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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, II; The Honorable Cynthia C. Dooley; and The Honorable Aisha Taylor.

SCWCC File No.: 1925782

Bilma Sanchez-Martinez,

Claimant,

v.

Techtronic Industries North America, Inc.,

Employer,

and

Ace American Insurance Co.,

Carrier,

Defendants.

AFFIRMED

Hearing Held in Richland County, South Carolina,
on March 10, 2025

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

Appearances: Stephen Garcia, Esq., of Garcia Law Firm, LLC, represents
Claimant/Appellant.

Amanda Mellard, Esq., of Robinson Gray Stepp & Laffitte, LLC,
represents Defendants/Respondents.

Court Reporter: Elizabeth L. Holt, 1230 Richland St, Columbia, SC 29201, 803-
252-3445, contact@creelreporting.com.

Filed: May 2, 2025

I. STATEMENT OF THE CASE

Single Commissioner

The parties agreed by Consent Order filed on December 14, 2022, that the repetitive trauma injury to Claimant's left foot was compensable. Defendants agreed to provide causally related medical treatment and temporary total disability (TTD) benefits for Claimant's admitted injury.

On June 12, 2023, Defendant filed a Form 21, Employer's Request for Hearing. Defendants asserted Claimant's condition was unrelated to her employment based on the opinion of Dr. David Barcel. Accordingly, Defendants denied Claimant's claim and sought to terminate her TTD benefits.

On June 14, 2023, Claimant filed a Form 50, Employee's Request for Hearing. Claimant reaffirmed the asserted injury to her left foot by repetitive trauma suffered in the course and scope of her employment.

On July 7, 2023, Defendants filed a Form 51, Employer's Answer to Request for Hearing. Defendants reaffirmed their denial of Claimant's claim. Defendants asserted since admitting Claimant's claim, they received medical evidence that contradicted her alleged employment-related condition.

On May 20, 2024, a hearing was held before a Single Commissioner to determine issues set forth on the parties' Forms 50, 51 and 21.

The Single Commissioner determined, *inter alia*:

[C]laimant has reached MMI for her compensable injury and has not sustained any degree of permanent partial disability and thus is not entitled to any award of additional benefits, indemnity or medical. Further, Defendants may terminate payment of TTD benefits and are entitled to a credit for overpayment of TTD benefits from June 12, 2023, the date of the filing of the Form 21/Hearing Request.

(Single Commissioner's Decision and Order filed on September 3, 2024, p.8).

Appellate Panel

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. Accordingly, the parties presented before the Appellate Panel on March 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. Pursuant to a prior Consent Order, the parties agreed that Claimant sustained a compensable injury to the left foot as a result of her employment with TTI and would provide TTD benefits and causally related medical treatment with a doctor of their choosing.
2. Defendants maintain that the claim is admitted and are not denying compensable injury to the left foot but instead contend that Claimant has reached MMI for her compensable injury.
3. Defendants provided treatment with Dr. David Barcel on May 20, 2023, which was a doctor of their choosing pursuant to the Consent Order.
4. Claimant has not had any treatment for over two years from Dr. Clemow, with her last visit being on March 14, 2022.
5. Claimant presented to Dr. Barcel on May 30, 2023, and saw him one time. (Depo. Tr. p. 7 ln. 10-12; p. 10, ln. 1-2).
6. Dr. Barcel noted that her EMG study was within normal limits. (Depo. Tr. p. 12, ln. 23-25).
7. Dr. Barcel noted that there was no evidence in the EMG study of tarsel [sic] tunnel syndrome. (Depo. Tr. p. 13, ln. 1-3).

8. Dr. Barcel confirmed the diagnosis of left flat foot. (Depo. Tr. p. 13, ln. 14-24; p. 14, ln. 5-16, 18-25).
9. Dr. Barcel opined that she has reached MMI for her compensable injury to the left foot. (Depo. Tr. p. 15, ln. 1-3).
10. Dr. Barcel opined that Claimant has no permanent impairment as a result of her work accident/injury (Depo. Tr. p. 15, 4-7), and would not need additional or future medical treatment. (Depo. Tr. p. 15, ln. 8-12).
11. Dr. Barcel opined that Claimant has no permanent work restrictions. (Depo. Tr. p. 15, ln. 13-18).
12. Dr. Barcel opined within a reasonable degree of medical certainty that Claimant's condition of flat foot is not related to her employment and while he would recommend treatment for the unrelated condition, he does not recommend any treatment or believe she has sustained an impairment due to the work accident. (Depo. Tr. p. 16).
13. All of Dr. Barcel's opinions were given within a reasonable degree of medical certainty. (Depo. Tr. p. 17, ln. 1-3).
14. On cross examination, Dr. Barcel noted that he did not know much about Claimant's work history but opined her condition was a progression. (Depo. Tr. p. 20, 21, 22).
15. Dr. Barcel testified that his only knowledge of Claimant's work history is what was provided to him in the evaluation by Claimant. (Depo. Tr. p. 25).
16. Dr. Barcel opined that Claimant's condition of flat foot likely warrants more treatment but that this condition is not related to her work accident. (Depo. Tr. p. 26-29).

17. Dr. Barcel testified that the majority of his patients are foot and ankle patients. (Depo. Tr. p. 30).

18. Dr. Barcel testified that none of his opinions changed while being questioned by Claimant's counsel. (Depo. Tr. p. 31).

19. The [Single Commissioner] grants greater weight to the opinion of Dr. Barcel over any of the other doctors as he is a board certified orthopedic surgeon.

20. The greater weight of the evidence supports that Claimant has a pre-existing condition aggravated by her employment with TTL.

21. Claimant has reached MMI for her compensable injury.

22. The only doctor stating [sic] that her flat foot was pre-existing, and this has redefined the baseline as 0%. Thus, Claimant has sustained zero impairment from the May 30, 2023 visit.

23. Claimant is not entitled to any award of PPD benefits as she has not sustained any permanent disability.

24. Defendants may terminate payment of TTD benefits and are entitled to a credit for overpayment of TTD benefits from June 12, 2023.

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 this Commissioner that:

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant Employer was a covered employer.
2. Pursuant to § 42-1-160, Claimant sustained a compensable injury to the left foot on January 24, 2022, due to repetitive trauma.

3. Pursuant to § 42-15-60, Claimant was evaluated by Dr. Barcel who opined within a reasonable Degree of medical certainty that she had reached MMI as of May 30, 2023.
4. Pursuant to § 42-9-30, Claimant has not sustained any loss of use of her left foot and is not entitled to any award of PPD benefits.
5. Pursuant to § 42-9-10, Claimant has reached MMI and is not entitled to TTD benefits beyond beyond June 12, 2023, the date of the filing of Form 21/Hearing Request.
6. Pursuant to § 42-9-10, Defendants are entitled to a credit of overpayment of TTD benefits paid after June 12, 2023.

III. ISSUE ON APPEAL

Whether the Single Commissioner erred as a matter of fact and law that Claimant was at MMI for her compensable left foot injury and not entitled to any additional benefits under the South Carolina Workers' Compensation Act?

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 fully **AFFIRM** the Decision and Order of the Single Commissioner filed on September 3, 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. Pursuant to a prior Consent Order, the parties agreed that Claimant sustained a compensable injury to the left foot as a result of her employment with TTI and would provide TTD benefits and causally related medical treatment with a doctor of their choosing.
2. Defendants maintain that the claim is admitted and are not denying compensable injury to the left foot but instead contend that Claimant has reached MMI for her compensable injury.
3. Defendants provided treatment with Dr. David Barcel on May 20, 2023, which was a doctor of their choosing pursuant to the Consent Order.
4. Claimant has not had any treatment for over two years from Dr. Clemow, with her last visit being on March 14, 2022.
5. Claimant presented to Dr. Barcel on May 30, 2023, and saw him one time. (Depo. Tr. p. 7 ln. 10-12; p. 10, ln 1-2).
6. Dr. Barcel noted that her EMG study was within normal limits. (Depo. Tr. p. 12, ln. 23-25).
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8. Dr. Barcel confirmed the diagnosis of left flat foot. (Depo. Tr. p. 13, ln. 14-24; p. 14, ln. 5-16, 18- 25).
9. Dr. Barcel opined that she has reached MMI for her compensable injury to the left foot. (Depo. Tr. p. 15, ln 1-3).
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11. Dr. Barcel opined that Claimant has no permanent work restrictions. (Depo. Tr. p. 15, ln. 13-18).
12. Dr. Barcel opined within a reasonable degree of medical certainty that Claimant's condition

of flat foot is not related to her employment and while he would recommend treatment for the unrelated condition, he does not recommend any treatment or believe she has sustained an impairment due to the work accident. (Depo. Tr. p. 16).

13. All of Dr. Barcel's opinions were given within a reasonable degree of medical certainty.

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17. Dr. Barcel testified that the majority of his patients are foot and ankle patients. (Depo. Tr. p. 30).

18. Dr. Barcel testified that none of his opinions changed while being questioned by Claimant's counsel. (Depo. Tr. p. 31).

19. The Appellate Panel grants greater weight to the opinion of Dr. Barcel over any of the other doctors as he is a board certified orthopedic surgeon.

20. The greater weight of the evidence supports that Claimant has a pre-existing condition aggravated by her employment with TTL.

21. Claimant has reached MMI for her compensable injury.

22. [Dr. Barcel]: The only doctor stating that [Claimant's] flat foot was pre-existing, and this

has redefined the baseline as 0%. Thus, Claimant has sustained zero impairment from the May 30, 2023 visit.

23. Claimant is not entitled to any award of PPD benefits as she has not sustained any permanent disability.
24. Defendants may terminate payment of TTD benefits and are entitled to a credit for overpayment of TTD benefits from June 12, 2023.

CONCLUSIONS OF LAW

1. Pursuant to § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant Employer was a covered employer.
2. Pursuant to § 42-1-160, Claimant sustained a compensable injury to the left foot on January 24, 2022, due to repetitive trauma.
3. Pursuant to § 42-15-60, Claimant was evaluated by Dr. Barcel who opined within a reasonable degree of medical certainty that she had reached MMI as of May 30, 2023.
4. Pursuant to § 42-9-30, Claimant has not sustained any loss of use of her left foot and is not entitled to any award of PPD benefits.
5. Pursuant to § 42-9-10, Claimant has reached MMI and is not entitled to TTD benefits beyond June 12, 2023, the date of the filing of Form 21/Hearing Request.
6. Pursuant to § 42-9-10, Defendants are entitled to a credit of overpayment of TTD.

ORDER


THEREFORE IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on September 3, 2024, is hereby fully **AFFIRMED**.

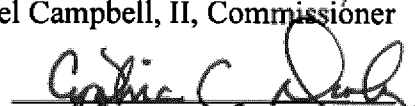
ACCORDINGLY:


IT IS FURTHER ORDERED that Claimant has reached MMI for her compensable injury and has not sustained any degree of permanent partial disability and thus is not entitled to any award of additional benefits, indemnity or medical. Further, Defendants may terminate payment of TTD benefits and are entitled to a credit for overpayment of TTD benefits from June 12, 2023, the date of the filing of the Form 21/Hearing Request.

AND SO IT IS ORDERED.

_____ (date)
Columbia, SC


R. Michael Campbell, II, Commissioner


Cynthia C. Dole, Commissioner


Aisha Taylor, Commissioner

Order Served via email:

<p>Amanda A. Mellard Robinson Gray Stepp & Laffitte amellard@robinsongray.com</p>	<p>Stephen Garcia Garcia Law Firm LLC stephen@scgarcialaw.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 May 2, 2025