BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE PANEL

Heather Cardones, Employee/Appellant, -vs- Charleston County, Self-Insured Employer/Respondent, -through- S.C. Counties Workers' Compensation Trust, Defendants.	W.C.C. FILE NO. 1022581 DECISION & ORDER

STATEMENT OF THE CASE

This matter came before the Appellate Panel of the S.C. Workers' Compensation Commission pursuant to the Form 30 filed by the Appellant. The Appellant seeks review and reversal of the January 8, 2014, Decision and Order of Hearing Commissioner Avery B. Wilkerson, Jr. The Appellants contend that Commissioner Wilkerson erred as a matter of law and fact in failing to find the Claimant permanently and totally disabled, failing to find the Claimant was entitled to future medical treatment to include a spinal cord stimulator, failing to find the Claimant's legs were affected as a result of her back injury, failing to find that the Claimant's average weekly wage should be adjusted to a higher rate, and in awarding the Respondents a credit for overpayment of temporary total benefits paid after the Appellant reached maximum medical improvement.

The Hearing Commissioner's Decision and Order contained the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.*
2. *The Claimant injured her low back in an accident arising out of and in the course of her employment with Charleston County on October 27, 2010, but did not sustain any injury to any other body member as a result of that accident based upon the greater weight of the evidence in the record and the testimony of the Claimant.*
3. *The Claimant's average weekly wage at the time of the accident was $97.88 resulting in a compensation rate of $75 00. The Claimant presented no credible evidence to support an adjustment in the average weekly wage and compensation Her argument that she could have earned more in the future as a Library Assistant I or II is speculative. The testimony of Jennifer Rogers indicates the Claimant was not guaranteed any promotions.*
4. *Following the October 27, 2010 accident the Defendants provided all causally-related and necessary medical treatment that would tend to lessen the period of disability associated with the October 27, 2010 accident and the Claimant's period of temporary disability ended when the Claimant reached maximum medical improvement on January 21, 2013, as agreed by the parties and evidenced by the medical records*
5. *Based upon the greater weight of the evidence in the record, including the opinions of Dr. Alexander and Dr Poletti, a spinal cord stimulator is not medically necessary and would not lessen the period of disability associated with the October 27, 2010 accident.*

6. *The retained hardware necessitated by the Claimant's lumbar fusion constitutes a prosthetic device.*

7. *The Claimant's treating physician, Dr. Pacult, released her to return to work when she was last seen on November 12, 2012. Since that time, she has been evaluated by Dr Alexander and her own IME physician, Dr. Poletti, both of whom have stated that she can return to work in a sedentary capacity. However, the Claimant has applied for only one job since being released by Dr. Pacult and has made no other effort to seek employment in any capacity, despite her work experience in sedentary, administrative positions. Based upon the greater weight of the evidence, including the vocational evaluation by Cassandra Townsend, I find that the Claimant has not proven a permanent loss of wage-earning capacity as a result of her low back injury. To find otherwise would be entirely speculative.*

8. *Based upon the record as a whole, including the Claimant's testimony, the medical records, and the opinions of both vocational experts, I find that the Clamant is not permanently and totally disabled and has not sustained a permanent loss of wage earning capacity. The vocational expert of Sandy Townsend identified multiple jobs that fit with the Claimant's restrictions. The Claimant's average weekly wage was $97.88. The greater weight of the evidence shows that there are jobs available within the Claimant's restrictions that would allow her to earn the same or greater wages than she was earning at the time of the accident.*

9. *The Claimant was provided proper and adequate medical treatment and reached medical improvement on January 21, 2013. The Defendants are responsible for all authorized and causally related treatment for the low back on or before January 21, 2013.*

10. *The Claimant was temporarily totally disabled from January 18, 2011 to January 21, 2013 when she reached maximum medical improvement and her temporary disability ended The Defendants are entitled to a credit for an overpayment of the temporary total benefits paid after January 21, 2013.*

11. *The Claimant has requested Dodge medical under S.C. Code Ann. § 42-15-60. The medical evidence is unclear at best as to what future medical the Claimant may need and the Claimant has the burden of proof. The parties stipulated that the Claimant reached maximum medical improvement on January 21, 2013 pursuant to Dr. Timothy Zgleszewski's report. Dr. Zgleszewski suggested the Claimant may need pain management in the future to include oral medications and intermittent physical therapy but was not specific. The report does not designate the specific medication or the nature of the physical therapy. Under S.C. Code Ann § 42-15-60, an award of future medical must be specific in nature. Based upon the record as a whole, there is insufficient evidence to make a specific award of future medical under S.C. Code Ann. § 42-15-60.*

12. *Based on the record as a whole, the Claimant has sustained 40% loss of use of the back as a scheduled member She has not sustained any permanent disability or loss of use of any other body member.*

RULINGS OF LAW

1. *Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time in question and under S.C. Code Ann. § 42-1-140, the Employer was a covered Employer;*
2. *Under S.C. Code Ann. § 42-1-40, the Claimant's average weekly wage at the time of the accident was $97.88 resulting in a compensation rate of $75.00.*

3. *Under S.C. Code Ann. § 42-1-160, the Claimant sustained an injury to her low back on October 27, 2010, arising out of and in the course and scope of her employment. The Claimant did not injure any other body member.*

4. *Under S.C. Code Ann. § 42-15-60, the Claimant was provided proper and adequate medical care and treatment for her low back injury and reached maximum medical improvement on January 21, 2013. The Defendants are responsible for all authorized and causally-related treatment incurred on or before said date*

5 *Under S.C. Code Ann. § 42-9-30, the Claimant has sustained a 40% loss of use of the back and is entitled to payment of compensation therefor. The Claimant is not entitled to any compensation under S.C Code Ann. § 42-9-10 or S.C Code Ann. § 42-9-20 based upon a loss of wage earning capacity*

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant reached maximum medical improvement on January 21, 2013 and the Defendants are responsible for any authorized and causally-related medical care and treatment incurred on or before said date,

IT IS FURTHER ORDERED that the Claimant's period of temporary total disability ended on January 21, 2013 and the Defendants are entitled to an overpayment of temporary total compensation paid after said date;

IT IS FURTHER ORDERED that the Defendants shall pay the Claimant 120 weeks of compensation at the rate of $75.00 per week representing 40% loss of use of the back as a scheduled member, with the Defendants taking a credit for all temporary total compensation to the Claimant after January 21, 2013 when the Claimant reached maximum medical improvement and her temporary disability ended. The award may be paid in a lump sum.

IT IS FURTHER ORDERED that the Claimant is not entitled to a spinal column stimulator as the greater weight of the evidence shows that a spinal column stimulator is not medically necessary and would not tend to lessen the Claimant's disability

IT IS SO ORDERED!

Within the statutory period, the Claimant/Appellant filed a Form 30 Application for Review in the case setting forth reasons, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on May 19, 2014. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By Appeal, the Claimant/Appellant respectfully submits the following:

1. *Did the Single Commissioner err as a matter of fact and law that the Claimant did not sustain an injury to any other body member as a result of the work accident based upon the greater weight of the evidence in the record and the testimony of the Claimant?*

2 *Did the Single Commissioner err, as a matter of fact and law that the Claimant did not provide credible evidence to support an adjustment in the Claimant's average weekly wage and compensation rate.*

3. *Did the Single Commissioner err as a matter of fact that the Defendants provided all causally-related and necessary medical treatment that would tend to lessen the period of disability associated with the October 27, 2010 accident and that treatment was proper and adequate?*

4. *Did the Single Commissioner err, as a matter of fact and law when he indicated that the greater weight of evidence in the record shows that the Claimant is not entitled to a spinal cord stimulator and that it would not lessen the period of disability associated with the October 27, 2010 accident?*

5. *Did the Single Commissioner err, as a matter of fact and law, that the*

Claimant has not proven a permanent loss of wage-earning capacity as a result of her low back injury?

6. *Did the Single Commissioner err, as a matter of fact, that the Claimant can do jobs that fit within her restrictions, as identified by Sandy Townsend?*

7. *Did the Single Commissioner err, as a matter of fact and law, that the Claimant is not entitled to future medical treatment pursuant to Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (S.C.App. 1999)?*

8. *Did the Single Commissioner err as a matter of fact and law that the Claimant is not entitled to future medical treatment pursuant to S.C. Code Ann § 42-15-60, regarding that the medications have to be specific in nature?*

9. *Did the Single Commissioner err, as a matter of fact, in awarding a 40% loss of use of the back as a scheduled member, as well as, not awarding any other type of permanent disability or loss of use of another body part?*

10. *Did the Single Commissioner err when ordering that the Defendants are entitled to an overpayment of total compensation paid after January 21, 2013?*

EVIDENCE SUMMARY

I. Claimant's Testimony

The Claimant is 36 years old. She is married with no children. The Claimant enrolled at Seminole Community College in 1997 and received her associate's degree in 2007. (H.T. p. 16, ll. 3-120). The Claimant worked as a cashier for Cinnabon for one year. (H.T. p. 16, ll. 19-25). She sold shoes and accessories for three months. (H.T. p. 17, 4-8). She also worked at Magnolia Press as a part-time receptionist/secretary for six months. (H.T. p. 17, ll. 10-16). The Claimant then worked at Rich Food Plant part-time as a file clerk for three months, then as a switchboard operator for another three months. (H.T. p. 17, ll 17-25). The Claimant spent three years working as a

secretary and production coordinator for Ann Dean Associates. (H.T. p. 18). She left that position to work as a part-time receptionist for four months at a doctor's office. (H.T. p. 20).

Prior to working for Charleston County, the Claimant worked part-time for the Central Florida Zoo earning $7.00 per hour. She left this position to work as a part-time library page in Florida earning $7.25 per hour. (H.T. p. 41, ll. 2-11). The Claimant testified the longest continuous period she has worked for any employer is two years. (H.T. p. 40, ll. 22). The Claimant admitted she had not held any full-time job within the last ten years and she did not work in any capacity in four years before she started with Charleston County. (H.T. p. 41, ll. 12-22). The Claimant testified she has administrative and office experience, (H.T. p. 52, l. 24) which is typically sedentary type work. (H.T. p. 52, l. 24 – p. 53 l. 4).

The Claimant began working as a part-time library page for Charleston County on October 6, 2010. She worked 15 hours per week and was paid $7.25 per hour. (H.T. p. 24, ll. 1-4). Her job duties included shelving books, keeping the library area clean, looking for books, and assisting customers. (H. T. p. 24, ll. 7-12). The Claimant admitted she was never guaranteed any full-time employment at the library, she was never guaranteed more than minimum wage, and she was never guaranteed any position other than library page. (H.T. p. 43, l. 3-11).

The Claimant injured her low back on October 27, 2010 when a library patron lost his balance and fell onto the Claimant, pushing her against a bookcase. (H.T. p. 26, ll. 5-10). The Claimant was able to return to work in a light duty capacity following the accident. (H.T. p. 26, ll. 14-23).

The Claimant was initially seen by Dr. Barry Weissglass after the accident, who referred her to Dr. Edward Tavel for further treatment of her back. Dr. Tavel recommended physical therapy and prescribed pain medications for the Claimant's low back symptoms. Dr. Tavel also provided a

lumbar epidural steroid injection (APA p. 32). The Claimant testified that she did not receive any relief from the lumbar epidural injection. She was subsequently referred to Dr. Mike Tyler for a second opinion.

Dr. Tyler saw the Claimant on October 24, 2011. Dr. Tyler recommended a CT guided lumbar epidural injection, which was done on November 8, 2011. (APA p. 23-24). The Claimant testified the injections in her low back did not help at all. (H.T. p. 28, l. 3). The Claimant returned to Dr. Tyler in February 2012 with continued low back symptoms. Dr. Tyler recommended the Claimant obtain an updated MRI of her lumbar spine as well as a second opinion. (APA p. 26-27). The updated lumbar MRI was completed on March 1, 2012 and was unchanged from the prior study done in July 2011. (APA p. 139).

The Claimant saw Dr. Artur Pacult for a second opinion evaluation on March 1, 2012. Dr. Pacult recommended a discogram at L5-S1 and then a posterior lumbar fusion at L5-S1. (APA p. 1-6). The Claimant underwent lumbar fusion surgery on July 2, 2012. (APA p. 5). The Claimant continued to see Dr. Pacult after surgery. On July 19, 2012, Dr. Pacult noted the Claimant was making good progress. (APA p. 7). The Claimant began physical therapy and by August 2012, Dr. Pacult noted he was very pleased with her progress and seemed to be doing much better. (APA p 9). The Claimant admits surgery provided some relief of her back symptoms. (H.T. p. 27, ll. 18-19).

On September 27, 2012, at that time, Dr. Pacult noted that x-ray films of the Claimant's low back looked excellent and her pain had improved. (APA p. 13). The Claimant was last seen by Dr. Pacult on November 12, 2012. Dr. Pacult noted

> "I believe that the patient has reached maximum medical improvement. She is five months out from her surgery, she takes occasional analgesics, has not tried to return

to work and this may be the time to do so. We have no plans for additional surgical intervention at this time." (APA p. 15).

The Claimant did not attempt to return to work after seeing Dr. Pacult on November 12th.

The Claimant was seen by Dr. Timothy Zgleszewski on December 5, 2012 for the purpose of providing an impairment rating to her back. Dr. Zgleszewski completed an addendum on July 21, 2013 placing the Claimant at maximum medical improvement and assigned a 23% impairment rating for the back. (APA p. 18-21). Dr. Zgleszewski did not address the Claimant's work restrictions or future medical treatment needs in his report.

The Claimant subsequently wrote Dr. Zgleszewski with a questionnaire asking him to address work restrictions and future medical treatment. Dr. Zgleszewski responded that the Claimant is unable to work and should not work. Dr. Zgleszewski recommended pain management, including oral pain medications, a trial spinal cord stimulator, and intermittent physical therapy for pain flares. (APA p. 22).

The Claimant completed a functional capacity evaluation (FCE) on May 30, 2013. The FCE report indicates that the Claimant self-limited kneeling, crawling, ladder climbing and could not get into position for several of the static and dynamic lifting tasks. (APA p. 165). It was also noted that the Claimant's movement patterns improved significantly by distraction during the FCE, making the results of the repetitive movement tests invalid. The therapist noted the Claimant's movement ability was better than what she demonstrated and this represented a non-organic sign. (APA p. 171). Another concern during the FCE was the Claimant's extremely high heart rate that increased dramatically with activity, suggesting very poor cardiovascular conditioning. The results of the FCE showed the Claimant was not able to work on that day. (APA p. 165).

The Claimant was evaluated by Dr. J. Robert Alexander, Jr., on May 22, 2013. Dr. Alexander believed the Claimant had not reached maximum medical improvement and recommended an updated lumbar MRI as well as a trial series of transforaminal injections. Dr. Alexander noted the Claimant could perform sedentary duty work. (APA p. 162-164).

On June 24, 2013, the Claimant saw Dr. Steven Poletti on her own accord for an independent medical evaluation. Dr. Poletti assigned a 33% impairment of the Claimant's back. Dr. Poletti agreed with Dr. Alexander that the Claimant could work in a sedentary capacity. (H.T. p. 65). In addition, Dr. Poletti noted that he "would strongly discourage her from considering dorsal column stimulation as a treatment option." (APA p. 65). Dr. Alexander subsequently issued an opinion on August 15, 2013 that he agreed with Dr. Poletti's assessment that the Claimant would not benefit from a spinal column stimulator. (APA p. 161).

The Claimant was seen by Jean Hutchinson on March 15, 2013 for an employability evaluation. It was Ms. Hutchinson's opinion that the Claimant was unable to return to work as a library page or to any past employment and that she did not have transferable skills to perform work within her residual functional capacity.

Cassandra Townsend completed a vocational assessment of the Claimant and labor market survey on May 14, 2013. Ms. Townsend found the Claimant remained employable in the sedentary to light duty capacity. (H.T. p. 202). She compiled a labor market survey identifying 25 separate job openings that fit within the light duty-sedentary work capacity earning between $9.00-$14.73 per hour. (APA pp. 198-200).

The Claimant testified her back problems are better now than they were prior to surgery. (H.T. p. 58, ll. 3-5). She has not had any injections in her back since her back surgery in July 2012. (H.T. p. 45, pp. 22-24). The Claimant testified under direct-examination that she continues to take

Percocet, Vicodin, Skelaxin, and Soma about once or twice per week. (H.T. p. 28, ll. 9-19). When presented with her deposition testimony, the Claimant changed her testimony on cross-examination and stated she took medications about once or twice per week. (H.T. p. 48, ll. 12-19). The Claimant was also forced to concede she had not refilled any prescriptions in over a year, since she was last seen by Dr. Pacult in November 2012. (H.T. p. 46, ll. 13-23). The Claimant admitted that medications did not help her back symptoms and she would be just as well not taking any medication. (H.T. p. 46, ll. 10-16).

Following her accident, the Claimant applied for the position of Library Assistant II, but was not selected for the position. (APA p. 179). The Claimant has not applied for any jobs with the Library since being turned down for this position. (H.T. p. 54, ll. 14). Claimant testified she was last seen by Dr. Poletti, a physician of her choice, on June 24, 2013 and released to work sedentary duty. (H.T. p. 52, ll. 21-23). The Claimant conceded she had over 10 years of administrative experience, which usually involved sedentary work. (H.T. p. 53, ll.1-7). The Claimant admits she has not made any effort to look for any type of employment. (H.T. p. 53, ll. 8-10). She also agreed she does not know what she is capable of doing since she had not tried to work in any capacity. (H.T. p. 53, ll. 11-13).

III. Testimony of Jennifer Rogers

Jennifer Rogers has worked as the Human Resources Manager for the Charleston County Library for 25 years. (H.T. p. 62, ll. 1-8). Rogers job duties included employment matters, insurance benefits, and job training. (H.T. p. 62, ll. 11-20). Rogers testified she does not hold the sole authority to hire or promote individuals at the library. (H.T. p. 63, l. 2). The decisions to hire and promote employees involve a collective process that includes the managers, deputy, and executive directors are involved with hiring and promotion of employees. (H.T. p. 63, ll. 4-16).

Rogers did not interview the Claimant for the position of library page. (H.T. p. 63, l. 23). Rogers extended an employment offer as a part-time Library Page to the Claimant based upon the input she received from the hiring department. (H.T. p. 66, ll. 3-5). The Claimant began work at the Charleston County Library as a part-time page in October 2010. She was paid $7.25 per hour and worked 15 hours per week. (H.T. p. 75, ll. 13-25). Rogers stated the Claimant was never employed with the Library in any capacity other than as a part-time library page. (H.T. p. 109, l. 2). Rogers stated the Claimant was a satisfactory employee; however, the Claimant's supervisor, Summer Mauldin, approached Rogers and told her she was having performance issues with the Claimant. (H.T. p. 100, ll. 4-6).

Following her October 27, 2010 accident, the Claimant continued to work at the library in a light duty position. (H.T. p. 77, ll. 1-2). The Claimant was later let go because she was unable to return to full duty work as a library page within 12 months following the accident and her position needed to be filled. (H.T. p. 97, ll. 19-25).

The Library system employs persons in the position of Library Assistant I. This position requires a high school education, office skills, and prior library experience is desired, but not required. (H.T. p. 70, ll. 9-13). The beginning salary for this full-time position is $20,113.60 annually. (H.T. p. 72, l. 17). (H.T. p. 112, l. 4). There is also a position of Library Assistant II. The qualifications for this job are a high school diploma and one year of library or related experience. (H.T. p. 71, ll. 21-25). Work as a library page is not considered as relevant experience towards employment as a library assistant. (H.T. p. 72, ll. 3-4). Rogers testified the positions of Library Assistant I & II did not become open very frequently because the employees hired into those jobs typically stayed in the positions. (H.T. p. 78, ll. 20-25).

The Claimant never expressed any interest to Rogers about working as a Library Assistant I and Rogers had no record of the Claimant applying for that position. (H.T. p. 109, ll. 3-9). The Claimant applied for the position of Library Assistant II in 2011. (H.T. p. 77, ll. 16-18). By letter dated May 27, 2011, the Claimant was informed that she was not selected for the Library Assistant II position. (APA p. 179). Rogers testified the Claimant was not hired for the position of Library Assistant II because the candidates interviewed for the position were more qualified than the Claimant. (H.T. p. 95, ll. 3-16).

Rogers testified she could not provide any definitive opinion on when, or even if, the Claimant could have ever become employed as a Library Assistant I, because there would be many variables including the availability of the position, as well as the number and quality of applicants applying for the position. (H.T. p. 104, ll. 8-12). Rogers testified it would be a complete guess for her to state that the Claimant would have stayed employed at the library or would have ever been promoted to the position of Library Assistant I. (H.T. p. 111, ll. 21-25). Rogers stated that past employment longevity is a consideration in hiring or promoting an employee to a Library Assistant I position. She testified that a person who never worked for a single employer longer than two years would cause concern in hiring that individual for the position. (H.T. p. 110, ll. 22-25). Rogers stated that she could have just as easily been fired or left for another job without working any position other than Library Page. (H.T. p. 111, ll. 17-20).

Conclusion

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good 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, the Panel has determined that the Hearing Commissioner's findings of fact and conclusions of law are supported by the greater weight of the evidence in the record and applicable law.

Accordingly, the Decision and Order of the single Commissioner dated January 8, 2014 is AFFIRMED in its entirety and the Appellate Panel adopts and enters the following findings of fact and conclusions of law based upon the greater weight of the evidence in the record and applicable law:

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The Claimant injured her low back in an accident arising out of and in the course of her employment with Charleston County on October 27, 2010, but did not sustain any injury to any other body member as a result of that accident based upon the greater weight of the evidence in the record and the testimony of the Claimant.
3. The Claimant's average weekly wage at the time of the accident was $97.88 resulting in a compensation rate of $75.00. The Claimant presented no credible evidence to support an adjustment in the average weekly wage and compensation. Her argument that she could have earned more in the future as a Library Assistant I or II is entirely speculative. The testimony of Jennifer Rogers indicates the Claimant was not guaranteed any promotions. Furthermore, the Claimant demonstrated no just reason, exceptional or otherwise, why the Form 20 calculation of her average weekly wage and compensation rate should not

apply. Instead, based upon the greater weight of the evidence, including the wage records and the testimony presented, $97.88 most nearly approximates the weekly amount the Claimant would be earning if not for the injury. To suggest that the Claimant would have earned more than $97.88 on average per week but for the injury, would require the Commission to resort to impermissible surmise, conjecture, and speculation.

4. Following the October 27, 2010 accident the Defendants provided all causally-related and necessary medical treatment that would tend to lessen the period of disability associated with the October 27, 2010 accident and the Claimant's period of temporary disability ended when the Claimant reached maximum medical improvement on January 21, 2013, as agreed by the parties and evidenced by the medical records.

5. Based upon the greater weight of the evidence in the record, including the opinions of Dr. Alexander and Dr. Poletti, a spinal cord stimulator is not medically necessary and would not lessen the period of disability associated with the October 27, 2010 accident.

6. The retained hardware necessitated by the Claimant's lumbar fusion constitutes a prosthetic device.

7. The Claimant's treating physician, Dr. Pacult, released her to return to work when she was last seen on November 12, 2012. Since that time, she has been evaluated by Dr. Alexander and her own IME physician, Dr. Poletti, both of whom have stated that she can return to work in a sedentary capacity. However, the Claimant has applied for only one job since being released by Dr. Pacult and has made no other effort to seek employment in any capacity, despite her work experience in sedentary, administrative positions. Furthermore, the vocational evaluation by Cassandra Townsend identified multiple jobs within the Claimant's restrictions that would allow the Claimant to earn the same or

greater wages than she was earning at the time of the accident. Based upon the greater weight of the evidence, we find that the Claimant has not proven a permanent loss of wage-earning capacity as a result of her low back injury. To find otherwise would be entirely speculative.

8. The Claimant was temporarily totally disabled from January 18, 2011 to January 21, 2013 when she stipulates that she reached maximum medical improvement and her temporary disability ended. The Defendants are entitled to a credit for an overpayment of the temporary total benefits paid after January 21, 2013 against the award.

9. The Claimant stipulated that she is at maximum medical improvement. While Dr. Zgleszewski suggested the Claimant may need pain management in the future to include oral medications and intermittent physical therapy, he was not specific. The report does not designate the specific medication or the nature of the physical therapy. More importantly, the Claimant admitted that none of her prior treatment, save surgery, provided her any benefit. She admits that she has not even attempted to refill any of her prescription medications since 2012, and she admits that she would be just as well not taking any medication. With respect to the Claimant's request for a spinal column stimulator, both Dr. Alexander and the Claimant's own physician, Dr. Poletti, have stated that the Claimant would <u>not</u> benefit from a spinal column stimulator. Therefore, based upon the greater weight of the evidence, there is no additional medical care or treatment at this time that would tend to lessen the Claimant's period of disability associated with the October 27, 2010 accident.

10. Based on the record as a whole, the Claimant has sustained 40% loss of use of the back as a scheduled member. She has not sustained any permanent disability or loss of use of any other body member.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time in question and under S.C. Code Ann. § 42-1-140, the Employer was a covered Employer;
2. Under S.C. Code Ann. § 42-1-40, the Claimant's average weekly wage at the time of the accident was $97.88 resulting in a compensation rate of $75.00.
3. Under S.C. Code Ann. § 42-1-160, the Claimant sustained an injury to her low back on October 27, 2010, arising out of and in the course and scope of her employment and no other body members were injured or affected.
4. Under S.C. Code Ann. § 42-15-60, the Claimant was provided proper and adequate medical care and treatment for her low back injury and reached maximum medical improvement on January 21, 2013. The Defendants are responsible for all authorized and causally-related treatment incurred on or before said date. There is no additional medical care of treatment at this time that would tend to lessen the Claimant's period of disability and; therefore, the Defendants shall have no liability for any additional medical care or treatment.
5. Pursuant to S.C. Code Ann. § 42-9-260, the Defendants have paid temporary total disability benefits for which they are liable and the Claimant's period of disability ended on January 21, 2013.
6. The Defendants continued paying temporary total disability benefits beyond January 21, 2013 and, therefore, pursuant to S.C. Code Ann. § 42-9-260 and § 42-9-210, the Defendants

are entitled to a credit for all benefits paid after January 21, 2013, which shall be deducted from the award.

7. Under S.C. Code Ann. § 42-9-30, the Claimant has sustained a 40% loss of use of the back and is entitled to one hundred twenty (120) weeks of benefits at the rate of $75.00 per week, less the Defendants' credit for overpayment of temporary disability benefits. The net award is to be paid in a lump sum.
8. The Defendants shall have no liability for permanent disability benefits under S.C. Code Ann. § 42-9-10 or § 42-9-20, as Claimant has no loss of wage-earning capacity as a result of the October 27, 2010 accident.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant reached maximum medical improvement on January 21, 2013 and the Defendants are responsible for any authorized and causally-related medical care and treatment incurred on or before said date;

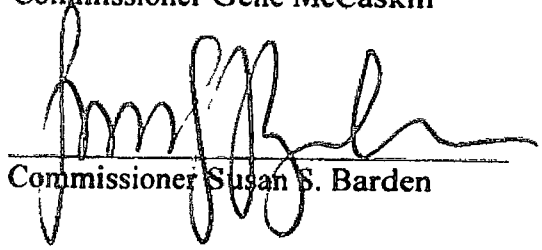
IT IS FURTHER ORDERED that the Claimant's period of temporary total disability ended on January 21, 2013 and the Defendants are entitled to an overpayment of temporary total compensation paid after said date;

IT IS FURTHER ORDERED that the Defendants shall pay the Claimant 120 weeks of compensation at the rate of $75.00 per week representing 40% loss of use of the back as a scheduled member, with the Defendants taking a credit for all temporary total compensation to the Claimant after January 21, 2013 when the Claimant reached maximum medical improvement and her temporary disability ended, payable in a lump sum.

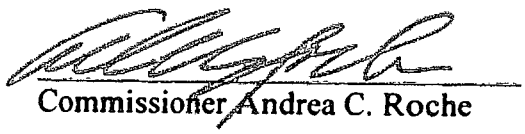
IT IS FURTHER ORDERED that the Claimant is not entitled to, and the Defendants shall have no liability for, any additional medical treatment.

IT IS SO ORDERED!

Commissioner Gene McCaskill



Commissioner Susan S. Barden



Commissioner Andrea C. Roche

1165/1109\FC Order

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 Kim Falls on July 25, 2014