

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0901375**

Kimberly Walker,

CLAIMANT/APPELLANT,

vs.

Sunbelt Human Advancement,

EMPLOYER,

AND

State Accident Fund .

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on November 18, 2014 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed

Filed:

March 4th, 2015

APPEARANCES:

Claimant/Appellant Kimberly Walker, of Greenville, South Carolina represented by Alton L. Martin, Jr., Esquire and Stephen B. Samuels, Esquire.

Defendants/Respondents represented by L. Brenn Watson, Esquire of Willson Jones Carter & Baxley, P.A. in Greenville, South Carolina.

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SC Court of Appeals

STATEMENT OF THE CASE

Claimant sustained a compensable injury to her left knee in a work-related accident on February 19, 2009 (hereinafter, "the 2009 accident"). Thereafter, she developed admitted overcompensation injuries to her right knee and low back. By Order of the Commission, dated February 14, 2013, Claimant was also found to have suffered an aggravation of her preexisting psychological condition on account of the 2009 accident and associated injuries. Claimant filed a Form 50, Request for Hearing, and a hearing was scheduled before Commissioner Gene McCaskill (hereinafter, "the Single Commissioner") on March 12, 2014.

It was Claimant's position in this matter that she had reached MMI for the conditions related to the 2009 accident, and she contended she was permanently and totally disabled on account of the same, pursuant to S.C. Code Ann. Section 42-9-10. It was Defendants' position in this matter that Claimant had not yet reached MMI in relation to the 2009 accident. In the alternative, if Claimant was found to have reached MMI, Defendants maintained Claimant was not permanently and totally disabled on account of the 2009 accident.

By Decision and Order dated July 23, 2014, the Single Commissioner found Claimant had reached MMI. The Single Commissioner awarded 40% permanent partial disability to Claimant's left knee, 2% permanent partial disability to her low back, and 0% permanent partial disability to her right knee. The Single Commissioner found Claimant's psychological condition is not disabling. The Single Commissioner found Claimant is entitled to specified causally-related future medical treatment, and Defendants are entitled to a credit for overpayment of TTD paid beyond December 13, 2013. The Single Commissioner further found that Claimant is not credible. On July 28, 2014, Claimant filed a Form 30, Request for Commission Review, appealing the Order of the Single Commissioner. Briefs were timely submitted by the parties, and oral arguments were held before the undersigned Commissioners of the Appellate Panel on November 18, 2014.

SINGLE COMMISSIONER'S FINDINGS OF FACT

The Single Commissioner's July 23, 2014 Decision and Order set forth the following Findings of Fact:

1. Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Kimberly Walker as Employee-Claimant and Sunbelt Human Advancement as Employer and State Accident Fund as Carrier, Defendants.

2. The average weekly wage of Employee at the time of the above-described accident was \$849.65, and her compensation rate was \$566.46.

3. Claimant suffered a compensable injury to her left knee within the course and scope of her employment on February 19, 2009, when she turned in her chair and bumped her knee on a desk.

4. Claimant first presented to Doctor's Care on February 21, 2009. The record from that date states: "Three episodes seemingly minor trauma, banged on desk, twisted and crouched for baseball practice. Now complains of left knee pain and swelling." (APA, p. 449)

5. Claimant presented to her family physician, Dr. Faile, for evaluation on February 24, 2009. This narrative states "Left knee pain. No trauma or injury. Bumped it a couple of times but other than that no trauma or injury." Claimant did not mention the "baseball" twisting incident to Dr. Faile. (APA, p. 460)

6. Dr. Faile referred Claimant for an MRI of the left knee which was performed on March 5, 2009. The MRI showed a flap of articular cartilage with some degeneration. Dr. Faile then referred Claimant to an orthopedist.

7. Defendants have provided medical care and treatment for Claimant's left knee, to include six surgeries.

8. Claimant has also developed admitted overcompensation injuries to her right knee and low back, which were accepted by Defendants as part of a January 12, 2011, Consent Order.

9. Additionally, Claimant's physical condition has aggravated her preexisting psychological condition, as determined by Commissioner Andrea C. Roche in a prior Order, dated February 14, 2013.

10. Claimant's position is that she has now reached MMI and is permanently and totally disabled as a result of the combination of her left knee, right knee, low back and psychological conditions. She also contends she will need a seventh knee surgery as part of her causally-related future medical treatment, per the recommendation of Dr. Piasecki.

11. Defendants' position is that Claimant must either (1) be at MMI and entitled to a determination of permanency, or (2) not be MMI and entitled to the additional surgery she seeks. They argue she cannot be both at MMI and entitled to this additional surgery.

12. Given the age and history of this claim, the record is voluminous. A thorough review of that record leads me to certain determinations as to the questions at bar in this hearing.

13. Claimant is a well-educated and articulate individual. She is a high school graduate and holds both an undergraduate degree and a master's degree.

14. Claimant's master's degree is in the field of human resources.

15. Claimant is well versed in medical terminology and can address any question as to her medical care and treatment.

16. Throughout the hearing, Claimant told me on several occasions that she was honest and told the truth. I find those statements to be self-serving declarations and give them no weight.

17. Throughout her treatment, many of the conclusions drawn by the medical and vocational experts as to Claimant's complaints and abilities are based - at least in part - on the subjective statements of Claimant.

18. It is interesting to note that, in the Pain Patient Profile Report dated October 8, 2013, there is this statement: "The P-3 Validity Index is designed to assess the probability of random responding, poor reading skills, and the excessive use of magnification in describing psychological and physical symptoms. This patient's extreme score (12) on the Validity index is higher than the scores of 95% of the pain patients in the normative sample. Because of this extreme score, the report is invalid." The report further notes: "The clinician should consider investigating the possibility of random responding or poor reading skills. The P-3 is written at approximately an 8th grade reading level. If the patient's response pattern and reading comprehension are acceptable, her Validity index score may suggest response magnification." (APA, pp. 99-102) It is important to remember, Claimant holds a master's degree.

19. Dr. C. David Tollison, who is a licensed clinical psychologist, performed an Independent Medical Evaluation on Claimant on June 23, 2011. Dr. Tollison opined, "Based upon my evaluation of the patient, review of medical records, and results of psychological testing, it is my opinion Ms. Walker currently suffers a Class 2 (mild) psychological impairment in activities of daily living, a Class 3 (moderate) psychological impairment in social functioning, a Class 2 impairment in concentration/persistence/pace, and a Class 3 psychological impairment in adaptation to stressful conditions (AMA Guides, 5th Edition)." (APA, pp. 114-118)

20. It is also interesting to note in the medical notes from Dr. David C. Jacobs of the South Carolina Research Group, on a scale of "0" for no impairment, "1" very mild impairment, "3" moderate impairment, "4" severe impairment, "5" very severe impairment, Dr. Jacobs rarely rates Claimant above a "3" in any category, and in his last note included in the APAs (dated November 18, 2013), in "Interval History Change," he rates Claimant a "2" in four categories, a "1" in only one category, and a "0" in five categories. She received no ratings higher than a "2." In his "Examination," he rates her a "2" in only two of the fifteen categories, a "1" in only one

category, and a "0" - no impairment - in twelve of the fifteen categories. The examination section concludes with these words, "Mood down some. No eye contact. Somewhat manipulative." (APA, pp. 129-130)

21. There are two vocational evaluations in this case. One is from Rock Weldon, MA, CVE, and the other is from Jan Westmoreland, M.Ed., CRC. While both are certified professional evaluations, I give much greater weight to Ms. Westmoreland's evaluation. Her evaluation is much more thorough and detailed. Additionally, Ms. Westmoreland was deposed and her deposition is part of the record. That deposition provides more insight into her evaluation and the methodology behind it.

22. While Mr. Weldon concludes that Claimant "should be considered permanently and totally vocationally disabled," Ms. Westmoreland opines that, "...it is my opinion that [Claimant] remains employable." Again, I give much greater weight to the evaluation and opinion of Ms. Westmoreland.

23. During her deposition testimony, Ms. Westmoreland testified she stands by her vocational opinion that Claimant remains employable.

24. There is also a Functional Capacity Evaluation in the record performed by Serenity Rehab & Wellness Center, LLC. The evaluator was TrVera L. Williams, MSPT, CSFA, CEAS. This evaluation was conducted at the request of Claimant's counsel. This evaluation and the evaluator's conclusions are especially important in this case given that subsequent medical opinions offered by two of the authorized treating physicians in this case are based, at least in part, on this evaluation.

25. The use of an FCE as a reliable measure of an individual's functional abilities is dependent on the effort put forth by the individual. In this case, the evaluator reports that she believes that Claimant gave a reliable effort

26. It was the conclusion of Ms. Williams that Claimant does not even meet the criteria for sedentary work. She classified Claimant as below Sedentary.

27. In reviewing this report and the effort of Claimant, I see inconsistencies with what the evaluator observed during the FCE and what I witnessed at the hearing. There are also numerous notations in the FCE report which lead me to question the validity of Claimant's effort during the testing.

28. In Table I of Ms. Williams' report, outlining Claimant's testing on carrying, pushing and pulling, Claimant's scoring was "Incomplete" on all seven tests. (APA, p. 223)

29. Ms. Williams reports in Table II of her report, as to sitting, that Claimant's tested ability is "occasional." (APA, p. 223) In her summary, Ms. Williams notes, "Sitting was performed but the evaluatee had to perform intermittent weight shifting during seated tasks." (APA, p. 227)

30. During the two hour and forty-two minute hearing, I observed that Claimant was engaged and participated in the entire hearing. She did not appear to be in a great deal of physical distress. She only stood three times during the hearing and for less than one minute each time.

31. In Table III of Ms. Williams' report, testing rapid exchange, reach, overhead reach, and stair climbing, Claimant's testing was noted to be unreliable on all five tests. (APA, p. 224)

32. In Table IV of Ms. Williams' report, testing stooping, kneeling, squatting and climbing stairs, Claimant's scoring was "Incomplete" on all four tests. (APA, p. 224)

33. In Table VI of Ms. Williams' report, testing Claimant's hands on a pegboard, Claimant tested in the 1st percentile in four of five tests, and she tested in the 5th percentile in the other test. The pegboard test measures an individual's hand, finger and arm dexterity. (APA, p. 225)

34. In Table VIII of Ms. Williams' report, comparing rapid exchange force with

standard position force, Claimant's rapid exchange force was greater than her standard position force bilaterally. Ms. Williams' report notes: "This table contains information that demonstrates the reliability of effort in the standard grip test. If [rapid exchange grip] strength exceeds standard grip strength it denotes probable unreliable or sub maximal effort in the standard test, which is indicated here..." (APA, p. 225)

35. When questioned, Claimant provided detailed and complete answers to questions that could be perceived to be helpful to her case. However, when the question could have been perceived to not be helpful, her responses were labored and she often said she could not remember.

36. An example of Claimant's opportunistic answers to questions during the hearing pertains to her prior medical treatment.

37. Claimant presented to her family physician on January 14, 2004, where the physician noted Claimant "has got some arthritic tests pending" and she was referred to an orthopedist for questionable arthritis. When asked about this visit at the hearing, Claimant testified she did not remember the visit. (APA, p. 472; Hr'g Tr., p. 33)

38. Claimant presented to her family physician on May 18, 2004, where she complained of swelling in her legs, left worse than right, and the doctor noted Claimant's "left leg measures 44cm 10cm below the inferior patella and the right measures 42.75cm." The note also indicates Claimant complained of discomfort in her left knee, calf and thigh. When asked about this visit at the hearing, Claimant testified she did not recall having issues in her left knee in May of 2004. (APA, p. 471; Hr'g Tr., p. 33-34)

39. Claimant presented to her family physician on January 25, 2006, with complaints of bilateral knee and leg pain. When asked about this visit at the hearing, Claimant testified she did not recall having bilateral knee and leg pain in January 2006. (APA, p. 466; Hr'g Tr., p. 34)

40. Claimant presented to Doctors Care on December 31, 2007, less than 14 months before he accident, and she complained of left knee pain. When asked about this visit at the hearing, Claimant testified she did not recall the visit. (APA, p. 452; Hr'g Tr., p. 34-35)

41. Claimant presented to Dr. Brian Burnikel on January 20, 2011, in relation to her work-related left knee injury. Dr. Burnikel's note states: "Gait: Normal ... Range of Motion: full AROM." At the hearing, Claimant reviewed the report of Dr. Burnikel indicating Claimant's gait was normal, and she testified, "It's not true," and she testified Dr. Burnikel's report that she had full active range of motion was also not true. (APA, pp. 283-284; Hr'g Tr., p. 43)

42. Dr. Piasecki's November 21, 2012 report indicates Claimant was having "no back pain." When asked about this report during the hearing, Claimant testified Dr. Piasecki did not ask her whether she was having back pain at that time. (APA, p. 18; Hr'g Tr., p. 54)

43. At the hearing, Claimant testified she tells the doctor her medications make her sleepy and drowsy at every visit. (Hr'g Tr., p. 58)

44. However, Dr. Math's record from July 21, 2011 indicates Claimant responded, "No." to the following questions: (1) "Does your current medication impair your judgment, coordination or your ability to drive?" (2) "Are you experiencing any side effects from the medications prescribed by your physician at UMR?" When asked about Dr. Math's July 21, 2011, report during the hearing, Claimant testified Dr. Math has never asked her whether her medications impair her judgment, coordination or ability to drive. (APA, p. 197; Hr'g Tr., pp. 57-58)

45. Dr. Math's October 8, 2012, record again indicates Claimant answered, "No," to the two questions above regarding her medications. (APA, p. 187)

46. Dr. Math's October 8, 2012, record also indicates Claimant "is able to transfer independently. Her gait is normal." Claimant was shown the October 8, 2012 record from Dr. Math, indicating her gait was normal, and Claimant testified. "I will say this, all these doctors that

are saying my gait is normal, I limp wherever I go. There are some days I limp more than others. But she - when I see her, I'm in the room. She leaves. I leave. I don't know if they're watching me when I walk in or out, but my gait has not been normal for a long time." (APA, p. 187; Hr'g Tr., p. 58)

47. Claimant was shown the record from Dr. Sanchez indicating a score of "0" for concentration, meaning there was no impairment, and she testified: "I see that, but he never talked to me about any of that." (APA, p. 139; Hr'g Tr., p. 61)

48. Claimant was shown the record from Dr. Jacobs indicating a "0" for concentration, meaning there was no impairment, and she testified: "I didn't know that. I didn't know that. He didn't ask and I didn't know." (APA, p. 133; Hr'g Tr., p. 63)

49. Claimant was asked about the patient pain profile and validity test referenced above, and she testified: "I took the test. I answered the questions the way I felt at that moment." (APA, pp. 99-102; Hr'g Tr., pp. 63-64)

50. On May 10, 2009, Claimant was involved in an incident at Copper River Grill Restaurant when she apparently slipped on water on the floor and fell down. Claimant initially testified she received no money in settlement from that incident. However, she then testified, "they might have sent a check for \$1,000.00." Claimant testified she may have received a small settlement from Copper River Grill, but she could not recall. (Defs' Exh. E; Hr'g Tr., pp. 39-41)

51. Claimant was involved in a motor vehicle accident on March 18, 2011, when she was rear-ended and injured her neck. Claimant was diagnosed with cervicgia, chest pain and pain in her right elbow and wrist, and she underwent physical therapy. Although Claimant testified she only wanted medical treatment, on September 13, 2011, Claimant sent a letter to State Farm Insurance demanding \$15,000 to settle her case because she had experienced "tremendous pain and suffering." Claimant received a settlement from State Farm Insurance in the amount of \$7,791

(Defs' Exh. C)

52. Claimant was involved in another motor vehicle accident on August 15, 2013, when she was rear-ended and injured her neck and experienced tingling down her right arm. Claimant received a settlement in the amount of \$7,200 from State Farm Insurance in relation to the accident. (Defs' Exh. B)

53. Claimant filed a claim with the Equal Employment Opportunity Commission (EEOC) in May of 2013, and at that time, she believed she could work within her restrictions. (Defs' Exh. D; Hr'g Tr., pp. 71-72)

54. Despite Claimant's filing a claim with the EEOC in May of 2013, and admitting at the hearing that she believed she could work as of May 2013, Claimant now asserts she is permanently and totally disabled from ever working again. Again, I find much of Claimant's testimony and actions to be self-serving and opportunity-based.

55. When we look at the opinions formed by the evaluators - vocational and functional - their conclusions, in part, rest on the effort and subjective complaints of Claimant. Likewise, the authorized treaters in this case base their opinions, at least in part, on the subjective complaints of Claimant.

56. Dr. Dana Piasecki of OrthoCarolina opines on a check-the-box form completed on January 13, 2014, that Claimant is at MMI from her work-related knee injuries, that she will require future medical care and treatment, and that she has suffered a 25% medical impairment to the left knee. He also opines that the FCI: conducted on October 25, 2012, "most probably" remains an accurate description of Claimant's physical limitations.

57. Those opinions as to MMI and her impairment rating, which are offered to a reasonable degree of certainty, are consistent with his opinions recorded in the medical note of November 21, 2012.

58. In a medical note from October 2, 2013, Dr. Piasecki opines under "PLAN," "I discussed with Kimberly that based on her overall presentation, I think at this point it would be reasonable to consider either an injection or a second-look arthroscopy given her degree of limitations. She is understanding of this and is not interested in an injection. She would favor a second-look scope, which I think is not unreasonable. We discussed an approach therefore that would involve a diagnostic arthroscopy with evaluation of her chondral surfaces with possible debridement versus chondroplasty depending on the status of the cartilage on arthroscopy. It is conceivable that should she has (sic) persistent symptoms after the scope we could potentially consider her for a revision chondral resurfacing procedure such as an osteochondral allograft. Though, if her cartilage were to appear healthy without substantial softening or ballotability, I would favor leaving things as is." (APA, pp. 11-12)

59. Dr. Jyoti Math, another authorized treating physician, cites the FCE performed on October 25, 2012, in her medical note of May 29, 2013. In reference to the FCE, Dr. Math notes: "spoke with therapist performing test who felt as though the pt. gave good effort, but would likely be able to do more if she went through a formal work hardening program." (APA, p. 170, admitted in the record without objection)

60. Dr. Math opined on a Form 14B executed on March 4, 2013, that Claimant had sustained a 25% impairment to her left knee and 1% medical impairment to her lumbar spine. (APA, p. 179)

61. At the request of Defendants, Claimant underwent an IME with Dr. John P. Evans on March 13, 2013. Dr. Evans opined that Claimant has suffered a 0% medical impairment to her right knee and a 0% medical impairment to her back. Dr. Evans further opined that Claimant will require no additional or future medical treatment for her right knee or low back, and she has no permanent work restrictions related to her right knee or low back. (APA, pp. 408-415)

62. Dr. Tollison opines that as a result of her psyche, Claimant has suffered a 10% impairment to the whole person. (APA, p. 86)

63. When I consider the record as whole, reviewing Claimant's responses and comments throughout the record and in her testimony at the hearing, I find her subjective complaints to be inconsistent with the medical evidence and her actions at the hearing. As such, I must find that Claimant is not credible.

64. With such a finding, given that many of the medical opinions are dependent on the subjective complaints of Claimant, those conclusions must be viewed in a questionable light as well. That being said, the empirical medical evidence stands on its own.

65. Claimant is at MMI for the left knee and back as of March 4, 2013. (APA, p. 179)

66. Claimant has reached MMI for the right knee and has sustained 0% disability to the right knee. (APA, pp. 408-415)

67. Claimant is not permanently and totally disabled. (I base this finding on the vocational opinion of Jan Westmoreland, the medical record as a whole, Claimant's education, my observations of Claimant during the hearing, and the evidence in the record as a whole)

68. Based on the evidence as a whole, Claimant has suffered permanent partial disability to the left knee of 40%.

69. Based on the evidence as a whole, Claimant has suffered permanent partial disability to her back of 2%.

70. Pursuant to the Order of Commissioner Roche date February 14, 2013, the aggravation of Claimant's psyche is compensable. Disability to her left knee and to the back combined with the psyche does not render her permanently and totally disabled.

71. Claimant is entitled to future medicals for her left knee which would tend to lessen her period of disability, as ordered by the authorized treating physician, Dr. Piasecki. This would

include the modalities described under PLAN in his medical note of October 2, 2013. The future medicals would also include oral medications, injections (even though Claimant testified they do not work for her), as well as braces or other orthopedic devices. The future medicals are not to be interpreted to include other invasive procedures beyond those specifically detailed in the medical note of October 2, 2013.

72. The future medicals, outlined above, would not change her MMI status. They are palliative in nature and are designed to maintain her current level of functioning.

73. Claimant is also entitled to a work-hardening program of Defendants' choosing, should an authorized treating physician order it.

74. Defendants are entitled to a credit for overpayment to TTD from December 13, 2013.

75. The following was addressed in an Administrative Order dated May 1, 2014: Claimant's back, psyche and both knees are compensable by prior Orders of the Commission. As such, Claimant is entitled to ongoing medical care and treatment as previously ordered by the Commission. Specifically, Claimant is entitled to medication as prescribed by the authorized treating physicians.

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

The Single Commissioner's July 23, 2014 Decision and Order set forth the following Conclusions of Law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, and pursuant to the prior Orders in this claim, Claimant sustained compensable injuries/conditions to her left knee, right knee, low back and psyche, which are causally-related to the February 19, 2009, accident.

3. Under § 42-15-60, Claimant has reached maximum medical improvement in relation to the February 19, 2009, accident.

4. Under § 42-9-30, Claimant has sustained 40% permanent partial disability to her left knee in relation to the February 19, 2009, accident.

5. Under § 42-9-30, Claimant has sustained 2% permanent partial disability to her low back in relation to the February 19, 2009, accident.

6. Under § 42-9-30, Claimant has sustained 0% permanent partial disability to her right knee in relation to the February 19, 2009, accident.

7. Claimant's psychological condition is not disabling.

8. Under § 42-15-60, Claimant is entitled to causally-related future medical treatment for her left knee which would tend to lessen her period of disability, as ordered by the authorized treating physician, Dr. Piasecki. This would include the modalities described under PLAN in Dr. Piasecki's medical note of October 2, 2013. The future medicals would also include oral medications, injections (even though Claimant testified they do not work for her), as well as braces or other orthopedic devices. The future medicals are not to be interpreted to include other invasive procedures beyond those specifically detailed in the medical note of October 2, 2013.

9. Under § 42-15-60, Claimant is entitled to ongoing causally-related medical care and treatment related to her back, psyche and right knee, to include medications prescribed by the authorized treating physicians. (*See, Finding of Fact No. 75*)

10. Defendants are entitled to a credit for overpayment of TTD paid beyond December 13, 2013.

11. Claimant is not permanently and totally disabled as a result of the February 19, 2009, accident

SINGLE COMMISSIONER'S ORDER/AWARD

The Single Commissioner's July 23, 2014 Decision and Order set forth the following Order/Award:

IT IS HEREBY ORDERED that Claimant has reached maximum medical improvement in relation to the February 19, 2009, accident, and Claimant has sustained 40% permanent partial disability to her left knee, 2% permanent partial disability to her low back, and 0% permanent partial disability to her right knee. Claimant's psychological condition is not disabling.

IT IS FURTHER ORDERED that Claimant is entitled to causally-related future medical treatment as indicated herein.

IT IS FURTHER ORDERED that Defendants are entitled to a credit for overpayment to TTD paid beyond December 13, 2013.

No hearing costs were assessed by the Single Commissioner.

APPEAL OF THE SINGLE COMMISSIONER'S ORDER

Within the statutory period, counsel for Claimant filed an Application for Review in the case, setting forth the following assignments of error and questions for review:

1. Did the Commissioner err in disregarding the opinions of the authorized treating surgeon, the authorized pain management physician, the authorized psychologist, the FCE showing "reliable effort," and the Claimant's IME doctor; instead relying solely on Defendants' IMI? (Findings 25, 26, 27, 56, 57, 58, 59, 60, 61; Conclusions 4, 5, 6, 7, 11)

2. Did the Commissioner err in giving greater weight to the vocational evaluation of Jan Westmoreland in light of her deposition testimony? (Findings 21, 22, 23; Conclusion 11)

3. Did the Commissioner err by finding the Claimant's "incomplete" results on portions of the FCE indicated lack of effort, when Claimant underwent six (6) authorized surgeries to her knee, the physical therapist found Claimant gave a reliable effort, the incomplete

testing involved activities such as carrying, kneeling, squatting, and stair climbing, and she was restricted from these activities by the authorized surgeon? (Findings 27, 28, 32)

4. Did the commissioner err in finding Claimant's testimony inconsistent with her medical records? (Finding 63)

5. Did the Commissioner err in finding all of Claimant's authorized treating doctors' opinions were questionable because they relied in part on subjective complaints of Claimant? (Finding 64)

6. Did the Commissioner fail to consider all of the evidence, specifically Claimant's IME doctor's opinion, considering the Order contains no reference to the doctor's opinion? (APA 7, pp. 209-215)

7. Did the Commissioner err in failing to find the Claimant was permanently and totally disabled as a result of her admitted left leg, right leg, back, and psyche issues? (Findings 55, 62, 66, 67, 68, 69, 70; Conclusions 4, 5, 6, 7, 11)

8. Did the Commissioner err in finding Claimant reached MMI for her left knee and back on March 4, 2013, based on the Form 14B completed by Dr. Math (APA p. 179), when the same form provides "the claimant is able to return to work with the following restrictions: sedentary work 2.5 hr/day with frequent breaks?" (Findings 63, 64, 65; Conclusion 3)

9. Did the Commissioner err in finding Claimant reached MMI for the left knee on March 4, 2013, when the authorized treating surgeon was awaiting approval from the workers' compensation carrier for another surgery at the time of the hearing? (Finding 65; Conclusion 3)

10. Did the Commissioner err in ordering specific restrictions to Claimant's future medical care in contravention to the holding in *Carter v. Verizon Wireless*? (Finding 71; Conclusion 8)

11. Did the Commissioner err in ruling that future medical treatment, including the proposed surgery to her left knee recommended by the authorized treating surgeon in his note of October 2, 2013, would not affect her being at MMI? (Finding 72; Conclusion 8)

12. Did the Commissioner err in finding Defendants were entitled to a credit for overpayment of TTD from 12/13/13, the date of Claimant's Motion seeking the Commission order the Claimant's Form 50 to be set for a hearing because Defendants failed to comply with the mandatory mediation regulations? (Finding 74; Conclusion 10)

13. Did the Commissioner err in failing to address whether Claimant suffered a loss of earning capacity per 42-9-20? (Findings 21, 22, 23, 26, 55; Conclusions 4, 5, 6, 7)

14. Did the Commissioner err in failing to provide evidentiary support for his Findings of Fact and Conclusions of Law in violation of *Baldwin v James River*? (Findings 15, 17, 21, 22, 23, 27, 30, 35, 36, 54, 55, 63, 64, 71, 72, 73, 74; Conclusions 7, 10, 11)

15. Did the Commissioner err in finding the Claimant stated she could work within her restrictions in May of 2013, without clarifying Claimant requested her employer provide her work "within her restrictions" and Defendant/Employer declined determining it could not accommodate her restrictions and terminating her from her sedentary job? (Findings 53, 54)

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the Briefs of the Appellant and Respondents. The Panel makes the following Findings of Fact and Conclusions of Law:

APPELLATE PANEL FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT

1. Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Kimberly Walker as Employee-Claimant and Sunbelt Human Advancement as Employer and State Accident Fund as Carrier, Defendants.

2. The average weekly wage of Employee at the time of the above-described accident was \$849.65, and her compensation rate was \$566.46.

3. Claimant suffered a compensable injury to her left knee within the course and scope of her employment on February 19, 2009, when she turned in her chair and bumped her knee on a desk.

4. Claimant first presented to Doctor's Care on February 21, 2009. The record from that date states: "Three episodes seemingly minor trauma, banged on desk, twisted and crouched for baseball practice. Now complains of left knee pain and swelling." (APA, p. 449)

5. Claimant presented to her family physician, Dr. Faile, for evaluation on February 24, 2009. This narrative states "Left knee pain. No trauma or injury. Bumped it a couple of times but other than that no trauma or injury." Claimant did not mention the "baseball" twisting incident to Dr. Faile. (APA, p. 460)

6. Dr. Faile referred Claimant for an MRI of the left knee which was performed on March 5, 2009. The MRI showed a flap of articular cartilage with some degeneration. Dr. Faile then referred Claimant to an orthopedist.

7. Defendants have provided medical care and treatment for Claimant's left knee, which at the time of the March 12, 2014 hearing, included six surgeries.

8. Claimant has also developed admitted overcompensation injuries to her right knee and low back, which were accepted by Defendants as part of a January 12, 2011, Consent Order.

9. Additionally, Claimant's physical condition has aggravated her preexisting psychological condition, as determined by Commissioner Andrea C. Roche in a prior Order, dated February 14, 2013.

10. Claimant's position at the March 12, 2014 hearing was that she had reached MMI. She further argued she is permanently and totally disabled as a result of the combination of her left knee, right knee, low back and psychological conditions. She also contended she would need a seventh knee surgery as part of her causally-related future medical treatment, per the recommendation of Dr. Piasecki.

11. Defendants' position at the March 12, 2014 hearing was that Claimant must either (1) be at MMI and entitled to a determination of permanency, or (2) not be at MMI and entitled to the additional surgery she seeks. They argued she cannot be both at MMI and entitled to this additional surgery.

12. Given the age and history of this claim, the record is voluminous. A thorough review of the record leads us to certain determinations as to the issues presented by the parties.

13. Claimant is well-educated. She is a high school graduate and holds both an undergraduate degree and a master's degree. Moreover, the Single Commissioner found her to be articulate. We find no reason to disturb that finding as the Single Commissioner was in the best position to judge her testimony.

14. Claimant's master's degree is in the field of human resources.

15. The Single Commissioner found Claimant to be well versed in medical terminology and that she could address any question as to her medical care and treatment. We find no reason to disturb these findings as the Single Commissioner was in the best position to judge her testimony.

16. Claimant testified on several occasions during the March 12, 2014 hearing that she was honest and told the truth. The Single Commissioner found those statements to be self-serving

declarations and gave them no weight. We find no reason to disturb this finding as the Single Commissioner was in the best position to judge her testimony.

17. Throughout her treatment, many of the conclusions drawn by the medical and vocational experts as to Claimant's complaints and abilities are based - at least in part - on the subjective statements of Claimant.

18. It is interesting to note that, in the Pain Patient Profile Report dated October 8, 2013, there is this statement: "The P-3 Validity Index is designed to assess the probability of random responding, poor reading skills, and the excessive use of magnification in describing psychological and physical symptoms. This patient's extreme score (12) on the Validity index is higher than the scores of 95% of the pain patients in the normative sample. Because of this extreme score, the report is invalid." The report further notes: "The clinician should consider investigating the possibility of random responding or poor reading skills. The P-3 is written at approximately an 8th grade reading level. If the patient's response pattern and reading comprehension are acceptable, her Validity index score may suggest response magnification." (APA, pp. 99-102) It is important to remember Claimant holds a master's degree.

19. Dr. C. David Tollison, who is a licensed clinical psychologist, performed an Independent Medical Evaluation on Claimant on June 23, 2011. Dr. Tollison opined, "Based upon my evaluation of the patient, review of medical records, and results of psychological testing, it is my opinion Ms. Walker currently suffers a Class 2 (mild) psychological impairment in activities of daily living, a Class 3 (moderate) psychological impairment in social functioning, a Class 2 impairment in concentration/persistence/pace, and a Class 3 psychological impairment in adaptation to stressful conditions (AMA Guides, 5th Edition)." (APA, pp. 114-118)

20. It is also interesting to note in the medical notes from Dr. David C. Jacobs of the South Carolina Research Group, on a scale of "0" for no impairment, "1" very mild impairment,

"3" moderate impairment, "4" severe impairment, "5" very severe impairment, Dr. Jacobs rarely rates Claimant above a "3" in any category, and in his last note included in the APAs (dated November 18, 2013), in "Interval History Change," he rates Claimant a "2" in four categories, a "1" in only one category, and a "0" in five categories. She received no ratings higher than a "2." In his "Examination," he rates her a "2" in only two of the fifteen categories, a "1" in only one category, and a "0" - no impairment - in twelve of the fifteen categories. The examination section concludes with these words, "Mood down some. No eye contact. Somewhat manipulative." (APA, pp. 129-130)

21. There are two vocational evaluations in this case. One is from Rock Weldon, MA, CVE, and the other is from Jan Westmoreland, M.Ed., CRC. While both are certified professional evaluations, I give much greater weight to Ms. Westmoreland's evaluation. Her evaluation is much more thorough and detailed. Additionally, Ms. Westmoreland was deposed and her deposition is part of the record. That deposition provides more insight into her evaluation and the methodology behind it.

22. While Mr. Weldon concludes that Claimant "should be considered permanently and totally vocationally disabled," Ms. Westmoreland opines that, "...it is my opinion that [Claimant] remains employable." We give much greater weight to the evaluation and opinion of Ms. Westmoreland due to the thoroughness of her evaluation.

23. During her deposition testimony, Ms. Westmoreland testified she stands by her vocational opinion that Claimant remains employable.

24. There is also a Functional Capacity Evaluation in the record performed by Serenity Rehab & Wellness Center, LLC. The evaluator was TrVera L. Williams, MSPT, CSFA, CEAS. This evaluation was conducted at the request of Claimant's counsel. This evaluation and the evaluator's conclusions are especially important in this case given that subsequent medical

opinions offered by two of the authorized treating physicians in this case are based, at least in part, on this evaluation.

25. The use of an FCE as a reliable measure of an individual's functional abilities is dependent on the effort put forth by the individual. In this case, the evaluator reports that she believes that Claimant gave a reliable effort.

26. It was the conclusion of Ms. Williams that Claimant does not even meet the criteria for sedentary work. She classified Claimant as below Sedentary.

27. In reviewing this report and the effort of Claimant, the Single Commissioner found inconsistencies with what the evaluator observed during the FCE and what he witnessed at the hearing. We find no reason to disturb this finding as the Single Commissioner was in the best position to witness Claimant's behavior at the March 12, 2014 hearing. There are also numerous notations in the FCE report which lead us to question the validity of Claimant's effort during the testing.

28. In Table I of Ms. Williams' report, outlining Claimant's testing on carrying, pushing and pulling, Claimant's scoring was "Incomplete" on all seven tests. (APA, p. 223)

29. Ms. Williams reports in Table II of her report, as to sitting, that Claimant's tested ability is "occasional." (APA, p. 223) In her summary, Ms. Williams notes, "Sitting was performed but the evaluatee had to perform intermittent weight shifting during seated tasks." (APA, p 227)

30. During the two hour and forty-two minute hearing, the Single Commissioner observed that Claimant was engaged and participated in the entire hearing. He found she did not appear to be in a great deal of physical distress. According to the Single Commissioner, she only stood three times during the hearing and for less than one minute each time.

31. In Table III of Ms. Williams' report, testing rapid exchange, reach, overhead reach, and stair climbing, Claimant's testing was noted to be unreliable on all five tests. (APA, p. 224)

32. In Table IV of Ms. Williams' report, testing stooping, kneeling, squatting and climbing stairs, Claimant's scoring was "Incomplete" on all four tests. (APA, p. 224)

33. In Table VI of Ms. Williams' report, testing Claimant's hands on a pegboard, Claimant tested in the 1st percentile in four of five tests, and she tested in the 5th percentile in the other test. The pegboard test measures an individual's hand, finger and arm dexterity. (APA, p. 225) Notably, Claimant's hands were not affected by her work accident.

34. In Table VIII of Ms. Williams' report, comparing rapid exchange force with standard position force, Claimant's rapid exchange force was greater than her standard position force bilaterally. Ms. Williams' report notes: "This table contains information that demonstrates the reliability of effort in the standard grip test. If [rapid exchange grip] strength exceeds standard grip strength it denotes probable unreliable or sub maximal effort in the standard test, which is indicated here..." (APA, p. 225)

35. When questioned, Claimant provided detailed and complete answers to questions that could be perceived to be helpful to her case. However, when the question could have been perceived to not be helpful, her responses were labored and she often said she could not remember.

36. An example of Claimant's opportunistic answers to questions during the hearing pertains to her prior medical treatment.

37. Claimant presented to her family physician on January 14, 2004, where the physician noted Claimant "has got some arthritic tests pending" and she was referred to an orthopedist for questionable arthritis. When asked about this visit at the hearing, Claimant testified she did not remember the visit (APA, p. 472; Hr'g Tr., p. 33)

38. Claimant presented to her family physician on May 18, 2004, where she complained of swelling in her legs, left worse than right, and the doctor noted Claimant's "left leg measures 44cm 10cm below the inferior patella and the right measures 42.75cm." The note also indicates Claimant complained of discomfort in her left knee, calf and thigh. When asked about this visit at the hearing, Claimant testified she did not recall having issues in her left knee in May of 2004. (APA, p. 471; Hr'g Tr., p. 33-34)

39. Claimant presented to her family physician on January 25, 2006, with complaints of bilateral knee and leg pain. When asked about this visit at the hearing, Claimant testified she did not recall having bilateral knee and leg pain in January 2006. (APA, p. 466; Hr'g Tr., p. 34)

40. Claimant presented to Doctors Care on December 31, 2007, less than 14 months before he accident, and she complained of left knee pain. When asked about this visit at the hearing, Claimant testified she did not recall the visit. (APA, p. 452; Hr'g Tr., p. 34-35)

41. Claimant presented to Dr. Brian Burnikel on January 20, 2011, in relation to her work-related left knee injury. Dr. Burnikel's note states: "Gait: Normal ... Range of Motion: full AROM." At the hearing, Claimant reviewed the report of Dr. Burnikel indicating Claimant's gait was normal, and she testified, "It's not true." When asked about Dr. Burnikel's report that she had full active range of motion, Claimant also said this report was not true. (APA, pp. 283-284; Hr'g Tr., p. 43)

42. Dr. Piasecki's November 21, 2012 report indicates Claimant was having "no back pain." When asked about this report during the hearing, Claimant testified Dr. Piasecki did not ask her whether she was having back pain at that time. (APA, p. 18; Hr'g Tr., p. 54)

43. At the hearing, Claimant testified she tells the doctor her medications make her sleepy and drowsy at every visit. (Hr'g Tr., p. 58)

44. However, Dr. Math's record from July 21, 2011 indicates Claimant responded, "No," to the following questions: (1) "Does your current medication impair your judgment, coordination or your ability to drive?" (2) "Are you experiencing any side effects from the medications prescribed by your physician at UMR?" When asked about Dr. Math's July 21, 2011, report during the hearing, Claimant testified Dr. Math has never asked her whether her medications impair her judgment, coordination or ability to drive. (APA, p. 197; Hr'g Tr., pp. 57-58)

45. Dr. Math's October 8, 2012, record again indicates Claimant answered, "No," to the two questions above regarding her medications. (APA, p. 187)

46. Dr. Math's October 8, 2012, record also indicates Claimant "is able to transfer independently. Her gait is normal." Claimant was shown the October 8, 2012 record from Dr. Math, indicating her gait was normal, and Claimant testified: "I will say this, all these doctors that are saying my gait is normal, I limp wherever I go. There are some days I limp more than others. But she – when I see her, I'm in the room. She leaves. I leave. I don't know if they're watching me when I walk in or out, but my gait has not been normal for a long time." (APA, p. 187; Hr'g Tr., p. 58)

47. Claimant was shown the record from Dr. Sanchez indicating a score of "0" for concentration, meaning there was no impairment, and she testified: "I see that, but he never talked to me about any of that." (APA, p. 139; Hr'g Tr., p. 61)

48. Claimant was shown the record from Dr. Jacobs indicating a "0" for concentration, meaning there was no impairment, and she testified: "I didn't know that. I didn't know that He didn't ask and I didn't know." (APA, p. 133; Hr'g Tr., p. 63)

49. Claimant was asked about the patient pain profile and validity test referenced above, and she testified: "I took the test. I answered the questions the way I felt at that moment." (APA, pp. 99-102; Hr'g Tr., pp. 63-64)

50. On May 10, 2009, Claimant was involved in an incident at Copper River Grill Restaurant when she apparently slipped on water on the floor and fell down. Claimant initially testified she received no money in settlement from that incident. However, she then testified, “they might have sent a check for \$1,000.00.” Claimant testified she may have received a small settlement from Copper River Grill, but she could not recall. (Defs’ Exh. E; Hr’g Tr., pp. 39-41)

51. Claimant was involved in a motor vehicle accident on March 18, 2011, when she was rear-ended and injured her neck. Claimant was diagnosed with cervicgia, chest pain and pain in her right elbow and wrist, and she underwent physical therapy. Although Claimant testified she only wanted medical treatment, on September 13, 2011, Claimant sent a letter to State Farm Insurance demanding \$15,000 to settle her case because she had experienced “tremendous pain and suffering.” Claimant received a settlement from State Farm Insurance in the amount of \$7,791. (Defs’ Exh. C)

52. Claimant was involved in another motor vehicle accident on August 15, 2013, when she was rear-ended and injured her neck and experienced tingling down her right arm. Claimant received a settlement in the amount of \$7,200 from State Farm Insurance in relation to the accident. (Defs’ Exh. B)

53. Claimant filed a claim with the Equal Employment Opportunity Commission (EEOC) in May of 2013, and at that time, she believed she could work within her restrictions. (Defs’ Exh. D; Hr’g Tr., pp. 71-72)

54. Despite Claimant’s filing a claim with the EEOC in May of 2013, and admitting at the hearing that she believed she could work as of May 2013, Claimant now asserts she is permanently and totally disabled from ever working again. We find much of Claimant’s testimony and actions to be self-serving and opportunity-based.

55. When we look at the opinions formed by the evaluators - vocational and functional - their conclusions, in part, rest on the effort and subjective complaints of Claimant. Likewise, the authorized treating physicians in this case base their opinions, at least in part, on the subjective complaints of Claimant.

56. Dr. Dana Piasecki of OrthoCarolina opines on a check-the-box form completed on January 13, 2014, that Claimant is at MMI from her work-related knee injuries, that she will require future medical care and treatment, and that she has suffered a 25% medical impairment to the left knee. He also opines that the FCE conducted on October 25, 2012, "most probably" remains an accurate description of Claimant's physical limitations.

57. Those opinions as to MMI and her impairment rating, which are offered to a reasonable degree of certainty, are consistent with his opinions recorded in the medical note of November 21, 2012.

58. In a medical note from October 2, 2013, Dr. Piasecki opines under "PLAN," "I discussed with Kimberly that based on her overall presentation, I think at this point it would be reasonable to consider either an injection or a second-look arthroscopy given her degree of limitations. She is understanding of this and is not interested in an injection. She would favor a second-look scope, which I think is not unreasonable. We discussed an approach therefore that would involve a diagnostic arthroscopy with evaluation of her chondral surfaces with possible debridement versus chondroplasty depending on the status of the cartilage on arthroscopy. It is conceivable that should she has (sic) persistent symptoms after the scope we could potentially consider her for a revision chondral resurfacing procedure such as an osteochondral allograft. Though, if her cartilage were to appear healthy without substantial softening or ballotability, I would favor leaving things as is." (APA, pp. 11-12)

59. Dr. Jyoti Math, another authorized treating physician, cites the FCE performed on October 25, 2012, in her medical note of May 29, 2013. In reference to the FCE, Dr. Math notes: "spoke with therapist performing test who felt as though the pt. gave good effort, but would likely be able to do more if she went through a formal work hardening program." (APA, p. 170, admitted in the record without objection)

60. Dr. Math opined on a Form 14B executed on March 4, 2013, that Claimant had sustained a 25% impairment to her left knee and 1% medical impairment to her lumbar spine. (APA, p. 179)

61. At the request of Defendants, Claimant underwent an IME with Dr. John P. Evans on March 13, 2013. Dr. Evans opined that Claimant has suffered a 0% medical impairment to her right knee and a 0% medical impairment to her back. Dr. Evans further opined that Claimant will require no additional or future medical treatment for her right knee or low back, and she has no permanent work restrictions related to her right knee or low back. (APA, pp. 408-415)

62. Dr. Tollison opines that as a result of her psyche, Claimant has suffered a 10% impairment to the whole person. (APA, p. 86)

63. When we consider the record as whole, reviewing Claimant's responses and comments throughout the record and in her testimony at the hearing, we find her subjective complaints to be inconsistent with the medical evidence and her actions at the hearing as observed by the Single Commissioner. As such, we find that Claimant is not credible.

64. With such a finding, given that many of the medical opinions are dependent on the subjective complaints of Claimant, those conclusions must be viewed in a questionable light as well. That being said, the empirical medical evidence stands on its own.

65. Claimant is at MMI for the left knee and back as of March 4, 2013. (APA, p. 179)

66. Claimant has reached MMI for the right knee and has sustained 0% disability to the

right knee. (APA, pp. 408-415)

67. Claimant is not permanently and totally disabled. (We base this finding on the vocational opinion of Jan Westmoreland, the medical record as a whole, Claimant's education, and the evidence in the record as a whole).

68. Based on the evidence as a whole, Claimant has suffered 40% permanent partial disability to the left knee.

69. Based on the evidence as a whole, Claimant has suffered 2% permanent partial disability to her back.

70. Pursuant to the Order of Commissioner Roche date February 14, 2013, the aggravation of Claimant's psyche is compensable. Disability to her left knee and to the back combined with the psyche does not render her permanently and totally disabled.

71. Claimant is entitled to future medicals for her left knee which would tend to lessen her period of disability, as ordered by the authorized treating physician, Dr. Piasecki. This would include the modalities described under PLAN in his medical note of October 2, 2013. The future medicals would also include oral medications, injections (even though Claimant testified they do not work for her), as well as braces or other orthopedic devices. The future medicals are not to be interpreted to include other invasive procedures beyond those specifically detailed in the medical note of October 2, 2013.

72. The future medicals, outlined above, would not change her MMI status. They are palliative in nature and are designed to maintain her current level of functioning.

73. Claimant is also entitled to a work-hardening program of Defendants' choosing, should an authorized treating physician order it.

74. Defendants are entitled to a credit for overpayment to FID from December 13, 2013.

75. The following was addressed in an Administrative Order dated May 1, 2014: Claimant's back, psyche and both knees are compensable by prior Orders of the Commission. As such, Claimant is entitled to ongoing medical care and treatment as previously ordered by the Commission. Specifically, Claimant is entitled to medication as prescribed by the authorized treating physicians.

APPELLATE PANEL CONCLUSIONS OF LAW

In view of the aforementioned Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under § 42-1-160, and pursuant to the prior Orders in this claim, Claimant sustained compensable injuries/conditions to her left knee, right knee, low back and psyche, which are causally-related to the February 19, 2009, accident.
3. Under § 42-15-60, Claimant has reached maximum medical improvement in relation to the February 19, 2009, accident.
4. Under § 42-9-30, Claimant has sustained 40% permanent partial disability to her left knee in relation to the February 19, 2009, accident.
5. Under § 42-9-30, Claimant has sustained 2% permanent partial disability to her low back in relation to the February 19, 2009, accident.
6. Under § 42-9-30, Claimant has sustained 0% permanent partial disability to her right knee in relation to the February 19, 2009, accident.
7. Claimant's psychological condition is not disabling.

8. Under § 42-15-60, Claimant is entitled to causally-related future medical treatment for her left knee which would tend to lessen her period of disability, as ordered by the authorized treating physician, Dr. Piasecki. This would include the modalities described under PLAN in Dr. Piasecki's medical note of October 2, 2013. The future medicals would also include oral medications, injections (even though Claimant testified they do not work for her), as well as braces or other orthopedic devices. The future medicals are not to be interpreted to include other invasive procedures beyond those specifically detailed in the medical note of October 2, 2013.

9. Under § 42-15-60, Claimant is entitled to ongoing causally-related medical care and treatment related to her back, psyche and right knee, to include medications prescribed by the authorized treating physicians. (*See*, Finding of Fact No. 75)

10. Defendants are entitled to a credit for overpayment of TTD paid beyond December 13, 2013.

11. Claimant is not permanently and totally disabled as a result of the February 19, 2009, accident.

APPELLATE PANEL ORDER

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Single Commissioner is hereby **AFFIRMED IN FULL**. The Findings of Fact and Conclusions of Law found in the Single Commissioner's Decision and Order are hereby **AFFIRMED IN FULL**.

IT IS HEREBY ORDERED that the July 23, 2014, Decision and Order of the Single Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**.

IT IS HEREBY AFFIRMED that Claimant has reached maximum medical improvement in relation to the February 19, 2009, accident, and Claimant has sustained 40% permanent partial disability to her left knee, 2% permanent partial disability to her low back, and 0% permanent

partial disability to her right knee. Claimant's psychological condition is not disabling.

IT IS FURTHER AFFIRMED that Claimant is entitled to causally-related future medical treatment as indicated herein.

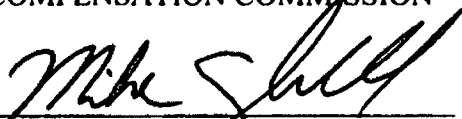
IT IS FURTHER AFFIRMED that Defendants are entitled to a credit for overpayment to TTD paid beyond December 13, 2013.

No hearing costs are assessed in this instance.

IT IS SO ORDERED/AFFIRMED.

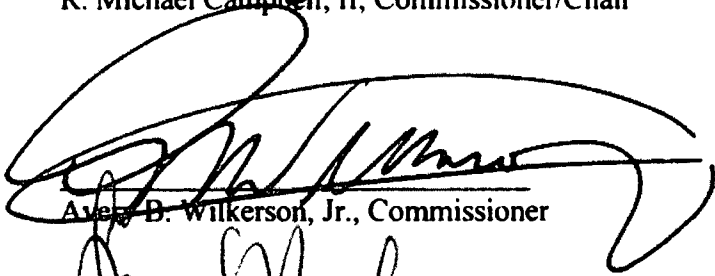
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

FULL AFFIRMATION:

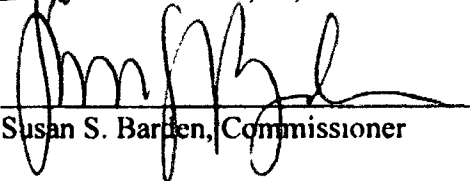


R. Michael Campbell, II, Commissioner/Chair

CONCUR:



Aylee B. Wilkerson, Jr., Commissioner



Susan S. Barden, 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 March 4, 2015