

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1122060 & 1308013

PAULA Y. TUCKER, CLAIMANT/APPELLANT,

VERSUS

SC DEPARTMENT OF MENTAL HEALTH,

and

STATE ACCIDENT FUND, DEFENDANTS/RESPONDENTS.

RECEIVED

APR 20 2015

SC Court of Appeals

APPELLATE PANEL DECISION AND ORDER

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

Appellate Panel Decision and Order filed:

APPEARANCES:

Claimant was represented by Frank A. Barton, Esquire, on behalf of the Mullis Law Firm, 1229 Elmwood Ave., Columbia, SC 29202-7757.

Defendants were represented by Ellen H. Goodwin of The South Carolina State Accident Fund, P.O. Box 102100, Columbia, South Carolina 29221-5000.

STATEMENT OF THE CASE

Claimant initially suffered an alleged injury by accident to her left arm, left shoulder, neck, left wrist, left hand, entire back and right leg/hip, thigh, knee, shin and foot on 04/05/11, when she dropped a bar of soap and fell. She was initially seen at KershawHealth Medical Center on 10/28/11. She was next seen at Doctor's Care Wateree on 7/14/12. She then obtained care with Dr. Olajide Balogun between 1/21/13 and 5/20/13. She also underwent physical therapy from 2/19/13 through 5/08/13 with Kershaw Physical Therapy. She received pain management from Dr. Steven Storick from 5/29/13 – 8/06/13. Defendants denied any injury by accident in the course and scope of employment.

Claimant also alleged she sustained injury/aggravation to her left arm, left shoulder, neck, left wrist, left hand, entire back and right leg/hip, thigh, knee, shin and foot on 6/16/13, when she was arising from a kneeling position on the floor and bending to remove items from the oven. She further alleged her right leg gave out and she fell on the kitchen floor. Defendants denied any injury by accident in the course and scope of employment.

As a result of these accidents, claimant contended she was permanently and totally disabled. The claims were tried on September 30, 2013, after which an Order was issued finding the claims to be compensable and awarding claimant 10% to the back and 8% to the shoulder. The Order further instructed Defendants to pay claimant temporary total disability benefits from 6/16/13 – 9/30/13, along with paying for or reimbursing claimant for unpaid medical treatment for both claims, limited to medical treatment and providers submitted to the WCC via APA submissions at the time of the hearing.

Claimant appealed to the Full Commission. The hearing Commissioner issued the following Findings of Fact:

FINDINGS OF FACT

1. Claimant sustained a compensable injury by accident to her back (including neck and lower back) and left shoulder on April 5, 2011. Claimant received medical treatment at the direction of the Fund and was ultimately released to return to work full duty and did so. I find Claimant does not have any permanent disability from the 4/5/11 injury. WCC File No. 1122060 is now closed.
2. Claimant sustained a second compensable work-related injury to her back (neck and lower back) and left shoulder on June 16, 2013. I find the June 2013 exacerbated and aggravated Claimant's pre-existing back and left shoulder condition from the 2011 work-related injury.
3. Claimant received appropriate medical care including conservative treatment consisting of physical therapy and pain management. Claimant was not determined to be a surgical candidate by any of the treating physicians. Dr. Storick had released Claimant to return to work light-duty; however Claimant had informed him she was out of work.
4. Claimant is at maximum medical improvement as of the date of the hearing, September 30, 2013. Claimant's frequent references to seeking long-term disability to several treating physicians weighed heavily on this finding.
5. There is insufficient evidence in the record to support a finding of permanent and total disability. The most recent reference to Claimant's ability to work came

from Dr. Storick, Claimant's pain management physician, who felt claimant could work in a light duty capacity.

6. I find this claim is governed by Section 42-9-30.
7. Claimant has sustained 10% PPD to her back as a result of her neck and lower back injury.
8. Claimant has sustained 8% PPD to her left shoulder as a result of the 6/16/13 injury.
9. Claimant is entitled to back payment of TTD from June 16, 2013 through September 30, 2013.
10. Claimant is not entitled to future medical treatment as none has been recommended that would tend to lessen her period of disability. Claimant's frequent references to seeking long-term disability to several treating physicians weighed heavily on this finding as well.
11. All benefits are to be paid in lump sum.
12. Defendants are responsible for unpaid medical treatment Claimant received as a result of both the 2011 and 2013 claims, but all claims for payment shall be limited to medical treatment and providers submitted to the Commission via APA submissions at the time of the hearing.

The hearing Commissioner further made Conclusions of Law as follows:

CONCLUSIONS OF LAW

Based on the evidence submitted in this case, the testimony given, the stipulations entered into, and the foregoing Findings of Fact, this Commissioner makes the following Conclusions of Law:

1. That pursuant to Section 42-3-180, the South Carolina Workers' Compensation Commission has jurisdiction in this proceeding and venue in the County of Richland is proper pursuant to Section 42-17-10;
2. Pursuant to Section 42-1-130, the Claimant was a covered employee at the times in question, and pursuant to Section 42-1-140, the Defendant Employer was a covered employer under the Act;
3. That the Claimant sustained injuries by accident arising out of and in the course of her employment pursuant to Section 42-1-160;
4. That this claim is governed by Section 42-9-30.

Appellant then filed a timely Form 30 Application for Review stating the following grounds for review:

1. The hearing commissioner erred as a matter of law in finding that this claim was governed by Section 42-9-30 where, to the contrary, Section 42-9-30 governs claims for scheduled injuries to a single body part; here, the commissioner found that Claimant had sustained compensable injuries to her neck, lower back and left shoulder.
2. The hearing commissioner erred as a matter of law and fact in failing to find that Claimant had sustained compensable injuries to her left arm, cervical spine, left shoulder, left wrist, left elbow, left hand, right hip, right leg, right knee and right foot as the result of the first accident on April 5, 2011.
3. The hearing commissioner erred as a matter of law and fact in failing to find that Claimant's compensable conditions included back pain, sciatica, and aggravation of the injuries to her left arm, cervical spine, left shoulder, left wrist, left elbow, left hand, right hip, and right leg as the result of the second work accident on June 16, 2013.
4. The hearing commissioner erred as a matter of law and fact in failing to find that Claimant had sustained compensable injury by accident to her back (including neck & lower back) and left shoulder on April 5, 2011, and that Claimant "received medical treatment at the direction of the Fund" where Claimant actually was not provided medical treatment for the injuries sustained on April 5, 2011, for some six months, i.e. October, 2011, and thereafter, medical care was largely denied, including the recommended treatment with an orthopaedic doctor.

5. The hearing commissioner erred as a matter of fact in finding, "Claimant received appropriate medical care, including conservative treatment consisting of physical therapy and pain management," where Claimant actually did not receive "appropriate" medical care after the June 16, 2013 accident; but instead, her medical care was denied and her appointments cancelled - - although Claimant was instructed by Dr. Oliver not to return to work until she had been seen by an orthopaedic doctor no such care was authorized so that Claimant was not able to return to work. The hearing commissioner herself found that Claimant was entitled to temporary total benefits from June 16, 2013, the date of the second accident, until the date of September 30, 2013, hearing as the result of the failure to provide medical care.
6. The hearing commissioner erred as a matter of law in concluding: "Claimant is at maximum medical improvement as of the date of the hearing, September 30, 2013. Claimant's frequent references to seeking long-term disability to several treating physicians weighed heavily on this finding," where any such finding was irrelevant to the determination of MMI.
7. The hearing commissioner erred as a matter of fact in finding that Claimant had received appropriate medical care and that she had reached MMI where even the hearing commissioner found that Claimant was not able to return to work after the second accident because the recommended medical care had not been authorized or provided that, therefore, back payment of TTD from June 16, 2013 through September 30, 2013 was required.
8. The hearing commissioner erred as a matter of fact in finding, "Claimant received appropriate medical, including conservative treatment consisting of physical therapy and pain management. Claimant was not determined to be a surgical candidate by any of the treating physician," where, to the contrary, Claimant was not provided the care of an orthopaedic doctor as recommended, and she is in need of further and continuing medical care and evaluation for her work injuries.
9. The hearing commissioner erred in allowing her decision as to whether or not Claimant had reached maximum medical improve e t to be affected by the fact that Claimant had asked her doctors about long term disability. The hearing commissioner erred as a matter of law and fact in allowing the fact that Claimant had asked her doctors about long term disability to "weigh heavily" in determining that Claimant had reached MMI where the hearing commissioner was, instead, required to evaluate whether there was further medical care which could then to reduce Claimant's disability [sic].
10. The hearing commissioner erred as a matter of law and fact in concluding that Claimant had reached MMI as of the date of the hearing despite being informed that claimant had a further referral appointment and surgery scheduled for after the hearing on September 30, 2013.

11. The hearing commissioner erred as a matter of law and fact in finding that Claimant's asking her doctors about long term disability was a negative factor which properly "weighed heavily" against finding that Claimant was in need of further medical care, given the fact that: Claimant's pain had continued unimproved; her condition had failed to benefit materially from conservative treatment and physical therapy; she had been required to perform work beyond her restrictions, resulting in increased pain and swelling; she was then put out of work altogether as the result of her restrictions and the carrier's refusal to provide medical care.
12. The hearing commissioner erred as a matter of law and fact in finding that there was insufficient evidence to support a finding of permanent and total disability where the Commissioner herself acknowledged that the most recent reference to Claimant's ability to work was Dr. Storick's opinion that Claimant could work in a light duty capacity, given that Claimant is a manual laborer without the experience, training or ability to obtain or perform less physically demanding work in the national or South Carolina economy.
13. The hearing commissioner erred in determining that Claimant has sustained only 10% PPD to her back as a result of her neck and lower back injuries where Claimant sustained an injury to her low back with radiation, Claimant had endured constant pain in her back and neck, so that she was unable to continue working.
14. The hearing commissioner erred in determining that Claimant has sustained only 8% PPD to her shoulder where, as a result of injuries, including the injury to her shoulder, Claimant had constant pain and she was, therefore, unable to continue working.
15. The hearing commissioner erred as a matter of law and fact in finding that Claimant has sustained only 8% PPD to her shoulder where Claimant's doctors have noted that her persistent pain in the left shoulder and arm continues and diagnosed her with tendinosus [sic] of the shoulder.
16. The hearing commissioner erred as a matter of law and fact in finding: "Claimant is not entitled to future medical treatment as none has been recommended that would tend to lessen her period of disability. Claimant's frequent references to seeking long-term disability to several treating physicians weighed heavily on this finding as well."
17. The hearing commissioner erred as a matter of law in finding that while Defendants were responsible for unpaid medical treatment Claimant had received after both the 2011 and 2013 claims, such was limited only to medical treatment and providers submitted via APA submissions at the time of the hearing, where

Defendants should be found responsible for all causally related medical care provided.

Oral arguments were delivered by the parties on 09/15/14. All proffered testimony has been taken. Such, together with all documentary evidence and legal briefs, has been delivered to the individual members of the Full Commission and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1976, as amended), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Frank A. Barton, Esquire, for the Claimant and Ellen H. Goodwin for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties. Having heard oral arguments on behalf of the parties, considered their briefs and viewed the record as a whole, the Appellate Panel hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

It is found by a preponderance of the substantial evidence as a fact:

1. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.
2. The South Carolina Workers' Compensation Commission has subject matter and personal jurisdiction over all the parties and matters before this Commissioner; all parties having received proper notice of the hearing held 9/30/13 and oral arguments held 9/15/14.

3. Venue is proper set in Richland County, South Carolina.
4. Claimant has an average weekly wage of \$474.78 and a compensation rate of \$319.20, pursuant to the Form 20 for the June 16, 2013 accident.
5. Claimant sustained a compensable injury by accident to her back (including neck and lower back) and left shoulder on April 5, 2011. Claimant received medical treatment at the direction of the Fund and was ultimately released to return to work full duty and did so. We find Claimant does not have any permanent disability from the 4/5/11 injury. WCC File No. 1122060 is now closed.
6. Claimant sustained a second compensable work-related injury to her back (neck and lower back) and left shoulder on June 16, 2013. We find the June 2013 exacerbated and aggravated Claimant's pre-existing back and left shoulder condition from the 2011 work-related injury.
7. Claimant received appropriate medical care including conservative treatment consisting of physical therapy and pain management. Claimant was not determined to be a surgical candidate by any of the treating physicians. Dr. Storick had released Claimant to return to work light-duty; however Claimant had informed him she was out of work.
8. Claimant is at maximum medical improvement as of the date of the hearing, September 30, 2013. Claimant's frequent references to seeking long-term disability to several treating physicians weighed heavily on this finding.
9. There is insufficient evidence in the record to support a finding of permanent and total disability. The most recent reference to Claimant's ability to work came from Dr. Storick, Claimant's pain management physician, who felt claimant could

work in a light duty capacity and that he had "not much else [he] could offer her".
(Claimant's APAs, p. 65.)

10. We agree that this claim is governed by Section 42-9-30.
11. Medical records indicate that "Extensive workup has only noted mild age-appropriate degenerative changes." Nerve studies "showed no evidence of radiculopathy." (Claimant's APAs, p. 65.) It was further noted that Claimant's range of motion was "normal in the neck and low back in flexion and extension."
(Claimant's APAs, p. 59.)
12. There was no medical evidence in the record that Claimant's impending cervical surgery was causally related to her work-related accidents.
13. No vocational evaluation was submitted by either party.
14. Claimant has sustained 10% PPD to her back as a result of her neck and lower back injury.
15. Claimant has sustained 8% PPD to her left shoulder as a result of the 6/16/13 injury.
16. Claimant is entitled to back payment of TTD from June 16, 2013 through September 30, 2013.
17. Claimant is not entitled to future medical treatment as none has been recommended that would tend to lessen her period of disability. Claimant's frequent references to seeking long-term disability to several treating physicians weighed heavily on this finding as well.
18. All benefits are to be paid in lump sum.

19. Defendants are responsible for unpaid medical treatment Claimant received as a result of both the 2011 and 2013 claims, but all claims for payment shall be limited to medical treatment and providers submitted to the Commission via APA submissions at the time of the hearing..

CONCLUSIONS OF LAW

Accordingly, as provided by the South Carolina Code Section 42-17-50, it is the determination and finding of this Appellate Panel:

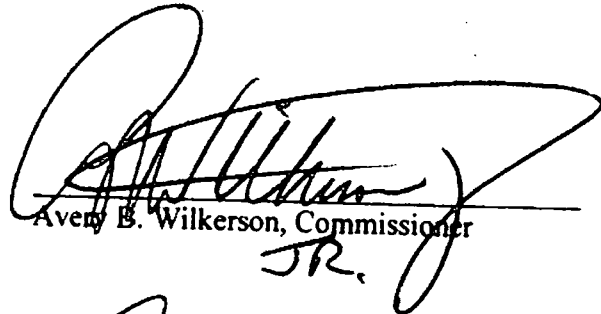
1. That pursuant to Section 42-3-180, the South Carolina Workers' Compensation Commission has jurisdiction in this proceeding and venue in the County of Richland is proper pursuant to Section 42-17-10;
2. Pursuant to Section 42-1-130, the Claimant was a covered employee at the times in question, and pursuant to Section 42-1-140, the Defendant Employer was a covered employer under the Act;
3. That the Claimant sustained injuries by accident to her neck, back and left shoulder arising out of and in the course of her employment pursuant to Section 42-1-160;
4. That this claim is governed by Section 42-9-30 because Claimant did not meet her burden of proving she is permanently and totally disabled based on the available medical reports and other evidence in the record.
5. The preponderance of the evidence supports the Findings of Fact and Conclusions of Law made by the hearing Commissioner.

ORDER

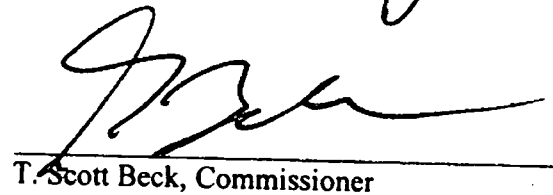
IT IS, THEREFORE, ORDERED: The Order of the hearing Commissioner is
AFFIRMED.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Avery B. Wilkerson, Commissioner
JR.



T. Scott Beck, Commissioner



Melody L. James., 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 Eugenia Hollmon on March 23, 2015