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STATE OF SOUTH CAROLINA ) BEFORE THE S.C. WORKERS'  
COUNTY OF FLORENCE ) COMPENSATION COMMISSION

SC Court of Appeals

Wanda Weaver, )  
)  
Employee/Claimant, )  
)  
v. )  
)  
SC Dept. of Disabilities and )  
Special Needs, )  
)  
Employer, )  
)  
and )  
)  
State Accident Fund, )  
)  
Carrier/Defendants. )

WCC File No. 1404431

Appellate Panel of the  
Full Commission Decision and Order

**DATE OF ORAL ARGUMENT:** Heard on February 25, 2015, in Columbia, South Carolina.

**APPEARANCES:** Claimant, Wanda Weaver, was represented by H. Thad White, Jr., Esquire.

Defendants, South Carolina Department of Disabilities and Special Needs and the State Accident Fund, were represented by Ashley R. Kirkham, Esquire.

**PURPOSE OF HEARING:** Appeal from the Single Commissioner.

**COMMISSIONERS:** Aisha Taylor, Chairperson  
Melody L. James  
Gene McCaskill

**FILED:**

April 27<sup>th</sup>, 2015

Having reviewed the record and heard arguments from counsel, the Appellate Panel hereby REVERSES the decision of the Single Commissioner. Pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel hereby issues the following Order.

### **STATEMENT OF THE CASE**

Respondent, Wanda Gail Weaver, hereinafter "Claimant," filed a Form 50 Request for Hearing alleging injury to her neck and left shoulder from an accident occurring on April 11, 2014 when she was attacked by a patient that grabbed and twisted her left arm.

Appellants, South Carolina Department of Disabilities and Special Needs, and their carrier, State Accident Fund, hereinafter "Defendants," admit a minor injury occurred, but denied Claimant's need for additional treatment and work restrictions are related to the minor accident because of Claimant's extensive pre-existing condition.

A hearing was held before Jurisdictional Commissioner Avery Wilkerson on October 8, 2014. The Jurisdictional Commissioner issued the following Findings of Fact, Conclusions of Law, and Award in an Order on October 28, 2014:

### **FINDINGS OF FACT**

1. All parties to these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended.
2. Based on the greater weight of the evidence, I would find this to be a compensable accident. Temporary total disability is to be started from the date it was cut off by the State Accident Fund.
3. Pee Dee Orthopaedic Associates is to be the authorized provider, specifically Dr. Robert E. Elvington. All recommended medical treatment, past and present, is so to be paid through the medical fee schedule set forth by the Commission.

### **CONCLUSIONS OF LAW**

Section 42-15-60 of the South Carolina Code of Laws as amended, governs payment of medical expenses; Section 42-1-60 governs injury and personal injury.

**AWARD**

1. Based on the greater weight of the evidence, I would find this to be a compensable accident. Temporary total disability is to be started from the date it was cut off by the State Accident Fund.

2. Pee Dee Orthopaedic Associates is to be the authorized provider, specifically Dr. Robert E. Elvington. All recommended medical treatment, past and present, is so to be paid through the medical fee schedule set forth by the Commission.

Within the applicable statutory time period, Defendants filed a Form 30 Request for Commission Review regarding the following issues:

1. Whether the hearing commissioner erred in Finding of Fact #2 finding Claimant sustained a compensable injury by accident therefore entitling her to temporary total disability benefits.

2. Whether the hearing commissioner erred in Finding of Fact #3 that Claimant is entitled to all past and present medical treatment recommended by Pee Dee Orthopaedic Associates.

3. Whether the hearing commissioner erred in not limiting the order to a medical evaluation to determine causation.

4. Whether the hearing commissioner erred in the Conclusion of Law finding Claimant's injury compensable entitling her to medical treatment under S.C. Code Sections 42-1-60 and 42-15-60.

After reviewing the record in total and hearing arguments from counsel, the Appellate Panel hereby **REVERSES** the decision of the Single Commissioner pursuant to S.C. Code Ann. § 42-17-50 and hereby issues its own Findings of Fact, Conclusions of Law, and Order as follows:

**FINDINGS OF FACT**

1. All parties to these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended.
2. Claimant failed to meet her burden of proving an injury by accident.
3. Claimant did not meet her burden of proving the work injury sustained on April 11, 2014 aggravated her pre-existing left shoulder condition pursuant to S.C. Code Section 42-9-35.
4. Authorized treating physician, Dr. Jones, opined Claimant had an extensive, pre-existing condition in the left shoulder which had been present for years. (Clmt. APA p. 43, 46).
5. Dr. Jones opined "I believe [Claimant] knew she had significant damage." (Clmt. APA p. 46).
6. Claimant treated with two other physicians, Dr. Hyler and Dr. Elvington, but did not present any evidence at the Form 50 Hearing proving her pre-existing condition was aggravated by the April 11, 2014 work accident. (Hrg. Tr. 17: 18-24; 18: 5-11).
7. Based on Dr. Jones' medical opinion Claimant had an extensive pre-existing condition and she knew she had significant damage, Claimant failed to meet her burden of proving an injury by accident or aggravation of her pre-existing condition.

**CONCLUSIONS OF LAW**

1. The Claimant must prove she sustained an injury by accident and demonstrate entitlement to benefits. Crisp v. SouthCo., Inc., 401 S.C. 627 (2013) (citing Clade v. Champion Labs., 330 S.C. at 11, 496 S.E.2d at 857).

2. The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury. S.C. Code Section 42-9-35.

**ORDER**

1. The Single Commissioner's Order is hereby **REVERSED** in its entirety.

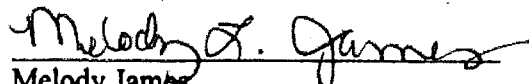
2. Claimant's claim for temporary benefits and medical treatment pursuant to the Act is hereby **DENIED**.

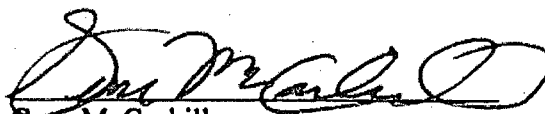
3. Claimant is not entitled to additional benefits pursuant to the Act for the work injury occurring on April 11, 2014 because she failed to meet her burden of proving a compensable injury by accident and an aggravation of her pre-existing condition.

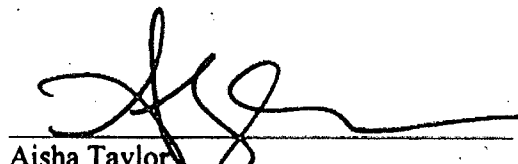
**AND IT IS SO ORDERED.**

[Signature page follows]

**SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION**

  
Melody James

  
Gene McCaskill

  
Aisha Taylor

April 27th, 2015.

**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 April 27, 2015**