

ATTACHMENT TO FORM 30

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JUN 25 2025

Mary L. Davis v. Ruiz Food Products, Inc.

WCC File Nos. 1923627 & 2223041

SC Court of Appeals

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Order and Award filed July 29, 2024 and denial of Reconsideration filed October 3, 2024, and of all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Orders, Award and Decisions rendered by the Hearing Commissioner in this matter.

2. That the Claimant requests Commission Review for all the reasons as set forth in the Motion for Reconsideration attached hereto and incorporated herein by reference in reference to the original Order Instructions dated January 23, 20204 and the Order issued by Commissioner Aisha Taylor on July 29, 2024 and as set forth in the Complaint filed July 11, 2024 and then Amended and filed August 19, 2024.

3. That due to the Commissioner's failure to make detailed Findings of Fact and Conclusions of Law in accordance with the decisions of the SC Supreme Court and Court of Appeals, and SC Code §42-17-40; §42-9-5, and §1-23-350 pursuant to the provisions of SC Code §42-17-50 the Claimant would request the Full Commission perform the statutory duty of the Commission and set a full hearing review and either reconsider the evidence or rehear the parties or assign this case immediately to another Hearing Commissioner for either a review of the evidence or a de novo hearing.

As of the date of the filing of this Form 30, a hearing in this matter was held over one (1) year ago; and an Order was only issued ten (10) months after hearing and only after a Complaint was filed in the Circuit Court.

4. That the Hearing Commissioner erred as a matter of law and fact in making Order Instruction #1 and Finding of Fact #1 in the Order, in that there is no prior Order finding the Claimant sustained compensable injuries to her knee, left hip and low back. The Record will show that the Defendants had provided authorized medical care for the Claimant's left knee, left hip, low back and neck after the first accident, and that the only Order in reference to body parts for which benefits have been ordered to be provided is the Order of June 7, 2021

which only addresses the left knee and left hip which was the subject of that hearing.

5. That the Hearing Commissioner erred as a matter of law and fact in making Order Instruction #2 and Finding of Fact #2 in the Order of July 29th as the Finding of Fact is wrong. One of the "essential issues" for decision at the hearing in both of these claims is because the Defendants had failed; and at the hearing admitted they had refused, to provide further medical care for the Claimant's left hip and leg and also to provide medical care for the Claimant's neck and back. There is absolutely no evidence in the Record that the Defendants were providing causally related medical care at the time of the hearing.

6. That the Hearing Commissioner erred as a matter of law and fact in making General Order Instruction #3 and Finding of Fact #3 as it is inaccurate as a matter of fact and as a matter of law. Following Dr. Alan's original restrictions the Record will show that Dr. Chokshi continued to make ever increasing restrictions and is the doctor that restricted her to sedentary work only. The Finding of Fact is, as are Findings of Fact #1 and #2, totally inadequate based on the requirement that the Commissioner make detailed Findings of Fact that are sufficiently definite and detailed enough to allow for Judicial Review including the factual review by the Full Commission. There is no citation to the evidence nor to the actual work restrictions of Dr. Alan, nor as to where in the evidence those restrictions are set out; nor is there any reference to any of the evidence concerning Dr. Chokshi and the work restrictions which applied at the time of the hearing.

7. That the Hearing Commissioner erred as a matter of fact and law in reference to General Order Instruction #4, #5 and #6 and by making Findings of Fact #4, #5, #6, and #7. First, there is insufficient evidence in the Record to meet the standard for denying a claimant temporary total disability benefits for a violation of a specific written company policy while under light duty restrictions and for the strictly limited reasons as set forth in Pollack v. Southern Wine & Spirits of America, 747 S.E.2d 430 (2013). The Commissioner erred by not citing any evidence in her Order Instructions or in her Findings of Fact and by relying on evidence that does not have anything to do with the alleged basis for termination. The Commissioner specifically erred as a matter of law and fact under Finding of Fact #3 which refers to the only item in the Record concerning the basis for termination of "throwing away" product, and the Commissioner failed to note that the accommodated sedentary work only job that the Employer was making available was to sit in a

chair on the production line as needed and to "throw away" bad, damaged, or unusable product.

That as a matter of law the facts in this case do not constitute termination for violation of a company policy sufficient enough to meet the Pollack standard for termination on the very limited basis for violation of a specific company policy.

8. That the Hearing Commissioner erred as a matter of law and fact by making General Order Instruction #7 and Finding of Fact #8 as they are contrary to law and fact. As to the Order, the Order refers to the June 7, 2021 Order which only ordered an evaluation of the hip and knee by Dr. Rodney K. Alan for which medical care had previously been provided for months after the original accident at McLeod Occupational Health as set forth in the Record. In February 2022 Dr. Alan had stated the opinion that Ms. Davis would need future medical interventions to include intraarticular steroid injections in the left hip three times per year, gel injections to the left knee two times per year. "She will need management of her sacroiliac joint problems as directed by the spine specialist." At the time of the hearing, one of the very purposes of the hearing was to obtain that further medical care ordered as directed by Dr. Alan for the left hip and knee and in reference to the spine specialist (note: her original Order of June 7, 2021 noted that "this is an admitted claim as to claimant's back only") the Defendants, at that time, had failed to provide any medical care for the Claimant's back as ordered by Dr. Chokshi which was the other purpose of the hearing.

9. That the Hearing Commissioner erred as a matter of law in making Findings of Fact #9 thru #20 in that there is absolutely no evidence in the Commission file that any of those Findings of Fact were made before or addressed in the Commissioner's original Notes for Decision or that they were made at any time prior to the time that the Claimant filed a Summons and Complaint requesting a Writ of Prohibition to prevent the Commissioner from issuing a decision since she had not made a decision in over ten (10) months since the date of the hearing; and further the Findings of Fact are in direct violation of the Decision and Order of Commissioner Wilkerson filed July 11, 2023 and quoting from that Order, it provided specifically:

"the incident that occurred on November 4, 2022 constituted a separate injury by accident and that a separate Form 50 Request for Hearing needed to be filed concerning that incident so

that all issues may be before the Commission as to whether or not the Claimant's current problems and request for medical care and benefits stem from the first accident, the second accident, or a combination of the two."

Thus, that Order is the law of the case; the evidence established a second incident occurred; and the determination to be made by the Commissioner was whether or not the problems with the Claimant's neck for which she needed medical care and requested medical care stemmed from the first accident, the second accident or a combination of the two.

10. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #9, particularly in that it is not based on the Record and cites to no evidence from the Record where the Claimant alleged that a pulling and pushing incident occurred, not an assault. The Defendants admitted that the incident occurred but denied that it resulted in a compensable injury. Additionally, Commissioner Wilkerson's Order is the law of the case that the Commissioner was to address whether or not the Claimant's problems for which she sought medical care stem from the first accident, the second accident, or a combination of the two.

11. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #10 as it was not included in her original Notes for Decision and is inaccurate in reference to the evidence presented at the hearing and is contrary to law of the case under Commissioner Wilkerson's Order.

12. That the Hearing Commissioner erred in making Finding of Fact #11 as it was not included in her original Notes for Decision and there is no evidence of review prior to the Circuit Court Complaint and it is contrary to Commissioner Wilkerson's law of the case Order, and erroneous in view of the facts presented, specifically from the Employer and the Employer witnesses itself. Quoting from the email of November 16, 2022:

"TM, requested to speak with Safety regarding an incident which occurred last week". TM stated that her doctor told us that she would need to ask us (assuming HR or Safety) about sending her to get an MRI done from when she was assaulted last week by another TM. TM stated she had given the paperwork from her doctor to Safety Tech on yesterday ...".

Shanda R. Blackwell to Jonathan Holder. (Cl. APA, p. 53).

13. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #12 as there is no reference to this Finding in her original Notes for Decision either in substance and is not correct factually. While noting that the Claimant had an appointment with Dr. Alan for the hip and leg on February 27, 2023, she fails to note the visit had not been authorized by the Defendants; and failed to note that the Claimant stated she had a follow-up appointment with a spine specialist.

14. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #13 as it is not part of the original Order Instructions nor is it in accordance with the Record, nor is it factually accurate. The Claimant in her Prehearing Brief and Form 50 did not make a claim for injury and treatment for the wrist. In addition, the notation on p. 100 of the Defendants' APA of the quotation that Claimant "denies any injury" is wrong.

15. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #14 as it is not contained in the original Order Instructions and is an arbitrary and capricious Finding and as a matter of law and fact not based on facts. The Claimant has alleged that there was a pushing and pulling incident not an assault. That characterization is made by the Employer and is contrary to the testimony of the Defense witnesses whose depositions were placed into the Record.

16. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #15 where it does not appear in her Order Instructions and was only made after the Claimant filed a Circuit Court action due to the Commissioner's failure to make Findings of Fact relative to this essential issue and exhibits a bias and prejudice towards the Claimant not substantiated by the medical records, and also is arbitrary and capricious and not based on fact in reference to the comment concerning emergency room visits.

17. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #16 wherein the Commissioner did not make this Finding of Fact as part of her original Order Instructions and was only made after the Claimant had filed an action in the Circuit Court because of the Commissioner's lack of due diligence and failure to make detailed Findings of Fact and Conclusions of Law on this essential issue. It also exhibits a bias and is arbitrary and capricious in reference to the basis

for giving more credibility to the defense witness wherein the defense witness testified that the video footage had been destroyed and is contrary to the evidence in the Record from both the Claimant and the other employee involved in the pushing and shoving incident, who both admitted and agreed that there was physical contact between the two on the date and time of the incident.

18. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #17 first because it was not a part of her original Order Instructions and was thus clearly made after that and there is no evidence that it was made prior to the time that the Claimant instituted an action in the Circuit Court due to the Commissioner's failure to perform due diligence and make detailed Findings of Fact and Conclusions of Law on the essential issues relevant to this Finding of Fact. Further, the Finding of Fact is inaccurate according to the evidence in reference to an incident occurring. Again, the assault characterization are the words of the employer, not the Claimant. In her depositions, Ms. Shanda Blackwell reiterated a statement made by a fellow co-worker, Ms. Octavia, noting that Ms. Davis and Mr. Eugene had previously been playing around and hugging each other and that she thought that was what was happening. The fellow employee then confirmed in her statement that the incident which occurred on the date of the accident was hard enough to where Ms. Davis bumped into her. In other words, Ms. Davis was knocked hard enough to where she was knocked into her. On p. 18 Ms. Blackwell confirmed that during the conversation between the two co-workers Ms. Davis was talking to Ms. Octavia also about her back. Then after stating that she had reviewed the camera footage, which again had been destroyed, and while looking for an assault she did not see an assault but she did observe a "hugging" incident but that because it was just an "aggressive hug" and it did not happen at a machine she did not think it was workers' comp. (Depo. pp. 22&23). Thus the Finding of Fact is contrary to the facts and evidence in the Record.

19. That the Hearing Commissioner erred as a matter of law and fact in making Finding of Fact #18 first because it was not included in her original Order Instructions and there is no evidence it was made until after the Claimant had filed in the Circuit Court for an Order because a lack of due diligence and compliance with law in making detailed Findings of Fact and Conclusions of Law on all the issues, on which the parties agreed that she did not make Findings of Fact on two issues, before her for decision. The Finding is also arbitrary and capricious and reflects an arbitrary abuse of authority by referring to other policy violations and basing the Finding on an assumption not in the evidence and speculation and as

unsupported justification for a Finding wherein there is absolutely no evidence in the Record concerning termination for any of those other violations. It is also an error of law and fact because the Claimant's request was for the issue before the Commissioner was for temporary total disability benefits; not whether or not she was fired as a result of a workers' compensation claim. That issue was simply not before the Commissioner and it is totally irrelevant as to whether or not the Claimant is entitled to temporary total disability benefits.

20. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #19 wherein again it was not part of the original Order Instructions and is contrary to the facts and evidence presented and cites no evidentiary basis for that Finding of Fact wherein the Record substantiates even in the Commissioner's prior Order that only the back was admitted and while treatment for the left knee and low left hip had been provided for over six (6) months following the first injury it was only provided after the Claimant filed for a hearing to have it ordered and it was ordered. The Finding of Fact is also contrary to the evidence in that the evidence also establishes that for a period of over six (6) months following the original injury and through the care of McLeod Occupational Medicine, the Defendants provided treatment for the Claimant's neck as part of a work-related diagnosis. Thus, the Finding of Fact is contrary to both fact and law.

21. That the Hearing Commissioner erred as a matter of law and fact by making Finding of Fact #20 first because it was not included in the original Order Instructions issued on January 23, 2024; and it is contrary to the law of the case Order of Commissioner Wilkerson as to the issue before her in reference to whether or not the Claimant's problems stem from the first accident, the second accident, or a combination of the two. It is also vague and does not specify what benefits are requested due to the November accident and/or the factual basis upon which the Finding of Fact is made. **Most importantly**, since this is one of the specific issues that defense counsel wrote the Commissioner about repeatedly after her Notes for Decision noting that she had not made Findings of Fact and Conclusions of Law on this issue before her for decision; and this is also one of the specific reasons for the Claimant filing a Circuit Court action due to her delay and failure to perform her statutory responsibilities in making Findings of Fact and Conclusions of Law on that and other issues.

22. That the Hearing Commissioner erred as a matter of law and fact in making Conclusion of Law #3 and #4 by failing to reference the accepted medical care and provision of medical

care for the Claimant's upper back; and it is also contrary to the prior decision noting that the Defendants had admitted the back injury only; and the Conclusion of Law is both not in accordance with law or fact.

23. That the Hearing Commissioner erred as a matter of law and fact in making Conclusions of Law #5 in that it is not a statement of law but is in fact a generalized statement of fact insufficient to allow for a review by this Commission. It is admitted that an incident occurred on November 4th and the question is thus whether it resulted in a compensable injury for either medical and/or compensation benefits.

24. That the Hearing Commissioner erred as a matter of law and fact as again it is not a Conclusion of Law but is in fact a Finding of Fact and does not reference an issue that was before her and is a generalized summary Finding unsupported by evidence and insufficient for review.

25. That the Hearing Commissioner erred as a matter of law and fact by making Conclusion of Law #7 as again it is a generalized Finding of Fact unsupported by fact or evidence and is not a Conclusion of Law nor a statement of law. Again it is a conclusion of fact that is not sufficient enough to allow for review by this Commission or Judicial Review.

26. That the Hearing Commissioner erred as a matter of law and fact in making Conclusions of Law #8 and #9 by failing to apply the Pollock, supra, decision and its requirements to the issues and evidence in this case, and by infusing fault and by failing to make detailed Findings of Fact or in the Conclusion of Law of exactly what company policy was violated and led to her termination. **Pollack involved a specific written policy put into evidence.**

27. That the Hearing Commissioner erred as a matter of law and fact by making Conclusion of Law #10. While setting forth appropriately the law as to the non-preclusive effect of the Dept. of Workforce's decision, the Commissioner erred by not setting forth whether or not it was given any weight and what weight it was given and a detailed Finding as to both.

28. That the Hearing Commissioner erred as a matter of law and fact by making Conclusion of Law #11 which is an insufficient Finding as a matter of law. It can only be assumed that it is based on Conclusions of Law #8 and #9 wherein as stated above, the Hearing Commissioner did not properly apply the Pollack decision or the other Supreme Court decisions in reference to disability benefits; and by infusing fault into a

no-fault system; and by failing to apply the Supreme Court decisions in Last v. MSI Constructions, Hines v. Hendrix, Orr v. Elastomeric Products, Inc. and other cases dealing with the continuation of weekly disability benefits while the claimant is on light duty. In relation thereto the Commissioner erred by failing to give a liberal application of the Appellate decisions and interpretation of the Workers' Compensation Act in favor of the injured worker and specifically the definition of disability under SC Code §42-1-120. Under the definition the worker is entitled to continuing "disability" payments where due to the incapacity because of the injury the worker is not able to earn the wages the injured worker was receiving at the time of injury in the same or any other employment. There is no evidence in the Record that the Claimant in her current capacity could earn the wages in the same or any other employment and is also contrary to the evidence.

29. That the Hearing Commissioner erred as a matter of law and fact in her "Order" by making a decision on medical care and not including medical care for the entire back; and also by making the determination the Claimant was not entitled to medical care due to the November 4, 2022 accident without specifying what medical care was requested as a result of just the November 4, 2022 injuries which decision is also contrary to the law of the case under Commissioner Wilkerson's Order; and by finding that the Claimant is not entitled to temporary total disability benefits from the date of termination on February 20th and continuing.

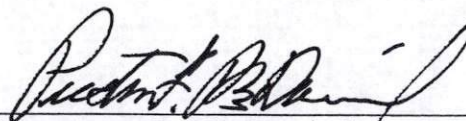
30. That based on the testimony and evidence from the Employer at the hearing concerning violations of other company policies during the time that the Claimant was on light duty employment for which under the testimony from the Employer the Employee could have been terminated but was not, were the Defendants estopped as a matter of law and under the Pollack decision and the other decisions of the Supreme Court and Court of Appeals from failing to pay weekly disability benefits, and did the Commissioner err in this regard?

For all the foregoing reasons the Decision of the Hearing Commissioner should be reversed and this Claimant awarded benefits to include all the injuries for which medical care has been accepted and provided to include treatment for the back, treatment for the left leg, treatment for the left hip, and all conditions found to be related to the work-related injuries and the Claimant provided temporary total disability benefits and due to the Commissioner's abject and total lack of performance of her statutory responsibility in making detailed Findings of Fact and Conclusions of Law as required both by the Act and by

court decisions, the Decision should be vacated and this matter remanded either for a hearing before a Commissioner based on a review of the Record or for a de novo hearing.

The above-referenced Exceptions are subject to amendment upon receipt of the Transcript.

Respectfully submitted,



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