

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

WCC FILE 0622032

PATRICIA MARZETT,

Claimant/Appellant,

vs.

CHARLESTON COUNTY SCHOOL DISTRICT,

**Employer/Self-Insured,
Respondent.**

**Appellate Panel Review
Columbia, South Carolina
January 21, 2014**

Appellate Panel Decision & Order filed

on March 27, 2014.

AFFIRMED IN FULL

Donald H. Howe of Howe & Wyndham, LLP, on behalf of Patricia Marzett.

Leslie M. Whitten of Young Clement Rivers LLP, on behalf of Employer/Respondent.

This matter was heard before the Appellate Panel of the South Carolina Workers' Compensation Commission on an appeal filed by the Claimant. This matter was set for a hearing before the Jurisdictional Commissioner on August 19, 2013, based upon a Form 21 filed by the Employer/Self-Insured. At the hearing, the Employer/Self-Insured admitted that the Claimant sustained compensable injuries to her low back, right hip, and right knee and alleged that she had reached Maximum Medical Improvement for each body part. The Employer/Self-Insured further argued that the Claimant's conditions to her right hip and her right knee at the time of the hearing were not related to her initial accident of February 21, 2006 and that the Defendants should not be responsible for current recommendations for treatment for those body parts, particularly the recommended total knee replacement and total hip replacement.

The Claimant agreed that she has reached Maximum Medical Improvement for her low back, right hip and right knee but alleged that her current conditions and need for treatment were all related to the original work injury and the responsibility of the Employer/Self-Insured. The Claimant also alleged that she sustained a loss of wage earning capacity from her injuries and requested her award in a lump sum.

On September 20, 2013, the Single Commissioner issued a Decision and Order awarding the Claimant compensation representing 10% permanent partial disability to the back, 15% permanent partial disability to the right hip, and 30% permanent partial disability to the right knee. In addition, the Single Commissioner ordered that the Defendant pay for continuing medical care and treatment relative to the Claimant's back and right knee. However, the Commission found that the Defendant would have no further responsibility regarding medical care for the right hip. The Claimant then filed a Form 30 appeal regarding the findings relative to the right hip.

ORDER OF SINGLE COMMISSIONER

The hearing in this matter was held on August 19, 2013. The Hearing Commissioner found as follows:

FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Claimant sustained compensable injuries to her low back, right knee and right hip as a result of her work accident on February 21, 2006.
3. That the Claimant has an average weekly wage of \$912.51 with a corresponding compensation rate of \$608.37.
4. That the Undersigned Commissioner emailed his Order Instructions to the parties in this matter on August 29, 2013.
5. That the Claimant has no lost time from work as a result of her work injury.
6. That the Claimant's contract with the Employer was not renewed for the 2012-2013 school year.
7. That the Claimant continued working from her date of injury in 2006 until her contract was not renewed in 2012.
8. That the Claimant is currently drawing unemployment benefits and continues to look for work.
9. That the Claimant has placed herself in the workforce and wishes to return to teaching.
10. That the Claimant took trips to New York, Atlanta, and Washington after her 2006 work injury, each of which involved a lot of walking.
11. That Jean Hutchinson's report June 12, 2013 was merely a letter and that Ms. Hutchinson has not reviewed the medical records in this matter.
12. That according to the complete vocational assessment and unchallenged labor market survey of James R. Myers, MA QRP CCM CRC, the Claimant has not sustained a loss of earning capacity.

13. That Dr. Graham released the Claimant most recently at Maximum Medical Improvement for her knee on July 12, 2013, with permanent restrictions of limited kneeling, squatting, and climbing.
14. That the Claimant reached Maximum Medical Improvement regarding her knee on July 12, 2013.
15. That Dr. Graham assigned the Claimant a 20% rating to the right lower extremity relative to her knee.
16. That Dr. Graham indicated that the Claimant will need additional treatment to her right lower extremity in the form of NSAIDS, injections, physical therapy, and a total knee replacement.
17. That the Claimant is entitled to further treatment for her right knee per the recommendations from Dr. Graham, to include a total knee replacement, which I find is causally related to her work injury of February 21, 2006.
18. That Dr. Merrill released the Claimant at Maximum Medical Improvement on December 8, 2009 with regard to her right hip with a rating of 7% to the right hip and no restrictions.
19. That the Claimant did not treat for her hip for two and a half years after December 8, 2009.
20. That Dr. Merrill again released the Claimant at Maximum Medical Improvement again on July 31, 2012 with regard to her hip with a rating of 15% to the right hip, restrictions of limited climbing, bending, and stooping, and a recommendation for a total hip replacement.
21. That Dr. Merrill testified to a reasonable degree of medical certainty that the Claimant's current condition is not related to her work accident of 2006.
22. That the Claimant reached Maximum Medical Improvement for her hip relative to the work injury on December 8, 2009.
23. That the Employer/Self-Insured is not responsible for any further treatment with regard to the Claimant's right hip as any needed treatment is not causally related to her work injury in 2006.
24. That Dr. Aymond released the Claimant most recently at Maximum Medical Improvement on August 31, 2009, with no restrictions, and a rating to 5% to the back and had previously assigned an 8% rating to the back.
25. That the Claimant reached Maximum Medical Improvement for her back by August 31, 2009.

26. That Dr. Aymond indicated that the Claimant will need injections and medications for her back.
27. That the Claimant is entitled to further treatment for her back per the recommendations from Dr. Aymond.
28. That the surveillance video of August 4, 2013 shows the claimant in church being active, jumping up and moving.
29. That based on greater weight of the evidence, I find that this claim is governed by Section 42-9-30 and is not a wage loss case.
30. That the Claimant has sustained 30% permanent partial disability to her right leg relative to her knee, 10% permanent partial disability to her back, and 15% permanent partial disability to her right hip, as a result of her work-related injury. I base this finding on the medical evidence as a whole including the Claimant's permanent work restrictions, along with the surveillance video and the vocational assessments.
31. That the award to the Claimant's hip is based on 280 weeks under the 2007 statute.
32. That the Claimant is awarded a lump-sum payment.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. S.C. Code Ann. § 42-15-60 sets forth periods during which medical benefits shall be provided;
3. S.C. Code Ann. § 42-9-30 establishes possible compensation for an injury to the knee, hip, and back; and
4. "Maximum medical improvement" (MMI) is term used to indicate that the workers' compensation claimant has reached such plateau that in physician's opinion there is no further medical care or treatment which will lessen degree of impairment. Lee v. Harborside Café, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002); see also Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).

ORDER

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured shall pay the Claimant for a period of 58.5 weeks at the weekly rate of \$608.37, which represents 30% permanent partial disability or loss of use of the right knee; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured shall pay the Claimant for a period of 30 weeks at the weekly rate of \$608.37, which represents 10% permanent partial disability or loss of use of the back; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured shall pay the Claimant for a period of 42 weeks at the weekly rate of \$608.37, which represents 15% permanent partial disability or loss of use of the right hip; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured is responsible for future treatment to the Claimant's right knee, specifically NSAIDs, injections, physical therapy, and a total knee replacement as directed by Dr. Graham for as long as it will tend to lessen her period of disability; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured is responsible for future treatment to the Claimant's back, specifically injections and medications as directed by Dr. Aymond for as long as it will tend to lessen her period of disability; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured shall have no further responsibility for medical care regarding the Claimant's right hip.

No hearing costs or penalties are assessed in this matter.

APPEAL TO APPELLATE PANEL

In her appeal to the Appellant Panel, the Claimant respectfully submits the following:

1. Did the Hearing Commissioner err in ruling that the Claimant's need for a right hip replacement was not related to her accident on February 21, 2006?
2. Did the Hearing Commissioner err in ruling that the Claimant was only entitled to an award of 15% to her right hip pursuant to 42-9-30 of the S.C. Code of Laws?

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1983), weigh the evidence as presented at the initial hearing, and if grounds be shown therefore,

make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, and by way of a full affirmation of the Findings and Conclusions of the Hearing Commissioner, we enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Claimant sustained compensable injuries to her low back, right knee and right hip as a result of her work accident on February 21, 2006.
3. That the Claimant has an average weekly wage of \$912.51 with a corresponding compensation rate of \$608.37.
4. That the Hearing Commissioner emailed his Order Instructions to the parties in this matter on August 29, 2013.
5. That the Claimant has no lost time from work as a result of her work injury.
6. That the Claimant's contract with the Employer was not renewed for the 2012-2013 school year.
7. That the Claimant continued working from her date of injury in 2006 until her contract was not renewed in 2012.
8. That the Claimant is currently drawing unemployment benefits and continues to look for work.
9. That the Claimant has placed herself in the workforce and wishes to return to teaching.

10. That the Claimant took trips to New York, Atlanta, and Washington after her 2006 work injury, each of which involved a lot of walking.
11. That Jean Hutchinson's report June 12, 2013 was merely a letter and that Ms. Hutchinson has not reviewed the medical records in this matter.
12. That according to the complete vocational assessment and unchallenged labor market survey of James R. Myers, MA QRP CCM CRC, the Claimant has not sustained a loss of earning capacity.
13. That Dr. Graham released the Claimant most recently at Maximum Medical Improvement for her knee on July 12, 2013, with permanent restrictions of limited kneeling, squatting, and climbing.
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15. That Dr. Graham assigned the Claimant a 20% rating to the right lower extremity relative to her knee.
16. That Dr. Graham indicated that the Claimant will need additional treatment to her right lower extremity in the form of NSAIDS, injections, physical therapy, and a total knee replacement.
17. That the Claimant is entitled to further treatment for her right knee per the recommendations from Dr. Graham, to include a total knee replacement, which I find is causally related to her work injury of February 21, 2006.
18. That Dr. Merrill released the Claimant at Maximum Medical Improvement on December 8, 2009 with regard to her right hip with a rating of 7% to the right hip and no restrictions.

19. That the Claimant did not treat for her hip for two and a half years after December 8, 2009.
20. That Dr. Merrill again released the Claimant at Maximum Medical Improvement again on July 31, 2012 with regard to her hip with a rating of 15% to the right hip, restrictions of limited climbing, bending, and stooping, and a recommendation for a total hip replacement.
21. That Dr. Merrill testified to a reasonable degree of medical certainty that the Claimant's current condition is not related to her work accident of 2006.
22. That the Claimant reached Maximum Medical Improvement for her hip relative to the work injury on December 8, 2009.
23. That the Employer/Self-Insured is not responsible for any further treatment with regard to the Claimant's right hip as any needed treatment is not causally related to her work injury in 2006.
24. That Dr. Aymond released the Claimant most recently at Maximum Medical Improvement on August 31, 2009, with no restrictions, and a rating to 5% to the back and had previously assigned an 8% rating to the back.
25. That the Claimant reached Maximum Medical Improvement for her back by August 31, 2009.
26. That Dr. Aymond indicated that the Claimant will need injections and medications for her back.
27. That the Claimant is entitled to further treatment for her back per the recommendations from Dr. Aymond.

28. That the surveillance video of August 4, 2013 shows the claimant in church being active, jumping up and moving.

29 That based on greater weight of the evidence, we find that this claim is governed by Section 42-9-30 and is not a wage loss case.

30 That the Claimant has sustained 30% permanent partial disability to her right leg relative to her knee, 10% permanent partial disability to her back, and 15% permanent partial disability to her right hip, as a result of her work-related injury. We base this finding on the medical evidence as a whole including the Claimant's permanent work restrictions, along with the surveillance video and the vocational assessments.

31. That the award to the Claimant's hip is based on 280 weeks under the 2007 statute.

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further medical care or treatment which will lessen degree of impairment. Lee v. Harborside Café, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002); see also Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).

ORDER

IT IS THEREFORD ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured shall pay the Claimant for a period of 58.5 weeks at the weekly rate of \$608.37, which represents 30% permanent partial disability or loss of use of the right knee; it is further

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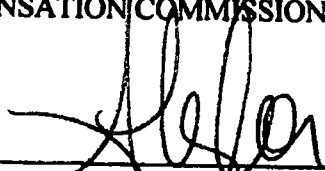
ORDERED, ADJUDGED, AND DECREED that the Employer/Self-Insured shall have no further responsibility for medical care regarding the Claimant's right hip.

No hearing costs or penalties are assessed in this matter.

AND IT IS SO ORDERED.

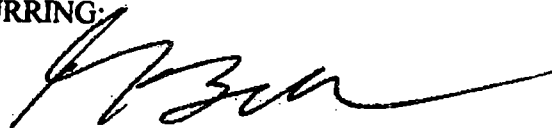
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

By:



Commissioner Aisha Taylor

CONCURRING:



Commissioner T. Scott Beck



Commissioner Andrea C. Roche

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 March 27, 2014