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APPELLATE PANEL DECISION AND ORDER

OF THE

**SC Court of Appeals**

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1001704

Jerome Sumter

EMPLOYEE,  
CLAIMANT/RESPONDENT

VS.

EMS Chemie (North America) Inc.

EMPLOYER,

AND

Hartford Ins. Co. of the Midwest

CARRIER,  
DEFENDANTS/APPELLANTS,

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Appellate Panel Review held in Columbia, South  
Carolina, on September 15, 2014 per notices timely  
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

November 24<sup>th</sup>, 2014

APPEARANCES: Claimant/Appellant represented by Max C. Sparwasser, Esquire, of  
Sparwasser Law Firm, LLC of Mt. Pleasant, South Carolina

Defendants/Respondents represented by A. Mundi George, Esquire of  
McAngus Goudelock & Courie, LLC of Columbia, South Carolina

## STATEMENT OF THE CASE

Claimant sustained an admitted accident to his right hand on February 26, 2010. This claim was originally heard and decided on September 11, 2012. Thereafter, on July 16, 2013, the Full Panel remanded this claim for a de novo hearing on Defendants' Form 21.

Defendants' position is that Claimant has reached maximum medical improvement. Defendants assert that Claimant sustained a thermal (not chemical) burn to his right hand that ultimately resulted in carpal tunnel syndrome in his right hand. Claimant did not plead the compensability of his left hand carpal tunnel syndrome. Claimant underwent carpal tunnel release with Dr. Moore. Dr. Moore placed Claimant at maximum medical improvement on May 3, 2012 with a 0% rating. Claimant was also given a 3% rating with maximum medical improvement from Dr. McFadden on April 9, 2012, and a neurological IME with Dr. Jervey on June 12, 2012 that resulted in no impairment rating and no restrictions. Additionally, Defendants relied on the opinions of Dr. Lowndes-Rosen to support their position that Claimant does not have a psychological disorder. Defendants sought an order terminating benefits, awarding permanency, if any, and a credit for temporary total disability benefits back to June 12, 2012 – the date of maximum medical improvement.

Claimant's position was that he was not at maximum medical improvement. Claimant relied on opinions by Dr. Healy, Dr. Deal and Dr. Bergmann that he still needed medical treatment in order to lessen his period of disability. Specifically, Claimant requested the Commission authorize a triple phase bone scan and a prescription for Abilify to medicate his alleged psychological overlay. Claimant also objected to any finding of permanency as Claimant asserted he was not at maximum medical improvement.

The Single Commissioner determined that Claimant reached maximum medical improvement on June 12, 2012 and sustained a 5% permanent partial disability to his right upper extremity. The Single Commissioner denied the compensability of the alleged psychological overlay. She found that Claimant is entitled to ongoing medical treatment only in the form of causally-related prescriptions for Cymbalta, with associated office visits with an authorized treating physician as causally-related and medically-necessary to prescribe this medication. Additionally, she ordered that Defendants are entitled to a credit for all temporary disability payments from the date of MMI, June 12, 2012, with credit applied against and deducted from the final award of 5% permanent partial disability to the right upper extremity and Claimant to pay the difference to Defendants because the credit exceeded the award. Claimant then filed an appeal to the Full Commission seeking reversal of the Single Commissioner regarding maximum medical improvement, future medical treatment needs, depression and TTD credit. This matter was set for reconsideration before the Full Commission on September 15, 2014.

### **EVIDENCE OF THE CASE**

Original testimony was taken before the Single Commissioner as follows:

Claimant testified on his behalf. Claimant is a 53 year old male with three children who are all dependent on him for support. (Hr'g Tr. 9:12-20). Claimant has worked for Employer since May 2002 as an extrusion operator. (Hr'g Tr. 9:23-25). Claimant testified that his job consists of maintenance, setting up lines, loading buckets, and cleaning silos. (Hr'g Tr. 10:3-6).

Claimant testified that she suffered a burn injury to his right hand in 2010. (Hr'g Tr. 10:19-20). Claimant first treated with Dr. Mullins. Claimant indicated that Dr. Mullins did a skin graft to treat the burn injury. (Hr'g Tr. 11:4-5). Claimant stated that the graft did not help and he eventually underwent carpal tunnel surgery. (Hr'g Tr. 11:7-21). Claimant's carpal tunnel surgery

was to both hands but Claimant indicated that only the right hand was work-related. (Hr'g Tr. 12:3-9). Claimant also underwent a cervical fusion that was not work-related. (Hr'g Tr. 12:10-13). The surgery was performed by Dr. DeHoll in January 2013. Claimant testified he had not been released from care by Dr. DeHoll or from pain management treatment with Dr. Cooper. Claimant indicated that his left hand got better following surgery but that his right hand did not get better. (Hr'g Tr. 11:15-23). Claimant stated that he wears lidoderm patches twelve hours per day to assist with his ongoing pain. (Hr'g Tr. 14:2-7).

Claimant also called his wife, Jennifer Sumter to testify. Mrs. Sumter testified she has been married to Claimant for ten (10) years. (Hr'g Tr.23:25). Mrs. Sumter testified that Claimant suffers from some limitations because he does not have strength in his right hand that he used to have. (Hr'g Tr. 24:18-19). Mrs. Sumter also testified that Claimant is depressed since the accident. (Hr'g Tr. 24:22-23).

Original evidence was submitted before the Single Commissioner as follows:

Claimant suffered a thermal burn to the back of his right hand and treated with JMS Burn Center and Dr. Healy, a neurologist. Claimant was initially evaluated and treated at the Joseph M. Still Burn Center for the chemical burn he sustained on February 26, 2010. He presented for his initial visit on March 3, 2010. (Cl. APA, p. 44). He underwent skin grafting. On September 21, 2011, Dr. Mullins notes that he has a well healing late effect burn injury to the right hand; he should continue present treatment by the orthopedist and his work restrictions will be instituted and monitored by the orthopedist. (Cl. APA, p. 123). He saw Dr. Mullins on August 15, 2012, at which time, Dr. Mullins notes that Claimant's right hand reveals well healed completely re-epithelialized burn injury; there are no open areas noted at this time; there is no purulence, malodor, or active bleeding; no scar banding, contracture or fibrosis; the patient's burn scars are

barely visible at this time. (Cl. APA, p. 140). Dr. Mullins indicates that the Claimant should wear an Isotoner glove daily and should continue to follow-up with his neurologist. Dr. Mullins does not indicate the need for additional future medical treatment. At the November 14, 2012 appointment, Dr. Mullins stated claimant's burn scars were completely resolved and said claimant "may be released for MMI." ( Def. APA p. 22).

Claimant was also being treated by Dr. R. Joseph Healy, a neurologist, for his continued complaints of paresthesias in his fingers and right hand since the date of the injury. Dr. Healy treated him on a regular basis from September 19, 2010 through September 10, 2013. Dr. Healy initially indicates that Claimant is likely suffering from carpal tunnel syndrome and recommended diagnostic testing to determine the etiology of the Claimant's complaints. (Cl. APA, p. 20). Claimant continued to see Dr. Healy regarding his complaints of carpal tunnel syndrome and was ultimately referred to an orthopaedist in February 2011. On January 31, 2012, Dr. Healy notes that updated studies from December show normal ulnar medical function in the right hand. (Cl. APA, p. 38). On March 28, 2012, Dr. Healy notes that Claimant has poor grasp, and fine motor abilities are reduced; however the grip strength testing a month later indicates otherwise. Claimant returns to Dr. Healy in July and is prescribed depression medication which he indicates in his note dated August 20, 2012 is related to his loss of functional abilities. (Cl. APA, p. 43). By August 20, 2013, three other physicians had evaluated claimant and placed him at MMI. ). Yet, Dr. Healy ignored the normal exams by Dr. Moore, Dr. McFadden and Dr. Jervey as outlined below and continued attempts to treat claimant for a growing and worsening list of complaints. Dr. Healy also continued to treat claimant after his cervical fusion surgery which took place in January 2013. Dr. Healy changed and increased

claimant's medication dosage and noted that claimant was asking for narcotic pain medication. (Cl. APA. p. 170).

Claimant underwent a right-handed carpal tunnel release with Dr. Moore on August 17, 2011. (Def. APA p. 9). Following the surgery, Claimant continued to follow up with Dr. Moore for ongoing treatment. Dr. Moore noted various complaints of pain following the surgical intervention in Claimant's right hand. (Def. APA p. 6-12). Dr. Moore noted on April 6, 2012 that Claimant was reporting pain that was out of proportion to the objective findings. (Def. APA p. 10). Dr. Moore also noted on April 6, 2012 that Claimant's skin graft "clinically looked great." Id. On May 3, 2012, Dr. Moore noted that Claimant underwent grip strength testing during which the testing facility indicated that his test was "consistent with submaximal effort." (Def. APA p. 12). Dr. Moore noted that Claimant continued to complain of pain in his hand that "is not coming from his carpal tunnel syndrome" and that is "certainly out of proportion to his clinical findings." Id. Dr. Moore indicated that Claimant reached maximum medical improvement on May 3, 2012 and that Claimant had a 0% impairment rating with no future medical needs. Id.

On December 6, 2011, Claimant underwent a nerve conduction study with Florence Rehabilitation Medicine. That report indicated that there was "no significant difference between nerves." (Def. APA p. 13). Further, the report indicated that "EMG is normal with no evidence of radiculopathy or plexopathy. Given this, these findings are considered normal." Id.

Claimant was also seen by Dr. Earl McFadden for a second opinion on April 9, 2012. Dr. McFadden noted that Claimant presented with a chemical burn on his right hand followed by a carpal tunnel surgery. (Def. APA p. 15). Dr. McFadden noted that a clinical exam revealed Claimant's hand to be "completely normal." Id. Claimant had "full extension" and "he has full active range of motion of his hand, wrist, and elbow." Id. Dr. McFadden indicated that Claimant

was “right off the bat very hostile” and that Claimant accused Dr. McFadden of “working for the Workers’ Compensation and I am just trying to say he can do whatever he wants to.” Id. Following the exam, Dr. McFadden stated that this was “one of the most normal exams I have seen” and “there is no reason why this gentleman shouldn’t be working or couldn’t be doing regular duty.” Id. Dr. McFadden indicated that an IME could be performed but that Claimant would likely give “less than full effort.” Id. In addition, Dr. McFadden issued a 3% impairment rating to the upper extremity which converts to a 2% whole person impairment. Id. Dr. McFadden issued a supplemental addendum to clear up language in his initial report. In that report, Dr. McFadden indicated that “I felt like his complaints were out of proportion to any clinical findings.” (Def. APA p. 17).

Claimant was also sent to Dr. Charles Jervey for an independent medical examination on June 12, 2012. Dr. Jervey indicated that he was “unable to explain patient’s two-point discrimination sensory loss from a neurologic/anatomic etiology...meaning noncompliance with subjective testing.” (Def. APA p. 20). Dr. Jervey also indicated that Claimant’s carpal tunnel etiology was most likely not from the burn injury as Claimant had identical nerve studies in each hand. Id. Dr. Jervey agreed that Claimant is at maximum medical improvement and agreed with Dr. McFadden’s ratings as reasonable. (Def. APA p. 21).

Claimant was sent to the Joseph M. Still Burn Center on November 14, 2012. During that visit, Dr. Brandigi and Shay Seymour PA-C visited with Claimant. (Def. APA p. 22). Dr. Brandigi noted a complete resolution of the burn injury. Dr. Brandigi noted that Claimant was at maximum medical improvement. Id.

For the alleged psychological conditions, Claimant was sent to Dr. Dyana Lowndes-Rosen on August 22, 2013. (Def. APA p. 23). Dr. Lowndes-Rosen met with Claimant and

conducted an extensive interview to uncover any underlying psychological issues. Dr. Lowndes-Rosen concluded that Claimant would not benefit from any psychological treatment. (Def. APA p. 28). Dr. Lowndes-Rosen indicated that Claimant may suffer from "situational despondency" but that would not be treatable as a neurochemical depression. Id. Dr. Lowndes-Rosen released Claimant at maximum medical improvement. Id. Claimant also attended psychological IME with Post Trauma Resources obtained by his attorney. That IME fails to mention the report and opinion of Dr. Lowndes-Rosen.

### **SINGLE COMMISSIONER FINDINGS OF FACT**

The Single Commissioner reached the following Findings of Fact at the Hearing:

1. This claim is not subject to mandatory mediation. Claimant contested MMI and identified determination of MMI and a request for triple phase bone scan as the facts in controversy on his Form 58 Pre-Hearing brief for this hearing.
2. Claimant is a 53-year-old male with three children who are all dependent on him for support. (Hr'g Tr. 9:12-20).
3. Claimant sustained a compensable injury to his right arm on February 26, 2010. This finding of an injury to the arm as opposed to the hand is based on Claimant's development of CTS after the burn injury, which I find affects the wrist and thus, the arm as a whole.
4. On December 6, 2011, Claimant underwent a nerve conduction study with Florence Rehabilitation Medicine. That report indicated that there was "no significant difference between nerves." Further, the report indicated that "EMG is normal with no evidence of radiculopathy or plexopathy. Given this, these findings are considered normal." (Def. APA p. 13).

5. On April 9, 2012, Dr. McFadden noted that a clinical exam revealed Claimant's hand to be "completely normal." Claimant had "full extension" and "he has full active range of motion of his hand, wrist, and elbow." (Def. APA p. 15).
6. Dr. McFadden indicated that Claimant was "right off the bat very hostile" and that Claimant accused Dr. McFadden of "working for the Workers' Compensation and I am just trying to say he can do whatever he wants to." (Def. APA p. 15).
7. Following the exam, Dr. McFadden remarked that Claimant was "one of the most normal exams I have seen" and "there is no reason why this gentleman shouldn't be working or couldn't be doing regular duty." Dr. McFadden indicated that an IME could be performed but that Claimant would likely give "less than full effort." In addition, Dr. McFadden issued a 3% impairment rating to the upper extremity which converts to a 2% whole person impairment. (Def. APA p. 15).
8. Dr. McFadden issued a supplemental addendum to clear up language in his initial report. In that report, Dr. McFadden indicated that "I felt like his complaints were out of proportion to any clinical findings." (Def. APA p. 17).
9. On May 3, 2012, Dr. Moore noted that Claimant underwent grip strength testing during which the testing facility indicated that his test was "consistent with submaximal effort." Dr. Moore noted that Claimant continued to complain of pain in his hand that "is not coming from his carpal tunnel syndrome" and that is "certainly out of proportion to his clinical findings." Dr. Moore indicated that Claimant reached maximum medical improvement on May 3, 2012 and that Claimant had a 0% impairment rating with no future medical needs. (Def. APA p. 12).

10. On June 12, 2012, Dr. Jervey indicated that he was “unable to explain patient’s two-point discrimination sensory loss from a neurologic/anatomic etiology...meaning noncompliance with subjective testing.” (Def. APA p. 20).
11. On November 14, 2012, Dr. Brandigi and Shay Seymour PA-C visited with Claimant. Dr. Brandigi noted a complete resolution of the burn injury. Dr. Brandigi noted that Claimant was at maximum medical improvement. (Def. APA p. 22).
12. Claimant is at maximum medical improvement for his right arm injury as of June 12, 2012 per Dr. Jervey (who references at least one other physician with an even earlier MMI date). (Def. APA p. 12, 15, 17, 21).
13. I find Claimant has sustained 5% permanent partial disability to his right arm. I base this finding on the evidence as a whole including the impairment rating issued by Dr. McFadden and concurred with by Dr. Jervey. More importantly, I found the numerous references and inferences to symptom magnification throughout the medical records to be quite persuasive. (Def. APA p. 12, 15, 17, 21).
14. Claimant is entitled to future medical treatment in the form of Cymbalta for his neuropathic pain. I base this finding on the totality of the medical evidence. Although Dr. Healy did recommend a triple phase bone scan on August 20, 2012, past the date that Defendants asserted maximum medical improvement, this recommendation was based on the subjective complaints of Claimant, which increased drastically after other physicians had placed him at maximum medical improvement. Additionally, this recommendation fell silent until the eve of hearing when it was again mentioned by Dr. Healy, more than a year after the original recommendation. It is not enough that Dr. Healy, who is an authorized treating physician, made a recommendation. Inquiry must be made into the

basis for the recommendation as well as the opinions of other physicians who may have treated and evaluated Claimant. In this case there were two orthopedists and one neurologist who had placed Claimant at maximum medical improvement with little to no permanent impairment. After these evaluations, I find Claimant's subjective complaints to his physicians increased substantially leading to requests for additional treatment. The triple phase bone scan requested by Dr. Healy is not supported by the preponderance of the medical evidence as a whole. Again the numerous references and inferences to symptom magnification weighed on this finding. (Def. APA p. 12, 15, 17, 21).

15. Claimant also alleged psychological overlay, which I do not find to be credible and hereby deny. I base this finding on the medical evidence as a whole including Claimant's minimal physical impairment as well as the report of Dr. Lowndes-Rosen who met with Claimant and his wife at length. (Def. APA p. 23).
16. Claimant is awarded a lump-sum and no hearing costs are assessed.
17. Defendants are entitled to a credit back to June 12, 2012 as they preserved this issue at all required points throughout this claim's procedural history. Defendants filed the original Form 21 seeking a stop payment, pay compensation and credit on July 25, 2012. The Single Commissioner issued a Decision and Order on December 7, 2012 indicating claimant was not at MMI, among other findings, so that the stop payment and credit were not appropriate. Defendants timely filed their appeal to the Appellate Panel who subsequently vacated the original Single Commissioner Decision and Order and remanded the claim to the Jurisdictional Commissioner for a Hearing de novo. The hearing set before the Undersigned and held on September 30, 2013 stemmed from the original Form 21 filed on July 25, 2012. Defendants' request for credit for overpayment

of temporary compensation after MMI of June 12, 2012 is clearly part of the original Form 21.

### **APPELLATE PANEL FINDINGS OF FACT**

The Appellate Panel of the Full Commission adopts the Single Commissioner's Findings of Fact in their entirety as follows:

1. This claim is not subject to mandatory mediation. Claimant contested MMI and identified determination of MMI and a request for triple phase bone scan as the facts in controversy on his Form 58 Pre-Hearing brief for this hearing.
2. Claimant is a 53 year old male with three children who are all dependent on him for support. (Hr'g Tr. 9:12-20).
3. Claimant sustained a compensable injury to his right arm on February 26, 2010. This finding of an injury to the arm as opposed to the hand is based on Claimant's development of CTS after the burn injury, which I find affects the wrist and thus, the arm as a whole.
4. On December 6, 2011, Claimant underwent a nerve conduction study with Florence Rehabilitation Medicine. That report indicated that there was "no significant difference between nerves." Further, the report indicated that "EMG is normal with no evidence of radiculopathy or plexopathy. Given this, these findings are considered normal." (Def. APA p. 13).
5. On April 9, 2012, Dr. McFadden noted that a clinical exam revealed Claimant's hand to be "completely normal." Claimant had "full extension" and "he has full active range of motion of his hand, wrist, and elbow." (Def. APA p. 15).

6. Dr. McFadden indicated that Claimant was “right off the bat very hostile” and that Claimant accused Dr. McFadden of “working for the Workers’ Compensation and I am just trying to say he can do whatever he wants to.” (Def. APA p. 15).
7. Following the exam, Dr. McFadden remarked that Claimant was “one of the most normal exams I have seen” and “there is no reason why this gentleman shouldn’t be working or couldn’t be doing regular duty.” Dr. McFadden indicated that an IME could be performed but that Claimant would likely give “less than full effort.” In addition, Dr. McFadden issued a 3% impairment rating to the upper extremity which converts to a 2% whole person impairment. (Def. APA p. 15).
8. Dr. McFadden issued a supplemental addendum to clear up language in his initial report. In that report, Dr. McFadden indicated that “I felt like his complaints were out of proportion to any clinical findings.” (Def. APA p. 17).
9. On May 3, 2012, Dr. Moore noted that Claimant underwent grip strength testing during which the testing facility indicated that his test was “consistent with submaximal effort.” Dr. Moore noted that Claimant continued to complain of pain in his hand that “is not coming from his carpal tunnel syndrome” and that is “certainly out of proportion to his clinical findings.” Dr. Moore indicated that Claimant reached maximum medical improvement on May 3, 2012 and that Claimant had a 0% impairment rating with no future medical needs. (Def. APA p. 12).
10. On June 12, 2012, Dr. Jervey indicated that he was “unable to explain patient’s two-point discrimination sensory loss from a neurologic/anatomic etiology...meaning noncompliance with subjective testing.” (Def. APA p. 20).

11. On November 14, 2012, Dr. Brandigi and Shay Seymour PA-C visited with Claimant. Dr. Brandigi noted a complete resolution of the burn injury. Dr. Brandigi noted that Claimant was at maximum medical improvement. (Def. APA p. 22).
12. Claimant is at maximum medical improvement for his right arm injury as of June 12, 2012 per Dr. Jervey (who references at least one other physician with an even earlier MMI date). (Def. APA p. 12, 15, 17, 21).
13. We find Claimant has sustained 5% permanent partial disability to his right arm. We base this finding on the evidence as a whole including the impairment rating issued by Dr. McFadden and concurred with by Dr. Jervey. More importantly, we found the numerous references and inferences to symptom magnification throughout the medical records to be quite persuasive. (Def. APA p. 12, 15, 17, 21).
14. Claimant is entitled to future medical treatment in the form of Cymbalta for his neuropathic pain. We base this finding on the totality of the medical evidence. Although Dr. Healy did recommend a triple phase bone scan on August 20, 2012, past the date that Defendants asserted maximum medical improvement, this recommendation was based on the subjective complaints of Claimant, which increased drastically after other physicians had placed him at maximum medical improvement. Additionally, this recommendation fell silent until the eve of hearing when it was again mentioned by Dr. Healy, more than a year after the original recommendation. It is not enough that Dr. Healy, who is an authorized treating physician, made a recommendation. Inquiry must be made into the basis for the recommendation as well as the opinions of other physicians who may have treated and evaluated Claimant. In this case there were two orthopedists and one neurologist who had placed Claimant at maximum medical improvement with little to no

permanent impairment. After these evaluations, We find Claimant's subjective complaints to his physicians increased substantially leading to requests for additional treatment. The triple phase bone scan requested by Dr. Healy is not supported by the preponderance of the medical evidence as a whole. Again the numerous references and inferences to symptom magnification weighed on this finding. (Def. APA p. 12, 15, 17, 21).

15. Claimant also alleged psychological overlay, which we do not find to be credible and hereby deny. We base this finding on the medical evidence as a whole including Claimant's minimal physical impairment as well as the report of Dr. Lowndes-Rosen who met with Claimant and his wife at length. (Def. APA p. 23).

16. Claimant is awarded a lump-sum and no hearing costs are assessed.

17. Defendants are entitled to a credit back to June 12, 2012 as they preserved this issue at all required points throughout this claim's procedural history. Defendants filed the original Form 21 seeking a stop payment, pay compensation and credit on July 25, 2012. The Single Commissioner issued a Decision and Order on December 7, 2012 indicating claimant was not at MMI, among other findings, so that the stop payment and credit were not appropriate. Defendants timely filed their appeal to the Appellate Panel who subsequently vacated the original Single Commissioner Decision and Order and remanded the claim to the Jurisdictional Commissioner for a Hearing de novo. The hearing set before the Single Commissioner and held on September 30, 2013 stemmed from the original Form 21 filed on July 25, 2012. Defendants' request for credit for overpayment of temporary compensation after MMI of June 12, 2012 is clearly part of the original Form 21.

## **SINGLE COMMISSIONER CONCLUSIONS OF LAW**

The Single Commissioner reached the following Conclusions of Law at the Hearing:

1. S.C. Code Ann. § 42-1-160 governs injuries by accident arising out of and in the course and scope of employment.
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant sustained admitted compensable injury to his right hand with resulting carpal tunnel syndrome in his right arm.
3. S.C. Code Ann. § 42-15-60 governs the provision of medical treatment.
4. The term maximum medical improvement means a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Hall v. United Rentals, Inc., 371 S.C. 69, 89, 636 S.E.2d 876, 887 (Ct. App. 2006).
5. Maximum medical improvement is a factual determination by the Commission. Hall, supra.
6. Pursuant to S.C. Code Ann. § 42-15-60 and Hall, Claimant reached maximum medical improvement on June 12, 2012.
7. Pursuant to S.C. Code Ann. § 42-15-60, Claimant is entitled only to future medical treatment in the form of Cymbalta as long as it is authorized by an authorized treating physician.
8. S.C. Code Ann. § 42-9-30 governs the amount of compensation and period of disability for specific injuries.
9. Pursuant to S.C. Code Ann. § 42-9-30, Claimant sustained a 5% permanent partial disability to his right upper extremity.

10. Pursuant to S.C. Code Ann. § 42-9-30, Claimant is entitled to eleven (11) weeks of permanent partial disability benefits less any credit owed to Defendants.
11. S.C. Code Ann. § 42-9-260 governs the suspension, termination, and credit for overpayment of temporary disability benefits.
12. Pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482, workers' compensation benefits accrue along a time continuum: temporary disability benefits are available from the date of injury through the date of maximum medical improvement; post-MMI benefits may then be awarded as either permanent total or permanent partial disability, or as a percentage of impairment to a scheduled member.
13. Pursuant to Curiel v. Environmental Management Services, 376 S.C. 23, 655 S.E.2d 482, the date of maximum medical improvement signals the end of entitlement to temporary total benefits.
14. Pursuant to Watson v. Xtra Mile Driver Training, Inc., 399 S.C. 455, 732 S.E.2d 190 (S.C. App. 2012), equity indicates that an Employer is entitled to a credit for any temporary disability benefits paid after the date of maximum medical improvement.
15. Pursuant to Regions Bank v. Wingard Props, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Ct. App. 2011), a court may not ignore statutes, rules, and other precedent when providing an equitable remedy.
16. Pursuant to S.C. Code Ann. § 42-9-260, Curiel, Watson, and Regions Bank, Defendants are entitled to a credit for overpayment of temporary disability benefits after the date of maximum medical improvement—June 12, 2012.
17. Claimant also alleged psychological overlay, which I do not find to be credible and hereby deny. I base this finding on the medical evidence as a whole including Claimant's

minimal physical impairment as well as the report of Dr. Lowndes-Rosen who met with Claimant and his wife at length. (Def. APA p. 23).

### **APPELLATE PANEL CONCLUSIONS OF LAW**

The Appellate Panel of the Full Commission adopts the Single Commissioner's Conclusions of law in their entirety as follows:

1. S.C. Code Ann. § 42-1-160 governs injuries by accident arising out of and in the course and scope of employment.
2. Pursuant to S.C. Code Ann. § 42-1-160, Claimant sustained admitted compensable injury to his right hand with resulting carpal tunnel syndrome in his right arm.
3. S.C. Code Ann. § 42-15-60 governs the provision of medical treatment.
4. The term maximum medical improvement means a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Hall v. United Rentals, Inc., 371 S.C. 69, 89, 636 S.E.2d 876, 887 (Ct. App. 2006).
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6. Pursuant to S.C. Code Ann. § 42-15-60 and Hall, Claimant reached maximum medical improvement on June 12, 2012.
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9. Pursuant to S.C. Code Ann. § 42-9-30, Claimant sustained a 5% permanent partial disability to his right upper extremity.
10. Pursuant to S.C. Code Ann. § 42-9-30, Claimant is entitled to eleven (11) weeks of permanent partial disability benefits less any credit owed to Defendants.
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14. Pursuant to Watson v. Xtra Mile Driver Training, Inc., 399 S.C. 455, 732 S.E.2d 190 (S.C. App. 2012), equity indicates that an Employer is entitled to a credit for any temporary disability benefits paid after the date of maximum medical improvement.
15. Pursuant to Regions Bank v. Wingard Props, Inc., 394 S.C. 241, 254, 715 S.E.2d 348, 355 (Cl. App. 2011), a court may not ignore statutes, rules, and other precedent when providing an equitable remedy.
16. Pursuant to S.C. Code Ann. § 42-9-260, Curiel, Watson, and Regions Bank, Defendants are entitled to a credit for overpayment of temporary disability benefits after the date of maximum medical improvement—June 12, 2012.

17. Claimant also alleged psychological overlay, which we do not find to be credible and hereby deny. We base this finding on the medical evidence as a whole including Claimant's minimal physical impairment as well as the report of Dr. Lowndes-Rosen who met with Claimant and his wife at length. (Def. APA p. 23).

**ORDER**

The Single Commissioner rendered the following Order at the Hearing. The Order as issued by the Single Commissioner is adopted in its entirety by this Full Commission as previously stated as follows:

**IT IS HEREBY ORDERED** that the greater weight and preponderance of the evidence supports a finding that Claimant has reached maximum medical improvement as of June 12, 2012.

**IT IS FURTHER ORDERED** that the greater weight and preponderance of the evidence supports a finding that Claimant sustained a 5% permanent partial disability to his right upper extremity, equivalent to eleven (11) weeks of compensation.

**IT IS FURTHER ORDERED** that the greater weight and preponderance of the evidence supports a finding that Claimant's alleged psychological overlay is DENIED.

**IT IS FURTHER ORDERED** that the greater weight and preponderance of the evidence supports a finding that Claimant is entitled to ongoing medical treatment only in the form of a causally-related prescription for Cymbalta, with associated office visits with an authorized treating physician as causally-related and medically-necessary to monitor and prescribe this medication.

**IT IS FURTHER ORDERED** that the greater weight and preponderance of the evidence supports a finding that Defendants are entitled to a credit for all temporary disability

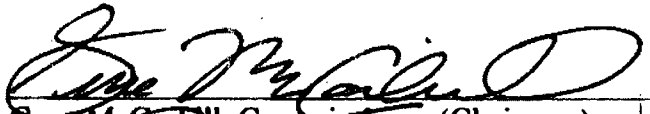
payments from the date of MMI—June 12, 2012. This credit shall be applied against and deducted from the final award of 5% permanent partial disability to the right upper extremity with Claimant to pay the difference to Defendants, as the credit exceeds the award.

**IT IS HEREBY ORDERED.**

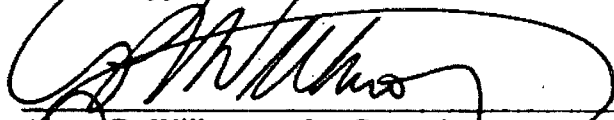
The Single Commissioner's Order is affirmed in its entirety.

**SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION**

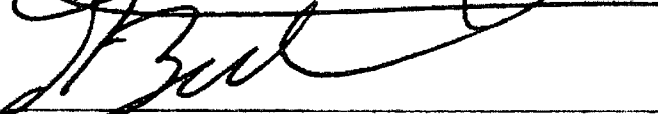
**WE CONCUR:**



Gene McCaskill, Commissioner (Chairman)  
For the Appellate Panel



Avery B. Wilkerson, Jr., Commissioner



T. Scott Beck, Commissioner

**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 November 24, 2014**