

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

FILE NO.: 1308107

**Yvonne R. Washney**, Employee-Claimant,

Respondent,

vs.

**TruGreen**, Employer, and

**American Zurich Insurance Co.**, Carrier-Defendants,

Appellants.

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APR 14 2015

SC Court of Appeals

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

Appearances: Don Kamb, Esq. of Kathryn Williams, P.A. of Greenville, South  
Carolina for claimant

Allison C. Nussbaum, Esq. of McAngus, Goudelock & Courie,  
LLC of Mt. Pleasant, SC for defendants

Purpose: Appellate Panel Review of issues set forth on defendants' Form 30  
Request for Commission Review

Filed: March 12, 2015

## STATEMENT OF CASE

This claim came before Commissioner James on February 25, 2014 by way of a form 50. Claimant contended she sustained injuries to both feet and her right leg as a result of work activities on or about April 11, 2013 and that she is in need of and entitled to past and continuing medical treatment and temporary compensation benefits. Specifically, claimant requested temporary total disability benefits from May 12, 2013 to August 24, 2013 and from November 10, 2013 to December 17, 2013, and she requested temporary partial disability benefits from August 25, 2013 to November 9, 2013 and from December 18, 2013 to the present and continuing. Defendants denied the claim is compensable or that any benefits are due. Defendants specifically relied on the Court of Appeals' decision in Nicholson v. S.C. Dep't of Social Services, 405 S.C. 537, 748 S.E.2d 256 (Ct.App. 2013)(certiorari granted).

By Order dated February 25, 2014, the Commissioner determined that claimant sustained compensable injury by accident and was entitled to requested medical and temporary compensation benefits. The Commissioner specifically found that claimant's injuries arose out of her work and that her work was a contributing cause of her injuries in that the work required claimant to walk distances, the walking caused blisters, and those blisters became infected. Specifically, the Commissioner ordered:

It is Ordered that defendants shall provide the following:

1. All causally related medical evaluation and treatment expenses for claimant's compensable injury to her bilateral feet and right leg.
2. Temporary total disability benefits for the periods of May 12, 2013 to August 24 and November 10, 2013 to December 17, 2013.

3. Temporary partial disability benefits for the periods of August 25, 2013 to November 9, 2013 and from December 18, 2013 through the present and continuing until further Order of the Commission or agreement of the parties.
4. Payment of all past due temporary total and temporary partial disability benefits shall be made in a lump-sum award to claimant through her attorney's office.

Within the statutory period, defendants filed an Application for Review in the case, a copy of which was furnished to claimant prior to briefing and oral argument before the Appellate Panel. By appeal, defendants respectfully submitted the Commissioner erred as follows:

1. Defendants contend Hearing Commissioner erred as a matter of law and fact by finding and concluding Claimant was injured in the course and scope of her employment and entitled to benefits under South Carolina Workers' Compensation Act.
2. Defendants contend Hearing Commissioner erred as a matter of law and fact by awarding claimant various periods of temporary total and/or temporary partial benefits when greater weight of the evidence indicates Claimant is able to earn wages and self-limited her wage earning capacity based on her enrollment in full time school.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration.

### **EVIDENCE OF THE CASE**

At the hearing before the single Commissioner, the following summarized evidence was presented:

The medical evidence shows claimant presented to Doctors Care on April 11, 2013 complaining of open blisters on her bilateral feet attributed to the increased walking from her new job. Doctors Care provided work restrictions of limited use of feet and walking. On April 17, 2013, claimant returned to Doctors Care complaining of infection. Claimant again followed up with Doctors Care on April 29, 2013 complaining of foot pain and lumps with blisters on the bottom of her right foot. Doctors Care diagnosed cellulitis and wrote claimant out of work until May 1, 2013. By work waivers dated May 1, 2013 and May 2, 2013, Doctors Care continued to write claimant out of work through May 10, 2013.

Claimant presented to Trident Health System on May 1, 2013 for the treatment of her diagnosed cellulitis. On a May 9, 2013 follow up appointment to re-check an ulcer on her right foot, Trident's office note records claimant was positive for staph and presumptive for MRSA. Dr. Hatchett, with Trident Health, sent claimant for hospital admission and administration of intravenous antibiotics.

Dr. Hatchett continued to treat claimant's diagnosed cellulitis and open foot wounds when she presented to Coastal Carolina Podiatry on May 9, 2013. Dr. Hatchett noted claimant had a sore on the bottom of her right foot that started as a blister but had since swollen, become infected, and required debridement, flushing, removal of soft tissue, and packing. Dr. Hatchett noted claimant could not wear a shoe and sent her for an MRI. On a May 13, 2013 follow up appointment, Dr. Hatchett noted claimant's foot had improved such she could start wearing a shoe again.

Claimant continued to treat with Dr. Hatchett for her improving foot condition. However, on July 15, 2013, Dr. Hatchett noted claimant started to experience pain in her

heal and took X-Rays revealing infracalcaneal spurring. Dr. Hatchett diagnosed plantar fasciitis of the right foot, performed an injection, and scheduled a follow up appointment. When claimant returned on August 19, 2013, Dr. Hatchett noted swelling in the second interspace area of the right foot, ongoing plantar fasciitis, and diagnosed a neuroma. Dr. Hatchett performed an injection to the neuroma site and a second injection to claimant's heel.

On October 21, 2013, Dr. Hatchett reviewed surgical options for resectioning claimant's ongoing neuroma. In four written statements dated October 28, 2013, Dr. Hatchett opined: (1) that it is more likely than not that claimant's right foot open wound, MRSA infection, and cellulitis all resulted from and were caused by blisters she developed while walking her sales route on or about April 11, 2013; (2) that claimant's right foot plantar fasciitis resulted from and was caused by her altered gait following her right foot infections and/or the boot she was required to wear for treatment; (3) that the medical treatment provided was designed to effect a cure, give relief, and reduce the period of disability stemming from claimant's work-related injuries; and (4) that claimant has been unable to work and temporarily totally disabled because of her work-related right foot injuries from at least May 9, 2013 to the present and continuing.

Claimant testified at the hearing that she is 31 years old and began employment with employer-defendant on March 19, 2013 as a sales representative to perform door to door sales. Claimant testified that she purchased a new pair of shoes, inspected and approved by employer-defendant, in preparation of walking door to door soliciting customers for employer-defendant's lawn care services.

Claimant testified that her work began around 10:30 a.m. and after performing office work, eating lunch, and receiving her route, she started walking the assigned route by 1:00 p.m. Claimant testified that employer-defendant expected her to knock on 100 doors each day. Claimant testified that her injury by accident occurred on April 11, 2013 in Summerville, South Carolina and that she performed her regular work duties of walking and knocking on doors when she started to experience pain in her feet around 2:30 p.m. Claimant testified that after finishing her route for the day, she removed her socks and shoes to inspect her feet and found blistered holes in the bottom of both feet then immediately called her supervisor, Christopher Wiser.

Claimant testified consistent with the medical evidence that after reporting the injury she presented to Doctors Care which counseled her to stay off her feet as much as possible, continue to change her bandages, and placed her on light duty. Claimant testified that she presented her light duty restrictions to employer-defendant but no light duty work was available so she tried to perform her regular duty work as long as possible. Claimant continued to work best she could until April 27, 2013 when her right foot pain increased until April 29, 2013, when she could no longer stand.

Claimant testified she again presented to Doctors Care which diagnosed an infection, prescribed antibiotics and pain medication, told her to stay completely non-weight bearing, and present to the emergency room should the symptoms persist. Claimant testified she has not worked for employer-defendant since April 29, 2013 as her condition continued to worsen to the point where she treated at the emergency room for infection and ultimately with Dr. Hatchett who diagnosed neuroma, altered gait, and plantar fasciitis. Claimant testified Dr. Hatchett placed her on crutches but allowed her to

return to work for employer-defendant in late May 2013 where she started performing office work. However, claimant testified she developed fever and nausea on her second day performing office work and that she felt her body was still battling the infection. Claimant testified Dr. Hatchett again wrote her out of work until she began work with a different employer under light duty restrictions in August 2013.

Claimant testified her light duty restrictions force her to stay off her foot as much as possible, limit the number of hours that she can work, and therefore, she makes less money than previously earned with employer-defendant. Claimant testified her work injury also prevented her from accepting a job offer in her preferred field of veterinarian medicine as association with infirmed animals is ill advised from her previous MRSA infection.

Claimant testified her left foot has healed but her right foot remains symptomatic in that a neuroma developed around the nerves in the previous site of her blister that causes pain to shoot through the right foot and leg. Claimant testified that the pain causes her to alter her gait to relieve pressure from the neuroma and that the altered gait caused her to develop plantar fasciitis, adding to the pain in her foot. Claimant testified she now wears a medical boot prescribed by the orthopedist and requests needed continuing medical treatment. Claimant testified that she ultimately believes the friction of her foot inside her shoe along with her required 100 knock door to door daily walking route caused her injuries.

Christopher Wiser, claimant's supervisor with employer-defendant, testified that claimant worked under him as a door to door sales representative and was required to knock on 100 doors per day. Wiser testified, from his personal observation, he believes

sales representatives walk approximately three to four miles a day. Wisner testified sales representatives were required to have walking shoes and that he first became aware of claimant's injuries on April 11, 2013 after she reported a problem with her feet from walking.

### **DECISION**

Under S.C. Code Ann. § 42-17-50, an Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown therefore, make its own factual findings and legal conclusions consistent with or inconsistent with the Hearing Commissioner.

Based upon its review of all the evidence on the record in this case, the Panel hereby affirms the Order of the Hearing Commissioner as to compensability of the injury by accident and the injuries sustained but amends the Commissioner's Order concerning the award of temporary total and temporary partial disability compensation.

The Panel makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. An employee/employer relationship existed between the parties at the time of claimant's injuries. This finding is based on all the evidence on the record, including but not limited to the parties' admission.
2. Claimant's average weekly wage is \$542.46, for a corresponding compensation rate of \$362.32. This finding is based on the parties' stipulation.

3. Claimant worked for employer-defendant as a sales representative, a position that required walking from door to door soliciting clients for lawn services. This finding is based on all the evidence in the record including but not limited to the testimony presented by claimant and Christopher Wiser.

4. Employer-defendant required claimant to provide walking shoes, walk approximately three to four miles per day, and perform 100 door to door knocks per day. This finding is based on all the evidence in the record including but not limited to the testimony presented by claimant and Christopher Wiser.

5. Claimant purchased new walking shoes, later approved by employer-defendant, in preparation for performing her job duties which required her to walk from door to door on a daily basis. This finding is based on all the evidence in the record including but not limited claimant's testimony.

6. On April 11, 2013, claimant developed blisters on both her feet while performing her required walking work duties for employer-defendant. This finding is based on all the evidence in the record including but not limited to the testimony presented by claimant and Christopher Wiser.

7. On April 11, 2013, claimant reported her bilateral foot injuries to employer-defendant after performing her required walking work duties. This finding is based on all the evidence in the record including but not limited to the testimony presented by claimant and Christopher Wiser.

8. Claimant presented to Doctors Care on April 11, 2013, treating for open blisters on her bilateral feet. This finding is based on all the evidence in the record

including but not limited to claimant's testimony and the medical records of Doctors Care.

9. Doctors Care placed claimant on light duty restrictions limiting the use of her feet and walking. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Doctors Care.

10. Claimant continued to treat with Doctors Care which noted infection, foot pain, lumps, and blisters on the bottoms of claimant's feet. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Doctors Care.

11. Doctors Care wrote claimant out of work from May 1, 2013 to May 10, 2013 with diagnosed cellulitis. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Doctors Care.

12. Claimant treated with Trident Health System which diagnosed cellulitis, positive staph, and presumptive MRSA stemming from claimant's bilateral blistered feet. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Trident Health System.

13. Claimant began treatment with Dr. Hatchett at Costal Carolina Podiatry on referral from Trident Health for her open foot wounds. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records Trident Health and Dr. Hatchett.

14. Dr. Hatchett noted claimant had a prior sore on the bottom of her right foot that started as a blister but had since swollen, become infected, and required

debridement, flushing, removal of soft tissue, and packing. This finding is based on all the evidence in the record including but not limited the medical records of Dr. Hatchett.

15. After a period of healing, on July 15, 2013, Dr. Hatchett noted claimant experienced increased pain in her heel and diagnosed plantar fasciitis of her right foot. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

16. Dr. Hatchett continued to treat claimant's ongoing plantar fasciitis and on August 19, 2013, noted a neuroma developed in the site of claimant's previous right foot blister. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

17. Dr. Hatchett treated claimant with injections and continues to treat claimant for her ongoing work injury. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

18. In an October 28, 2013 statement, Dr. Hatchett opined that it is more likely than not that claimant's right foot open wound, MRSA infection, and cellulitis all resulted from and were caused by blisters she developed while walking her sales route on or about April 11, 2013. This finding is based on all the evidence in the record including but not limited to the medical records of Dr. Hatchett.

19. In an October 28, 2013 statement, Dr. Hatchett opined that claimant's right foot plantar fasciitis resulted from and was caused by her altered gait following her right foot infections and/or the boot she was required to wear for treatment. This finding

is based on all the evidence in the record including but not limited to the medical records of Dr. Hatchett.

20. In an October 28, 2013 statement, Dr. Hatchett opined that the medical treatment provided was designed to effect a cure, give relief, and reduce the period of disability stemming from claimant's work-related injuries. This finding is based on all the evidence in the record including but not limited to the medical records of Dr. Hatchett.

21. In an October 28, 2013 statement, Dr. Hatchett opined that claimant has been unable to work and temporarily totally disabled because of her work-related right foot injuries from at least May 9, 2013 to the present and continuing. This finding is based on all the evidence in the record including but not limited to the medical records of Dr. Hatchett.

22. Claimant testified that she believes her injuries resulted from the friction of her foot inside her shoe along with the required 100 knock door to door daily walking route she performed for employer-defendant. This finding is based on all the evidence in the record including but not limited to claimant's testimony.

23. Claimant testified her right foot remains symptomatic in that a neuroma developed around the nerves in the previous site of her blister that causes pain to shoot through the right foot and leg. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

24. Claimant testified that the pain causes her to alter her gait to relieve pressure from the neuroma and that the altered gait caused her to develop plantar fasciitis,

adding to the pain in her foot. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

25. Claimant testified that she continues to treat for her work injuries and, at the time of the hearing, wore a prescribed medical boot. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

26. Claimant testified that she remains on light duty restrictions which limit her employment and earning potential. This finding is based on all the evidence in the record including but not limited to claimant's testimony and the medical records of Dr. Hatchett.

27. Claimant did incur an injury by accident within the course and scope of her employment with employer-defendant. This finding is based on all the evidence in the record.

28. Claimant's injury by accident arose out of work and her work was a contributing cause of the injury as the work required her to walk distances, the walking caused blisters, and the blisters became infected (MRSA). This finding is based on all the evidence in the record.

29. Claimant is entitled to temporary total disability compensation up through and including May 5, 2013.

#### **RULINGS OF LAW**

1. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits.

2. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$542.46, for a corresponding compensation rate of \$362.32.

3. Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident arising out of and in the course of her employment with employer-defendant on or about April 11, 2013 causing injury to her bilateral feet and right leg.

4. Under S.C. Code Ann. § 42-15-20, claimant timely reported her bilateral feet and right leg injuries.

5. Claimant has not reached maximum medical improvement. See Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment).

6. Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for all causally related medical evaluation and treatment expenses.

7. Under S.C. Code Ann. § 42-15-10, claimant is entitled to and defendants are responsible for temporary total disability compensation up through and including May 5, 2013.

#### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Order of the Hearing Commissioner is hereby affirmed in its entirety.

**IT IS FURTHER ORDERED** that defendants shall make the following payments:

1. All causally related medical evaluation and treatment expenses for claimant's compensable injury to her bilateral feet and right leg.

2. Temporary total disability compensation up through and including May 5, 2013.

3. Payment of all past due temporary total disability compensation benefits shall be made in a lump-sum award to claimant through her attorney's office.

**AND IT IS SO ORDERED.**

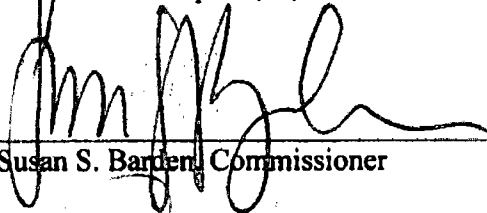
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**S.C. WORKERS' COMPENSATION COMMISSION**



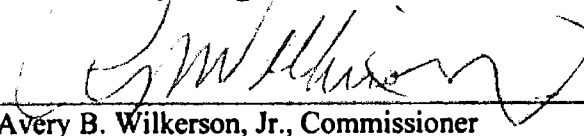
R. Michael Campbell, II, Commissioner

CONCUR:



Susan S. Barden, Commissioner

CONCUR:



Avery B. Wilkerson, Jr., 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 12, 2015***