

**DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**COMMISSION PANEL: THE HONORABLE MELODY L. JAMES, CHAIR; THE
HONORABLE GENE MCCASKILL; THE HONORABLE AVERY B.
WILKERSON, JR.**

SCWCC FILE NO.: 0800718

Denica Powell,

Claimant

v.

Petsmart, Inc.

Employer, and

Phoenix Insurance Co.,

Carrier, Defendants.

Hearing held in Conway,
South Carolina on June 12, 2012
Per notice timely and properly served upon all Parties of Interest.

Appearances: for Claimant/ Appellant
 Defendants/ Respondents

Filed:

April 1, 2014

STATEMENT OF THE CASE

The instant proceeding was initiated by Claimant's Form 50 Request for Hearing dated March 26, 2012 and by Defendant's Form 21 Employer's Request for Hearing dated April 5, 2012. At issue in the pleadings was Claimant's entitlement to a finding of total and permanent disability and entitlement to lifetime medicals, a lump sum and Utica Mohawk language.

Defendant timely filed a responsive pleading to the Form 50. Defendant/Employer admitted that the claim was compensable, but denied that the Claimant was totally and permanently disabled. Furthermore, Defendant asserted that the Claimant reached maximum medical improvement (MMI). Defendant requested that the Commission determine if employer/carrier may stop payment, and if so, to determine if Claimant was entitled to any further benefits. Defendant also requested credit for temporary total benefits paid in excess of award.

On August 11, 2012, the single Commissioner issued his Decision and Order containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Claimant, Denica Powell, was an employee of Petsmart, Inc.
2. Claimant suffered an injury by accident on January 3, 2008 while employed a dog groomer.
3. Employer, Petsmart, Inc., is subject to the Workers' Compensation Act.
4. Claimant was assigned the task of stocking and dog grooming.
5. Claimant's detailed testimony is credible.
6. The treating doctors' records are convincing that Claimant is totally and permanently disabled.
7. Claimant is entitled to lifetime medical care per the Form 14(B) report of the treating physician, Dr. Kang.
8. The medical evidence presented by the Claimant establishes by a preponderance of the evidence, and Claimant is entitled to compensation.

9. Claimant's severe depression and psychological disorder is directly caused by the severe upper extremity injury and the resultant pain.
10. The treating doctor finds that the Claimant has a 70% permanent impairment to the upper extremity.
11. Claimant is totally and permanently disabled and entitled to lifetime medical care.
12. By preponderance of the evidence, the Claimant is entitled to all benefits as provided for under the Workers' Compensation Act.
13. Claimant is entitled to a lump sum payment of the commuted balance of: 500 weeks less the credit for the weeks she has been paid compensation.
14. Claimant is entitled to the following Utica-Mohawk language:

The commuted value of this claim on the date of the hearing, June 12, 2012, is \$159,684.35. This lump sum is compensation for permanent impairment that will affect the Claimant for the remainder of her life. The Claimant's remaining life expectancy is 2,431 weeks. Therefore, even though paid in a lump sum, the Claimant's benefits after attorney's fees for the prosecution of this action shall be considered to be \$43.81 a week for 2,431 weeks beginning as of June 12, 2012; pursuant to Section 42-3-180 of the South Carolina Workers' Compensation Act, 1976, as amended, and as interpreted by the South Carolina Supreme Court decision in Utica-Mohawk Mills v. Orr, 227, S.C. 226, 87 S.E.2d 589 and James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (S.C.2010).

RULINGS OF LAW

1. Claimant and Employer are subject to the Workers' Compensation Act.
2. Claimant suffered an injury by accident while employed with Petsmart, Inc.
3. Claimant is entitled to permanent and total disability for the injuries she suffered on January 3, 2008.
4. Claimant was in the course and scope of employment when she suffered this injury.
5. The record in this case is closed.
6. Claimant is entitled to continuing medical treatment pursuant to the Workers' Compensation Act.
7. Claimant is entitled to lifetime medical care and ongoing treatment from Dr. Kang and Dr. Simon.
8. Claimant is to continue to receive all medications and other treatment to lessen her disability.

ORDER AND AWARD

Claimant/Employee is permanently and totally disabled, entitled to lifetime medical care, a lump sum payment, Utica-Mohawk language, and continuous medical treatment from Dr. Simon and Dr. Kang.

ISSUES ON APPEAL

Defendant filed a Form 30 Request for Commission Review on August 27, 2012. Defendant requested the Commission review the single Commissioner's Decision and Order to address 15 questions of law or fact regarding the Commissioner's findings. The Form 30 with attachment is contained in the Commission's file.

FINDINGS OF THE FULL COMMISSION

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Vacated and Remanded** the matter to the Jurisdictional Commissioner for a hearing de novo.

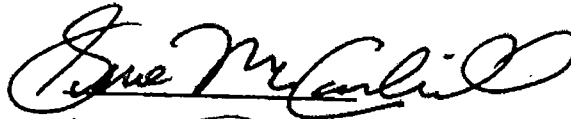
ORDER

IT IS THEREFORE ORDERED that this matter is **Remanded** to the Jurisdictional Commissioner for a hearing de novo. The Full Commission retains jurisdiction over all other issues in contention and will hear oral arguments prior to rendering its final decision on the matter after the Jurisdictional Commissioner makes his or her decision. The matter shall be set for oral arguments during the next available term of Review following the issuance of the single Commissioner's decision on Remand and thirty-days notice to the parties.

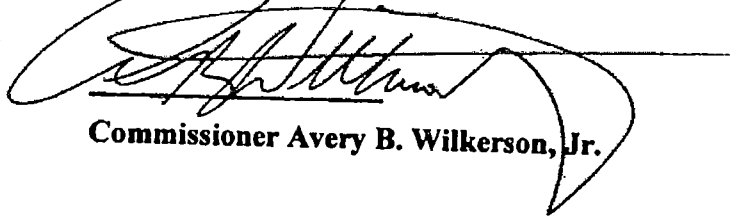
AND SO IT IS ORDERED!



Commissioner Melody L. James, Chair



Commissioner Gene McCaskill



Commissioner Avery B. Wilkerson, Jr.

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 1, 2014