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SC Court of Appeals

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable T. Scott Beck, The Honorable R. Michael Campbell, II, The Honorable Aisha Taylor

SCWCC File No.: 2222962

Tracey Hope,

Claimant,

v.

West Marine, Inc.,

Employer,

And

The Phoenix Insurance Company,

Carrier,

Defendants.

AFFIRMED WITH AMENDMENTS

Hearing held in Richland County, South Carolina,
on September 15, 2025

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

Appearances: Andrea Roche, of Williams & Roche, LLC, appeared on behalf of Claimant/Appellant.

W. Strat Stavrou, Jr., of Willson Jones Carter & Baxley, P.A., appeared on behalf of Defendants/ Respondents.

Court Reporter: Amber Scarborough, Creel Court Reporting, Inc.
1230 Richland Street, Columbia, SC 29201
(803) 252-3445, contact@creelreporting.com

Filed: **December 3, 2025**

I. STATEMENT OF THE CASE

This case was heard by Commissioner McCaskill in York County, South Carolina, on October 4, 2024. Claimant filed a Form 50 arguing that she sustained a work-related injury to her right knee, right leg, right ankle, right middle finger, neck, head, and back on December 7, 2022 in the course and scope of her employment when Claimant slipped and fell on water on a mat. Claimant further asserts she is entitled to temporary total disability (“TTD”) benefits from the date of the accident, December 7, 2022, through February 8, 2024, when the Carrier began paying her TTD benefits. Claimant relies on an opinion given by Dr. Taylor Jarrell in response to a questionnaire in support of her claim. Further, Claimant alleges she was told there was no light duty available by the Employer.

Defendants admit to the occurrence of the aforementioned work-related accident but respectfully contend that Claimant is not entitled to TTD for the requested period of the date of the accident, December 7, 2022 through February 8, 2024. Defendants assert Dr. Jarrell’s questionnaire dated August 15, 2024 opining (assuming certain conditions) that he would have taken Claimant out of work between the date of accident, December 7, 2022, and February 8, 2024 is speculative and seeks to change the facts of the case as they existed during the time in question as Claimant was not placed on modified work until November 16, 2023, and the Employer had light duty work available during this time. Further, Dr. Jarrell did not even meet, see, or evaluate the Claimant until February 8, 2024. Additionally, Dr. Jarrell’s questionnaire response submitted as evidence by the Claimant is vague, lacking specificity. Defendants also assert that Claimant voluntarily resigned per Employer’s attendance policy for not showing up or calling out from work for three consecutive days and was not restricted from work by a medical provider from December

7, 2022 until November 16, 2023. Defendants further assert that TTD benefits were initiated on February 8, 2024, when Claimant was written out of work by an authorized physician.

On June 25, 2025, Commissioner McCaskill issued an order in which he found that Claimant was not entitled to TTD benefits from December 7, 2022 through February 7, 2024.

On July 10, 2025, Claimant filed an appeal, claiming that the commissioner erred by finding that the greater weight of the evidence did not support Claimant's entitlement to TTD. A hearing was held before the appellate panel on September 15, 2025. We affirm the decision of the single commissioner with amendments.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

The verbatim findings of fact and conclusions of law in the appealed order of the single commissioner are as follows:

Single Commissioner Findings of Fact

1. Claimant sustained an admitted work-related accident on December 07, 2022.
2. Claimant asserts that she is entitled to TTD from the date of the accident until February 08, 2024, when the carrier began paying her TTD benefits.
3. Claimant also asserts that there are two ways in which TTD can be awarded.
4. First, Claimant contends that she was told there was no light duty available and then she was terminated for a no-call/no-show while she was out of work on a work-related injury.
5. Second, Claimant also asserts that Dr. S. Taylor Jarrell, who is a neurosurgeon, has opined in a questionnaire as to her condition and stated Claimant should have been written out of work since the date of her injury.

6. Dr. Jarrell answered “yes” to the following question: “On February 8, 2024, my patient presented with complaints of low back pain due to a work injury. I wrote my patient out of work. Had I seen her in the time between the work injury and February 8, 2024, and if my patient’s condition was the same or worse during that time, then my recommendation would have been that she be out of work due to the work injury.” That questionnaire is dated August 15, 2024.
7. Defendants position is that TTD benefits began on February 08, 2024, when the Claimant was first written out of work.
8. Claimant is currently out of work while receiving treatment.
9. It is undisputed that the Claimant is not at MMI.
10. Defendants contend that the Claimant is not due TTD prior to February 08, 2024.
11. Defendants further contend that the evidence submitted by Claimant is conjecture and speculation.
12. Defendants also assert that workers’ compensation awards in South Carolina cannot be based on surmise, conjecture, or speculation.
13. Defendants further assert that the note from Dr. Jarrell is not clear and specific. Defendants also contend that Dr. Jarrell is attempting to comment on her work status during a period of time he did treat or see Claimant. In fact, it was before he even met Claimant.
14. Defendants further assert that Claimant was seen by other medical providers prior to Dr. Jarrell, who did not write Claimant out of work.
15. Defendants also contend that the questionnaire is dated by Dr. Jarrell on a date he did not see Claimant.

16. When the evidence is viewed as a whole, I find the position of the Defendants more persuasive.
17. It is clear from the record that the Claimant had seen other providers prior to Dr. Jarrell and none of those providers had taken her out of work.
18. To then have a questionnaire from August 15, 2024, opining that had Dr. Jarrell seen Claimant between the work-related accident on December 7, 2022 and February 08, 2024, he would have taken the Claimant out of work, is speculative.
19. Dr. Jarrell's opinion is based on what he assumes the presentation of the Claimant would have been.
20. The fact the Claimant was not taken out of work is not my opinion. It is the history of the case.
21. Mr. James Skinner, who is the Environmental Health and Safety Manager for the Employer, testified that he is responsible for all aspects of safety, safety policies and workers' compensation claims.
22. Mr. James Skinner further testified that light duty would have been available to the Claimant for the period of November 16, 2023 to February 07, 2024, which February 8, 2024 is the date Claimant is taken out of work and TTD benefits were initiated.
23. I find Mr. Skinner's testimony persuasive that light duty would have been available during the period above and that Claimant was deemed voluntarily resigned per the attendance policy due to a lack of showing up for work and not communicating with West Marine regarding her attendance following her date of injury.
24. I find that the Claimant has not proven by the totality of the evidence that she was or should have been taken out of work for the period of November 16, 2023 to February 07, 2024.

25. Further, no medical records or work status notes with a date of service prior to November 16, 2023 were submitted as evidence at the hearing.
26. As such, I find the Claimant is not entitled to TTD for the period of November 16, 2023 to February 07, 2024.
27. Claimant is further not entitled to TTD benefits from December 7, 2022 through February 7, 2024.
28. At the time of the hearing the Claimant was still treating and had not yet reached MMI.
29. All other issues are held in abeyance.

Single Commissioner Conclusions of Law

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Sections 42-9-200, and 42-9-260 of the South Carolina Code of Laws (1976, as amended) are applicable in determining when temporary total compensation benefits should be paid.
3. A guiding principle underlying our workers' compensation system is that "an award may not rest upon surmise, conjecture, or speculation." *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012) (citing *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999)). Rather, an award "must be founded on evidence of sufficient substance to afford a reasonable basis for it. *Id.* (quoting *Wynn v. People's Nat. Gas Co. of S.C.*, 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961)).

III. ISSUES ON APPEAL

1. Did the commissioner err by finding that the greater weight of the evidence did not support Claimant's entitlement to TTD?

IV. DECISION OF THE APPELLATE PANEL

Appellate Panel's Findings of Fact

1. Claimant sustained an admitted work-related accident on December 07, 2022.
2. Claimant asserts that she is entitled to TTD from the date of the accident until February 08, 2024, when the carrier began paying her TTD benefits.
3. Claimant also asserts that there are two ways in which TTD can be awarded.
4. First, Claimant contends that she was told there was no light duty available and then she was terminated for a no-call/no-show while she was out of work on a work-related injury.
5. Second, Claimant also asserts that Dr. S. Taylor Jarrell, who is a neurosurgeon, has opined in a questionnaire as to her condition and stated Claimant should have been written out of work since the date of her injury.
6. Dr. Jarrell answered "yes" to the following question: "On February 8, 2024, my patient presented with complaints of low back pain due to a work injury. I wrote my patient out of work. Had I seen her in the time between the work injury and February 8, 2024, and if my patient's condition was the same or worse during that time, then my recommendation would have been that she be out of work due to the work injury." That questionnaire is dated August 15, 2024.
7. Defendants' position is that TTD benefits began on February 08, 2024, when the Claimant was first written out of work.
8. Claimant is currently out of work while receiving treatment.
9. It is undisputed that the Claimant is not at MMI.
10. Defendants contend that the Claimant is not due TTD prior to February 08, 2024.

11. Defendants further contend that the evidence submitted by Claimant is conjecture and speculation.
12. Defendants also assert that workers' compensation awards in South Carolina cannot be based on surmise, conjecture, or speculation.
13. Defendants further assert that the note from Dr. Jarrell is not clear and specific. Defendants also contend that Dr. Jarrell is attempting to comment on her work status during a period of time he did treat or see Claimant. In fact, it was before he even met Claimant.
14. Defendants further assert that Claimant was seen by other medical providers prior to Dr. Jarrell, who did not write Claimant out of work.
15. Defendants also contend that the questionnaire is dated by Dr. Jarrell on a date he did not see Claimant.
16. When the evidence is viewed as a whole, I find the position of the Defendants more persuasive.
17. It is clear from the record that the Claimant had seen other providers prior to Dr. Jarrell and none of those providers had taken her out of work.
18. To then have a questionnaire from August 15, 2024, opining that had Dr. Jarrell seen Claimant between the work-related accident on December 7, 2022 and February 08, 2024, he would have taken the Claimant out of work, is speculative.
19. Dr. Jarrell's opinion is based on what he assumes the presentation of the Claimant would have been.
20. Moreover, at the hearing on October 4, 2024, Claimant testified that the pain in her neck and back had gotten worse over time. Dr. Jarrell's opinion was based on the assumption that Claimant's condition had been the same or worse before the day of the evaluation;

however, since Claimant's condition was admittedly worsening over time, the condition precedent set forth by Dr. Jarrell was not met. (Hearing transcript, p. 18)

21. The fact the Claimant was not taken out of work is not our *opinion*; it is the history of the case.
22. Mr. James Skinner, who is the Environmental Health and Safety Manager for the Employer, testified that he is responsible for all aspects of safety, safety policies and workers' compensation claims.
23. Mr. James Skinner further testified that light duty would have been available to the Claimant for the period of November 16, 2023 to February 07, 2024, which February 8, 2024 is the date Claimant is taken out of work and TTD benefits were initiated.
24. I find Mr. Skinner's testimony persuasive that light duty would have been available during the period above and that Claimant was deemed voluntarily resigned per the attendance policy due to a lack of showing up for work and not communicating with West Marine regarding her attendance following her date of injury.
25. Because Claimant had been validly terminated for cause before Claimant resumed communication with Defendants, Defendants did not need to offer Claimant light duty in order to deny TTD benefits.
26. I find that the Claimant has not proven by the totality of the evidence that she was or should have been taken out of work for the period of November 16, 2023 to February 07, 2024.
27. Further, no medical records or work status notes with a date of service prior to November 16, 2023 were submitted as evidence at the hearing.
28. As such, I find the Claimant is not entitled to TTD for the period of November 16, 2023 to February 07, 2024.

29. Claimant is further not entitled to TTD benefits from December 7, 2022 through February 7, 2024.

30. At the time of the hearing the Claimant was still treating and had not yet reached MMI.

31. All other issues are held in abeyance.

Appellate Panel's Conclusions of Law

Based on the foregoing findings of fact, the undersigned commissioners make the following conclusions of law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Sections 42-9-200, and 42-9-260 of the South Carolina Code of Laws (1976, as amended) are applicable in determining when temporary total compensation benefits should be paid.
3. A guiding principle underlying our workers' compensation system is that "an award may not rest upon surmise, conjecture, or speculation." *Hutson v. S.C. State Ports Auth.*, 399 S.C. 381, 387, 732 S.E.2d 500, 503 (2012) (citing *Tiller v. Nat'l Health Care Ctr. of Sumter*, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999)). Rather, an award "must be founded on evidence of sufficient substance to afford a reasonable basis for it. *Id.* (quoting *Wynn v. People's Nat. Gas Co. of S.C.*, 238 S.C. 1, 12, 118 S.E.2d 812, 818 (1961)).

ORDER

Based on the preceding findings of fact and conclusions of law,

IT IS HEREBY ORDERED that Claimant is not entitled to TTD benefits from December 7, 2022 through February 7, 2024.

No hearing costs are assessed in this instance.

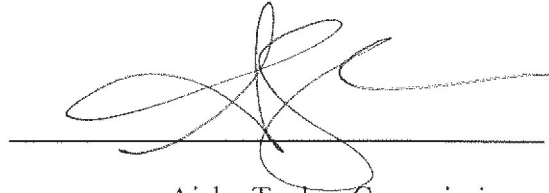
AND SO IT IS ORDERED.



T. Scott Beck, Commissioner



R. Michael Campbell, II, Commissioner



Aisha Taylor, Commissioner

Date

Columbia, SC

Order Served via email:

<p>W. Strat Stavrou Christopher M. Cato Wilson Jones Carter & Baxley, PA wsstavrou@wjcblaw.com cmcato@wjcblaw.com</p>	<p>Andrea C. Roche Williams and Roche andrea@williamsandroche.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 December 3, 2025