

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

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SC Court of Appeals

W.C.C. FILE NO. 1120778

Lettie Spencer,

Employee / Claimant,

Vs.

Appellant / Respondent,

NHC Parklane,

Employer,

and

Premier Group Insurance Co., Inc.,

Carrier,

Appellants / Respondents.

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Appellate Panel Decision and Order filed

September 11<sup>th</sup>, 2015

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APPEARANCES:

Employee Appellant / Respondent represented by  
Andrew W. Creech, Esquire  
of Rock Hill, South Carolina

Defendants Appellants/Respondents represented by  
Clarke W. McCants, III, Esquire  
of Aiken, South Carolina.

## STATEMENT OF THE CASE

The Parties were heard by Commissioner R. Michael Campbell, II on September 3, 2014 in Columbia, South Carolina. On March 12, 2015, he issued the following Order:

IT IS THEREFORE ORDERED that the Defendant shall be allowed to stop payment of temporary total compensation to the Claimant effective September 3, 2014;

IT IS FURTHER ORDERED that the Defendant shall pay to the Claimant compensation for a 21% permanent partial disability to her lower back, in a lump sum, pursuant to the provisions of the Act and in accordance with the decision of James v. Anne's Inc., et al., 390 S.C. 188, 701 S.E.2d 730 (2010);

IT IS FURTHER ORDERED that the Defendants shall be responsible for that additional authorized, causally related and reasonable and necessary medical treatment for the injuries to the Claimant's lower back and psyche, pursuant to the provisions of the Act, and other applicable law and regulation, including the decision of Dodge v. Brucoli, Clark, Layman, Inc., et al. 334 S.C. 574, 514 S.E.2d 593 (1999).

Within the statutory period, Counsel for the Employee and Counsel for the Employer and Carrier filed Applications for Review in this case setting forth their reasons, a copy of which was furnished to all interested Parties prior to oral argument presented before an Appellate Panel on June 15, 2015, and comprised of Commissioner Avery B. Wilkerson, Jr., Commissioner Aisha Taylor and Commissioner Susan S. Barden. All proffered testimony had been taken. Such, together with all documentary evidence, was delivered by oral argument to the individual members of the Appellate Panel convened on the aforesaid date.

By appeal, the Employee / Appellant respectfully submitted the following issues:

1. Did the Single Commissioner err in Finding of Fact No. 12 stating "Based upon the video evidence in this matter the Claimant is physically active to a significant degree. Based upon this evidence as well as the testimony of the Claimant and her son regarding the operation of Car Toys, the Claimant is capable of performing some level of work associated with this business" when this finding is not supported by the preponderance of the evidence?

2. Did the Single Commissioner err in Finding of Fact No. 13 stating "the Claimant is not permanently and totally disabled, and is not entitled to an award of compensation for permanent and total disability. This finding is based upon the medical records and reports for this matter, the testimony of the Claimant and the extensive videotape evidence of the Claimant which is reliable and uncontradicted" as this finding is not supported by the preponderance of the evidence?

3. Did the Single Commissioner err in Finding of Fact No. 14 stating "Based on the evidence as a whole, and particularly in light of the surveillance and my finding that the Claimant is physically active to a significant degree, I am not persuaded that Claimant's disability to her back, combined with her impairment to her psyche, diminishes her earning capacity to such an extent as to result in a total incapacity for work" as it is not supported by the preponderance of the evidence?

4. Did the Single Commissioner err in Finding of Fact No. 15 stating that the Claimant has sustained only a 21% permanent partial impairment to her back, when that finding is not supported by the preponderance of the evidence?

5. Did the Single Commissioner err in failing to find the Claimant is permanently and totally disabled per 42-9-10 and / or 42-9-30 and awarding lifetime medical to Claimant's low back and psyche - when all the medical evidence in the record states Claimant is totally disabled?

6. Did the Single Commissioner err in failing to make a finding under 42-9-20, regarding the extent of the Claimant's wage loss when wage loss was properly before the court as stipulated to the parties on the record; it is undisputed Claimant has sustained permanent injury to both back and psyche; and that the Claimant is physically unable to return to her former job as an LPN; and the Claimant submitted an unrefuted vocational evaluation noting Claimant is permanently and totally disabled, but in the alternative if she is able to find work, she will have a significant loss in earning capacity?

By appeal the Employer and Carrier / Appellants respectfully submitted the following issue:

1. Did the Single Commissioner err in finding as a fact and in concluding as a matter of law that the Defendants are not entitled to a credit for overpayment of Temporary Total Compensation?

In an Appellate Review, the Appellate Panel shall, pursuant to S. C. Code Ann. §

42-17-50 (1976), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

After careful review of the record for this matter, and listening to and considering the statements and arguments of Counsel, a majority of the Appellate Panel hereby makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The Claimant sustained injuries to her lower back and psyche on June 22, 2011 as a result of an accident arising out of and in the course of her employment with the Employer.
2. The Defendants have paid the costs associated with certain medical treatment received by the Claimant for her injuries, and have also paid temporary total compensation to her.
3. Based upon the Form 14B prepared by Dr. Nandurkar the Claimant reached the point of maximum medical improvement on February 9, 2014, and with respect to the injuries to her lower back and psyche.
4. Based upon the medical records and reports of Dr. Lehman and the medical records and reports of Dr. Nandurkar, the Claimant has sustained a 9% permanent physical impairment to her lower back, and a 13% whole person impairment, as a result of the injury to her lower back.
5. The Claimant testified that she intended to retire at the age of 66-years of age and is interested in performing volunteer work assisting individuals with Alzheimer's Disease.
6. Based upon the video evidence submitted into evidence in this matter the Claimant is physically active to a significant degree. Based upon this evidence, as well as the testimony of the Claimant and her son regarding the operation of Car Toys, the Claimant is capable of performing some level of work associated with such a business.
7. The Claimant is not permanently and totally disabled, and is not entitled to an award of compensation for a permanent and total disability. This finding is based upon the medical records and reports for this matter,

the testimony of the Claimant and the extensive videotape evidence of the Claimant which is reliable and uncontradicted.

8. Based upon the evidence when viewed as a whole, and particularly in light of the surveillance and our finding that the Claimant is physically active to a significant degree, the Panel is not persuaded that Claimant's disability to her back, combined with the impairment to her psyche, diminishes her earning capacity to such an extent as to result in a total incapacity for work.

9. Therefore, based on the evidence cited above, Claimant sustained permanent partial disability to the back in the amount of 21%.

10. The opinions and conclusions of Dr. Mullen and Ms. Hollenbeck are given less evidentiary weight in this matter. This finding is due to the conflicts and inconsistencies between the evidence of the Claimant's prior health history and her testimony at the hearing for this matter, and the historical and factual conclusions set forth in their reports, and upon which these providers' opinions and conclusions are based.

#### CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-160 (1976), and other applicable law and regulation, the Claimant sustained injuries to her lower back and psyche on June 22, 2011, and as a result of an accident arising out of and in the course of her employment with the Employer.

2. The Claimant reached maximum medical improvement with respect to the injuries to her lower back and psyche on February 9, 2014.

3. Pursuant to S.C. Code Ann. § 42-15-60 (1976), and other applicable law and regulation, including the decision of Dodge v. Bruccoli, Clark Layman Inc., et al. 334 S.C. 574, 514 S.E.2d 593 (1999), the Defendants shall be responsible for the provision and payment of additional authorized, causally related and reasonable and necessary medical treatment for the injuries the Claimant sustained to her lower back and psyche.

4. The Defendants shall be allowed to stop payment of temporary total compensation to the Claimant effective September 3, 2014.

5. The Defendants are not entitled to a credit for overpayment of temporary compensation beyond the date the Claimant reached maximum medical improvement from her injuries, as no Form 21 was filed in this matter.

6. Pursuant to S.C. Code Ann. § 42-9-30 (1976), and other applicable law and regulation, the Claimant has sustained a 21% permanent partial disability to her lower back as a result of the accident in this matter, and shall be paid compensation therefor pursuant to the provisions of the Act.

7. The Claimant has not met her burden on proving she is entitled to permanent and total disability benefits under § 42-9-10(A). The Claimant has not demonstrated a total incapacity for work as a result of multiple injuries.

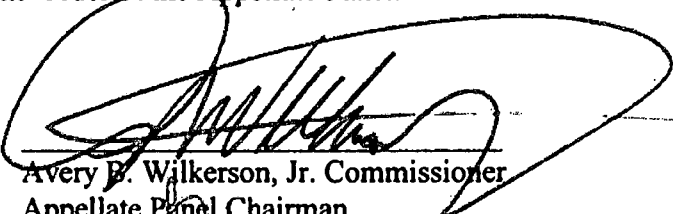
8. Benefits are to awarded in accordance with § 42-9-30(21). The Claimant has not met her burden of proving that she is entitled to permanent and total disability benefits in accordance with § 42-9-30(21) as she has not sustained a 50% or greater disability to the back.

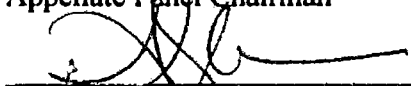
9. The Claimant is entitled to a lump sum payment of the award of permanent partial disability in this matter, pursuant to the provisions of the Act, and in accordance with the decision of James v. Anne's Inc., et al., 390 S.C. 188, 701 S.E. 2d 730 (2010).

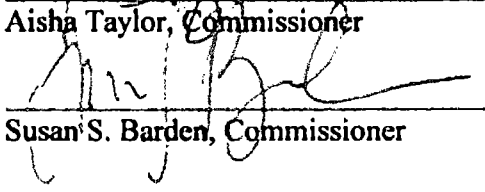
### ORDER

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in this matter on March 12, 2015 is hereby affirmed by a majority of the Appellate Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

SO ORDERED.

  
Avery B. Wilkerson, Jr. Commissioner  
Appellate Panel Chairman

  
Aisha Taylor, Commissioner

  
Susan S. Barden, Commissioner

Dated : September 11<sup>th</sup>, 2015  
Columbia, South Carolina

### 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 September 11, 2015*