

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 1119818

RECEIVED

JUN 26 2015

SC Court of Appeals

Shameka S. Green

EMPLOYEE,
CLAIMANT/APPELLANT

VS.

Teleperformance Group, Inc.

EMPLOYER,

AND

Zurich North America

CARRIER,
DEFENDANTS/RESPONDENTS,

Appellate Panel Review held in Columbia, South
Carolina, on March 17, 2015 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

May 29th, 2015

APPEARANCES: Claimant/Appellant represented by Everett H. Garner, Esquire

Defendants/Respondents represented by Kelly F. Morrow, Esquire

STATEMENT OF THE CASE

This matter was initially held on July 9, 2013 before Commissioner Wilkerson. Commissioner Wilkerson issued a Decision and Order that was then appealed by the Claimant to the Full Commission. Just prior to the Full Commission review hearing, the Claimant withdrew the appeal and the Decision and Order of Commissioner Wilkerson became the unappealed Order of this case.

Commissioner Wilkerson held that the Claimant sustained an admitted injury by accident to the right lower extremity arising out of and in the course and scope of the employment with the Defendants on September 23, 2011. He determined that she was entitled to future medical care including NSAIDS, shots and braces. He awarded her 35% disability to the right lower extremity from her 21% impairment rating and provided the Defendants with a credit for the overpayment of benefits in the amount of \$1,210.90.

After withdrawing the Appeal to the Full Commission, the Claimant filed for a change of condition for the worse requesting further medical care for the right lower extremity. The Defendants timely responded denying the Claimant's change of condition for the worse and indicating that the prior Order of Commissioner Wilkerson remained in effect governing her future medical care.

A Hearing was held before Commissioner McCaskill on July 18, 2014. The Claimant was seeking a determination of a change of condition for the worse and the medical care to be provided as a result of the same. The Claimant took the position that the authorized treating physician, Dr. Noojin, indicated that the Claimant required further causally-related medical care in the form of a high tibial osteotomy. The Claimant took the position that this was supported by a questionnaire as provided by Dr. Noojin. The Defendants took the position that there had been

no change of condition for the worse. The Defendants indicated that was supported by the discovery deposition of Dr. Noojin that was conducted subsequent to the completion of the questionnaire and further clarified the medical care that was presently recommended was the same medical care that had been in issue prior to the Decision of Commissioner Wilkerson. As a result, the Defendants denied there had been a worsening of the Claimant's condition.

Prior to the Hearing before Commissioner McCaskill, the Claimant made a Motion to request a postponement or alternatively to allow the record to remain open to secure medical evidence by an orthopedist. The Claimant cited circumstances beyond their control (difficulty in getting the proper medical records from the treating doctor's office to the IME doctor) that had delayed their ability to secure that evaluation prior to the hearing date. The Defendants objected to any postponement of the hearing or for the record to remain open for any additional evidence. Alternatively, if the record were to remain open, the Defendants requested their right to respond to the new evidence as needed. The Single Commissioner allowed for the record to remain open for the Claimant to secure their assessment with an orthopedist and for the Defendants to respond to that evidence only. Claimant requested reconsideration to re-depose Dr. Noojin and the Single Commissioner indicated the record was closed.

At the conclusion of the hearing, the Single Commissioner issued a Decision and Order making the following findings of fact and conclusions of law:

SINGLE COMMISSIONER FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Findings of Fact

1. The Claimant suffered an injury by accident by accident to her right knee on 09/23/11 arising out of and within the course and scope of her employment with the Defendants which was adjudicated before Commissioner Wilkerson on July 9, 2013.
2. Commissioner Wilkerson issued an Order on September 18, 2013. His

Order was not appealed and is the law of the case.

3. The Claimant alleges that she has suffered a change of condition for the worse and seeking additional medical care and treatment under Section 42-17-90.
4. The Defendants assert that there is no evidence of a medical change of condition, and without supporting evidence the standard in the law as to change of condition cannot be met.
5. The Claimant asserts that her request is pain driven which is sufficient under the Act for a change of condition to exist.
6. The Claimant cites an Affidavit dated April 2, 2014 which was executed by Dr. Frank K. Noojin, who is the authorized treating physician, as evidence that the Claimant is entitled to a change of condition and, as such, additional medical care and treatment.
7. Dr. Noojin was also deposed on May 14, 2014. I give much greater weight to his deposition testimony.
8. In that deposition, Dr. Noojin was questioned as to the future medical care and treatment he listed on the Form 14B which was ordered by Commissioner Wilkerson – braces, shots, and NSAIDS.
9. Dr. Noojin was asked, “But in terms of the future medical treatment that was specifically stated, it was shots, braces, and NSAIDS?” Answer: Yes. “And no indication of a high tibial osteotomy; is that fair?” Answer: “That’s what I answered. Yes.” (Deposition page 15, lines 1-7).
10. Dr. Noojin goes on to say, “And the reason I had said that is because I had been offering the osteotomy for quite a time, and then she had not wanted to do it. So, therefore, I figured the decision had been made, that she didn’t want to do the surgery when we settled the case.” (Deposition page 15, lines 15-17).
11. It is the Claimant’s contention that her pain level is now higher and she now wishes to have additional medical care and treatment.
12. The Defendants counter that there has been no medical change to her condition and the pain she is having now is essentially the same pain she was having at the time of the hearing on July 9, 2013.

13. As to the medical evidence, Dr. Noojin testifies, "So objectively speaking from an x-ray standpoint, which is the only objective that I have, there has been no change in the condition other than the subjective pain." (Deposition page 31, lines 3-6).
14. The Claimant, at the direction of her attorney, underwent an IME with Dr. Joseph P. Jackson.
15. At the time of the hearing, Claimant's attorney did not disclose that the IME was to be with Dr. Jackson. In the interest of full disclosure, which I would have made at the hearing had I known the IME was to be with Dr. Jackson, Dr. Jackson performed hand surgery on me about 18 years ago. I had an excellent outcome and have not seen him since. This prior relationship does not have any impact on my ruling.
16. Dr. Jackson opines that the Claimant has had a medical change of condition for the worse. He writes, "So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse."
17. While I have the utmost respect for Dr. Jackson and I have thoughtfully considered his opinion, I give greater weight to the opinion of Dr. Noojin who has been the authorized treating physician throughout this case.
18. Dr. Noojin testifies, "...her pain has progressed to a level where she is –or has gotten to the point where she has decided she wants to do something else about it. But has there been a medical change in the overall condition of the knee? I don't think so based on my best assessment with the x-ray tools I have." (Deposition page 40, lines 7-13).
19. Having reviewing the original hearing transcript and having heard the live testimony of the Claimant at this hearing, I find that the pain the Claimant now professes to have is not substantively different than the pain she was having at the time of the original hearing on 07/09/13.
20. When I consider the evidence as a whole, the Claimant has failed to meet her burden as to a change of condition for the worse.
21. As such, the Claimant is not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013.

Conclusions of Law

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of and in the course of employment.
2. Claimant sustained a compensable injury by accident to the right lower extremity with the Defendants on September 23, 2011 per the prior Order of Commissioner Wilkerson.
3. Section 42-17-90 governs the Review of an Award for a Change of Condition for the worse.
4. Pursuant to Section 42-17-90, the Claimant has not carried the requisite burden of proof required under the South Carolina Workers' Compensation Act to establish that her right lower extremity injury has changed for the worse.
5. Section 42-1-40 governs average weekly wage.
6. Claimant has an average weekly wage of \$373.18 with a corresponding compensation rate of \$248.78.
7. Because the Claimant has failed to prove a change of condition for the worse, the prior Order of Commissioner Wilkerson remains the law of this case.

Following the Decision and Order, Claimant filed a Form 30 and asserted the following exceptions to the Decision and Order:

1. Did the Hearing Commissioner err in Finding of Fact No. 5 wherein he found that Claimant asserts that her request (for change of condition) is pain driven; the error being that the contemporary evaluating orthopedist, Dr. Joseph Jackson specifically opined that based on his review of more recent radiographic evidence Claimant had suffered a clear arthritic progression of her condition.
2. Did the Hearing Commissioner err in Finding of Fact No. 7 wherein he accorded greater weight to Dr. Frank Noojin's deposition testimony than to his affidavit; the error being that the affidavit addressed specific points of contention and explicitly established a change of condition.

3. Did the Hearing Commissioner err in Finding of Fact No. 13 wherein he accorded dispositive weight to Dr. Noojin's statement "so objectively speaking from an x-ray standpoint which is the only objective I have there has been no change in the condition other than subjective pain;" the error being that Dr. Noojin was reviewing outdated x-rays when expressing this opinion.
4. Did the Hearing Commissioner err in Finding of Fact No. 17 wherein he accorded greater weight to the opinion of Dr. Noojin; the error being that Dr. Jackson's radiographic evidence was contemporary and his opinion was based explicitly on such evidence.
5. Did the Hearing Commissioner err in Finding of Fact No. 19 wherein he found that the pain the Claimant now professes to have is not substantively different from the pain she was having at the time of the original hearing on July 9, 2013; the error being that the pain scale is a nebulous concept relative of the current context i.e., the advent of exposure to pain of heightened intensity.
6. Did the Hearing Commissioner err in Finding of Fact No. 20 wherein he found that the Claimant failed to meet her burden as to change of condition for the worse; the error being that the preliminary evidence afforded by Dr. Noojin and the contemporary evidence afforded by Dr. Jackson mandate otherwise.
7. Did the Hearing Commissioner err in Finding of Fact No. 21 wherein he found that Claimant was not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013; the error being that the substantial evidence heretofore cited mandates otherwise.

EVIDENCE OF THE CASE

Testimony

The Claimant testified that she is 40 years of age and has a high school education and some college education. (Hearing Trans. p. 12). Claimant continues to be employed with the Defendants, Teleperformance USA/Direct T.V. (Hearing Trans. p. 12). The Claimant testified she was involved in a work-related accident on September 23, 2011. She stated as a result she secured medical treatment with Dr. Noojin. (Hearing Trans. p. 13). She stated he released her

from his care on April 23, 2013. (Hearing Trans. p. 14). She testified prior to her release by Dr. Noojin she had discussed with him the possibility of having a high tibial osteotomy done on her right lower extremity. (Hearing Trans. p. 14). The Claimant testified she chose not to have the recommended surgery because of the extensive nature of the surgery and the recovery period she understood to be as long as one year's time. (Hearing Trans. p. 14-16).

The Claimant testified that her pain levels were worse since the last hearing in this matter. (Hearing Trans. p. 17-18). She testified she was experiencing more frequent Charlie horses in her leg and having to adjust more frequently because of the pain. (Hearing Trans. p. 18). As a result of her increased, unbearable pain, she felt as though she would now require/need the previously recommended surgery by Dr. Noojin. (Hearing Trans. p. 18). The Claimant testified that she continues to have increased pain despite the use of prescribed medications. (Hearing Trans. p. 19). The Claimant further testified that she has increased swelling in the knee that was physically displayed to the Single Commissioner. (Hearing Trans. p. 21).

On cross-examination Ms. Green testified that she testified at the prior hearing that her pain levels were between an 8 and a 9 consistently. (Hearing Trans. p. 24). She further testified that at her discovery deposition that was taken just weeks before the first hearing that she had also testified that her pain level average was a level 9 and she again reiterated that as her pain level at the prior hearing. (Hearing Trans. p. 25). The Claimant testified that despite a pain level of 9 she continued to work full time and the same hours she was working prior to the last hearing. (Hearing Trans. p. 26).

The Claimant testified that Dr. Noojin had performed her prior ACL knee surgery and she trusted his opinion of her condition and need for care. (Hearing Trans. p. 26-27). The Claimant testified that she had asked Commissioner Wilkerson at the prior hearing to award her

the high tibial osteotomy surgery for her injury in this case and that she was asking for the exact same treatment and care at the present hearing. (Hearing Trans. p. 27-29). The Claimant testified that she expressed her pain levels and complaints to Dr. Noojin throughout her medical care. (Hearing Trans. p. 29). She described her pain complaints and sensations as a Charlie horse to be the same sensations she testified to at the prior hearing. (Hearing Trans. p. 30).

The Claimant testified that she continues to have the same accommodations at work that she had at the last hearing to enable her to perform her job with the Employer on a routine basis. (Hearing Trans. p. 29). Further the Claimant testified she had received a pay raise since her last hearing in this matter. (Hearing Trans. p. 30).

Pamela Fleming testified on behalf of the Defendants. Ms. Flemming testified that she works with Teleperformance as the human resources generalist. (Hearing Trans. p. 33-34). In that capacity she oversees HR aspects and she handles workers compensation matters. (Hearing Trans. p. 34). Ms. Flemming testified if the Claimant was having any job performance issues either physically or on another platform she would have been informed of them and would have been asked to address them in her capacity. (Hearing Trans. p. 35). Ms. Flemming testified that the Claimant has never come to her and never indicated to her that she was having discomfort of any type nor did she ask for any specific accommodations to allow her to perform her job with them. (Hearing Trans. p. 37). Ms. Flemming described the Claimant as a good employee and she did not observe or have any personal knowledge of her having any difficulties performing her job as the result of her work-related injury to the right lower extremity. (Hearing Trans. p. 38).

On cross-examination Ms. Flemming testified she is not a medical professional and has not provided care to the Claimant. She further testified that the Claimant had never come to her to notify her of any pain or problems associated to performing her job with the Employer and she

had never requested medical care through them for anything associated to her workers compensation claim. (Hearing Trans. p. 40-42).

Medical

The Claimant received causally-related medical care with Dr. Noojin. Prior to the initial release by Dr. Noojin, he recommended on May 21, 2012 that the Claimant may be a candidate for a high tibial osteotomy. (APA p. 17). The Claimant elected not to have the surgery and Dr. Noojin placed her at maximum medical improvement on April 23, 2013 with a 21% impairment to the right lower extremity. He provided her with recommendations for future medical care to include: shots, braces, and NSAIDS. (APA p. 38-41).

The Claimant returned for an evaluation with Dr. Noojin after her release, on December 2, 2013 for her right knee. Dr. Noojin recommended that the Claimant could live with it or have a high tibial osteotomy. (APA p. 42). Dr. Noojin then completed an Affidavit on April 2, 2014 indicating that the Claimant sustained a change of condition for the worse due to worsened pain and that he would recommend the high tibial osteotomy. (APA p. 44-45).

Dr. Noojin's discovery deposition was taken on May 15, 2014, wherein Dr. Noojin stated that he had offered the Claimant a high tibial osteotomy and that the Claimant declined that surgery. (Depo p. 9-10). Dr. Noojin testified if the Claimant had the levels of pain described at the first hearing he would suspect that she would elect emergent care or immediate treatment. (Depo p. 17). Dr. Noojin also agreed that the Claimant's pain level complaints both prior to his release at MMI and then on her return visit in December 2013 were largely the same. (Depo p. 20). Dr. Noojin evaluated the x-rays of the Claimant's right knee both before and after the determination of MMI and indicated that her loss of cartilage was at the same level that it was at the time of her release, so he could not state that her condition had medically worsened. (Depo p.

30-35). Dr. Noojin agreed as a result the only change would be the Claimant's election to have the surgery, the same surgery that had been recommended to her prior to the release at maximum medical improvement. (Depo p. 29-32). Dr. Noojin indicated in his deposition that he was no longer of the opinions that he had previously provided in the Affidavit of April 2, 2014.

After the deposition of Dr. Noojin, and after the IME of Dr. Jackson, Dr. Noojin completed a questionnaire indicating that the IME secured with Dr. Jackson did not in any way impact his opinions that were set forth in his discovery deposition of May 15, 2014. He further indicated that the only thing that had changed in this case was the Claimant's election to have the high tibial osteotomy. Finally, Dr. Noojin concluded that the Claimant's need for a knee replacement was a consideration prior to the initial release on April 23, 2013 and that nothing had changed or accelerated that need.

The Claimant was evaluated by Dr. Jackson on September 5, 2014. Dr. Jackson concluded that there had been clear progression of the disease despite the Claimant's best efforts. He recommended that she not undergo an osteotomy because she no longer met the criteria for that surgery. He recommended that the Claimant see a regional expert in joint replacement and recommended weight loss.

**FULL COMMISSION FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Findings of Fact:

1. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant suffered an injury by accident to her right knee on September 23, 2011, arising out of and within the course and scope of her employment with the Defendants which was adjudicated before Commissioner

Wilkerson on July 9, 2013.

2. Commissioner Wilkerson issued an Order on September 18, 2013. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that his Order was not appealed and is the law of the case.
3. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant alleges that she has suffered a change of condition for the worse and seeking additional medical care and treatment under Section 42-17-90.
4. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Defendants assert that there is no evidence of a medical change of condition, and without supporting evidence the standard in the law as to change of condition cannot be met.
5. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant asserts that her request is pain driven which is sufficient under the Act for a change of condition to exist.
6. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant cites an affidavit dated April 2, 2014 which was executed by Dr. Frank K. Noojin, who is the authorized treating physician, as evidence that the Claimant is entitled to a change of condition and, as such, additional medical care

and treatment.

7. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Noojin was also deposed on May 14, 2014. We give much greater weight to his deposition testimony.
8. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that in that deposition, Dr. Noojin was questioned as to the future medical care and treatment he listed on the Form 14B which was ordered by Commissioner Wilkerson – braces, shots, and NSAIDS.
9. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Noojin was asked, "But in terms of the future medical treatment that was specifically stated, it was shots, braces, and NSAIDS?" Answer: Yes. "And no indication of a high tibial osteotomy; is that fair?" Answer: "That's what I answered. Yes." (Deposition page 15, lines 1-7).
10. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Noojin went on to say, "And the reason I had said that is because I had been offering the osteotomy for quite a time, and then she had not wanted to do it. So, therefore, I figured the decision had been made, that she didn't want to do the surgery when we settled the case." (Deposition page 15, lines 15-17).

11. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find it is the Claimant's contention that her pain level is now higher and she now wishes to have additional medical care and treatment.
12. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Defendants counter that there has been no medical change to her condition and the pain she is having now is essentially the same pain she was having at the time of the hearing on July 9, 2013.
13. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that as to the medical evidence, Dr. Noojin testifies, "So objectively speaking from an x-ray standpoint, which is the only objective that I have, there has been no change in the condition other than the subjective pain." (Deposition page 31, lines 3-6).
14. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant, at the direction of her attorney, underwent an IME with Dr. Joseph P. Jackson.
15. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that at the time of the Single Commissioner Hearing, Claimant's attorney did not disclose that the IME was to be with Dr. Jackson. In the interest of full

disclosure, which we find that Commissioner McCaskill would have made at the hearing had he known the IME was to be with Dr. Jackson, Dr. Jackson performed hand surgery on him about 18 years ago. Commissioner McCaskill had an excellent outcome and has not seen him since. However, this prior relationship did not have any impact on his ruling.

16. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Dr. Jackson opines that the Claimant has had a medical change of condition for the worse. He writes, "So in summary, my interpretation of the conventional x-ray films taken today show that she has tricompartmental osteoarthritis and therefore an unequivocal progression of her condition for the worse."
17. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that while we have the utmost respect for Dr. Jackson and we have thoughtfully considered his opinion, we give greater weight to the opinion of Dr. Noojin who has been the authorized treating physician throughout this case.
18. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, Dr. Noojin testifies, "...her pain has progressed to a level where she is –or has gotten to the point where she has decided she wants to do something else about it. But has there been a medical change in the overall condition of the knee? I don't think so based on my best assessment with the x-ray tools I have." (Deposition

page 40, lines 7-13).

19. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the pain the Claimant now professes to have is not substantively different than the pain she was having at the time of the original hearing on July 9, 2013.
20. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant has failed to meet her burden as to a change of condition for the worse.
21. As such, based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant is not entitled to additional medical care and treatment beyond what is outlined in Commissioner Wilkerson's Order of September 18, 2013.
22. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

Conclusions of Law

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Section 42-1-160 governs injuries and includes injuries by accident arising out of

and in the course of employment.

2. Pursuant to S.C. Code Ann. § 42-15-10 and § 42-17-20, jurisdiction and venue are proper.
3. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
4. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).
5. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.
6. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
7. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant sustained a compensable injury by accident to the right

lower extremity with the Defendants on September 23, 2011 per the prior Order of Commissioner Wilkerson.

8. Section 42-17-90 governs the Review of an Award for a Change of Condition for the worse.
9. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that pursuant to Section 42-17-90, the Claimant has not carried the requisite burden of proof required under the South Carolina Workers' Compensation Act to establish that her right lower extremity injury has changed for the worse.
10. Section 42-1-40 governs average weekly wage.
11. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant has an average weekly wage of \$373.18 with a corresponding compensation rate of \$248.78.
12. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the Claimant has failed to prove a change of condition for the worse, and the prior Order of Commissioner Wilkerson remains the law of this case.
13. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

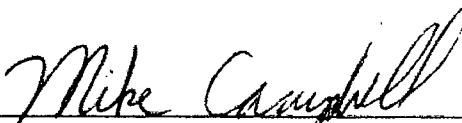
ORDER

IT IS HEREBY ORDERED that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED IN ITS ENTIRETY**.

IT IS HEREBY ORDERED that the substantial evidence supports a finding that the Claimant has failed to carry her burden of proof in demonstrating that she suffered a change of condition for the worse under Section 42-17-90.


IT IS HEREBY ORDERED that the substantial evidence supports a finding that the prior Decision and Order of Commissioner Wilkerson remains the law of this case as the unappealed Order of this case. That Order governs the Claimant's entitlement to future medical care as there has been no change of condition for the worse.

AND IT IS SO ORDERED.

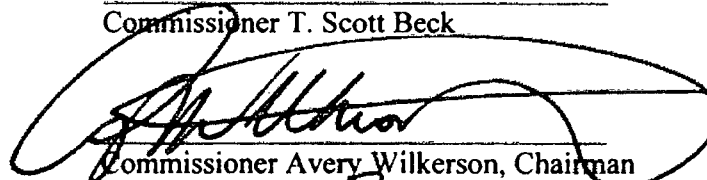



Commissioner Michael Campbell
For the Appellate Panel

WE CONCUR:



Commissioner T. Scott Beck



Commissioner Avery Wilkerson, Chairman


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 May 29, 2015