consent Order, Appellant was entitled to additional causally related medical treatment as well as provisions for her retained hardware. (Defendants/Respondents Ex. 1).
3. Respondents assert that Appellant's last causally related medical treatment occurred in 2022 with a chiropractic visit. They assert that as of the date of the hearing, over one year has passed without seeking additional medical treatment, and thus, Appellant is no longer entitled to future medical treatment under Section 42-15-60. This Finding is based on the testimony of Appellant.
4. Appellant asserts she has been speaking directly with the adjuster regarding settling her claim and believed she had requested additional medical treatment as well. This Finding is based on the testimony of Appellant.
5. Appellant requested the medical record to be held open to submit documentation of her email correspondence with the adjuster, which was granted.
6. On May 13, 2024, Appellant, through counsel, submitted a Supplemental APA submission, which purported to show correspondence between Appellant and Respondents regarding Appellant's right to additional medical treatment.
7. Upon review, we find the correspondence is between Claimant and a third-party company, EthosRisk, which is not the Carrier or Employer, or any other agent thereof. Moreover, it does not even reference treatment, but a "well check." (Claimant/Appellant Ex. 1-7, pp. 71-78).
8. We find the Consent Order does not give Appellant additional time to request medical treatment. Although Appellant could have been entitled to medical treatment for her lifetime, she did not comply with the provisions of Section 42-15-60 with regard to the requirement of annual medical treatment.

9. We find that Appellant did not make reasonable attempts to obtain further treatment or modality from an authorized physician in compliance with Section 42-15-60. Appellant's correspondence was with EthosRisk, a third party, and did not reference treatment.
10. Appellant has failed to meet her burden of proving her entitlement to additional medical benefits under the Act.
11. No hearing costs are assessed.

CONCLUSIONS OF LAW

1. Pursuant to Section 42-15-60, Appellant is not entitled to continued causally related medical treatment, as there was a lapse in treatment of more than one year and Appellant did not make reasonable attempts to obtain further treatment.
2. Therefore, Appellant has failed to meet her burden of proving her entitlement to additional medical benefits under the Act.

ORDER


IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed on November 13, 2024, is fully **AFFIRMED**.

Accordingly:

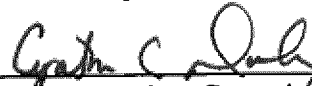
IT IS FURTHER ORDERED that Appellant is not entitled to further medical treatment for her admitted work accident pursuant to the Consent Order.

AND SO IT IS ORDERED.

_____ (date)
Columbia, SC



R. Michael Campbell, Commissioner



Cynthia C. Dooley, Commissioner



Melody James, Commissioner

Order Served via email:

<p>Grady Beard Nicolas L. Haigler Robinson, Gray, Stepp, & Laffitte gbeard@robinsongray.com nhaigler@robinsongray.com</p>	<p>David V. Benson Elrod People Law Firm dbenson@elrodpope.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 April 7, 2025