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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. File No.: 1315636

Kathey L. Staton, Employee, Appellant,

v.

Mohawk Industries, Inc., Employer, and
Liberty Mutual, Carrier, Respondents.

**MOTION TO STRIKE PORTIONS OF
INITIAL BRIEF OF APPELLANT AND
DESIGNATION OF MATTER**

Pursuant to Rules 208, 209 and 240, SCACR, Respondents Mohawk Industries, Inc. and Liberty Mutual hereby move this Court to strike portions of the Initial Brief of Appellant ("Initial Brief"), and of Appellant's Designation of Matter to be Included in Record on Appeal ("Designation"), both dated September 15, 2015.

First, pursuant to Rule 208(b)(4), SCACR, a party's brief "shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged." Second, Rule 209(b) provides that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)]." In turn, Rule

210(c), SCACR, provides that the Record on Appeal “shall not ... include matter which was not presented to the lower court of tribunal.”

Appellant’s Initial Brief cites to and substantively relies on two deposition transcripts, originally identified as Claimant’s APA No. 16 (Deposition of Dr. Matthew Welsch) and No. 17 (Deposition of Dr. Robert Moore) that were removed from evidence and withdrawn from the record before the Commission. *See* (Transcript of Hearing before Commissioner McCaskill on Oct. 2, 2014, p. 6, line 21 – p. 7, line 23 (Att. A)) (Decision and Order of Commissioner McCaskill, filed Jan. 26, 2015, p. 2 (Att. B)). Appellant’s Designation also lists portions of these two deposition transcripts as Nos. 11 and 12.

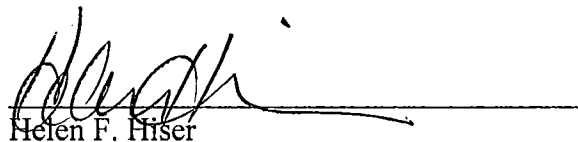
Because Appellant “stipulated and agreed to the removal and withdrawal of” the above-listed evidence, it is improper for her to substantively rely on them in her Initial Brief and/or to designate them for the Record in this appeal. Consequently, Respondents move to strike the paragraph on page 16 of her Initial Brief that begins, “The next time any physician indicated ...” and which references and entirely relies on the deposition transcripts of Drs. Welsch and Moore. Respondents also move to strike Designation Nos. 11 and 12 from Appellant’s Designation.

Finally, Respondents request that the deadline for filing their Initial Brief and Designation of Matter be suspended until this Court resolves this Motion.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

October 9, 2015

A handwritten signature in black ink, appearing to read "Hiser", is written over a horizontal line.

Helen F. Hiser

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Attorneys for Respondents

Attachment A

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1315636

Kathey Staton,)	
)	
Claimant,)	
)	
vs.)	
)	TRANSCRIPT OF PROCEEDINGS
Mohawk Industries, Inc.,)	
Employer,)	October 2, 2014
)	
and)	
)	
Liberty Insurance)	
Corporation, Carrier,)	
)	
Defendants.)	

This hearing was held before
Commissioner Gene McCaskill, reported by
Kimberly T. Power, Court Reporter and Notary
Public in and for the State of South Carolina;
said proceedings were held at the South
Carolina Workers' Compensation Commission,
Florence-Darlington Tech, 225 Swift Creek Road,
Hartsville, South Carolina, on Thursday,
October 2, 2014, commencing at the hour of
3:00 p.m.

1 APPEARANCES

2

3

ATTORNEYS FOR THE CLAIMANT

4

WUKELA LAW FIRM

5

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ATTORNEYS FOR THE DEFENDANTS

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WITNESS: KATHEY STATON

Direct Examination by Mr. Wukela	22
Cross-Examination by Mr. Hylton	33
Redirect Examination by Mr. Wukela	36

Certificate of Reporter	38
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1 THE COURT: Today's date is
2 October 2, 2014. This is Workers' Compensation
3 Commission File Number 1315636. This is the
4 case of Kathey Staton vs. Mohawk Industries,
5 Inc. The carrier is Liberty Insurance
6 Corporation. The claimant is represented today
7 by Stephen J. Wukela, and the employer and
8 carrier are represented by J. Brandon Hylton.

9 The date of the accident is 6/28/13.
10 The claimant has an average weekly wage of
11 \$705.60, with a corresponding compensation rate
12 of \$470.42.

13 I know there was some discussion
14 before we went on the record and let's address
15 that right up front as to what the parties are
16 willing to stipulate to. If we can go ahead
17 and capture that for the record.

18 MR. WUKELA: Thank you,
19 Commissioner. We have a stipulation as to a
20 number of things. First, while the defendants
21 deny this case is compensable and firmly
22 challenge the compensability of the case, they
23 would admit that if the Commission finds that
24 adequate notice was given within the meaning of
25 the statute, that the case would be compensable

1 as to causation.

2 MR. HYLTON: Correct.

3 MR. WUKELA: We also have a
4 stipulation that if the Commission found that
5 the case was compensable, that the claimant
6 would be entitled to temporary total disability
7 benefits at the weekly rate of --

8 MR. HYLTON: Temporary total or
9 temporary partial because, I mean, based on
10 these things come in for a little bit of time.
11 TTD or TPD depending on the payments.

12 MR. WUKELA: Okay. Temporary total
13 or temporary partial disability benefits for
14 the periods between November 17, 2013 and
15 January 27, 2014.

16 THE COURT: Hold on. I don't type
17 numbers fast. 11/17/13 to January what?

18 MR. WUKELA: 27/14 and June 3, 2014
19 through September 5, 2014. As to Mr. Hylton's
20 point, he has offered as APA 22 payroll
21 records. I don't believe that there were any
22 earnings received by the claimant during those
23 dates. But obviously if there were, that would
24 convert that weekly period from temporary total
25 to temporary partial. Is that correct,

1 Mr. Hylton?

2 MR. HYLTON: Correct. We've got
3 them all labeled whether they were short-term.
4 We can go through that. That's not a problem
5 because short-term, of course, would not be for
6 us.

7 MR. WUKELA: Correct.

8 MR. HYLTON: We don't get that back.

9 MR. WUKELA: And, of course, the
10 payments to which Mr. Hylton refers are payroll
11 payments as opposed to any short-term
12 disability benefits.

13 THE COURT: If I get to that point
14 in my order, I think generally the way I write
15 it that they're entitled to TTD from when to
16 when except for any time during or any period
17 during that time in which they earned wages.

18 MR. WUKELA: That's correct,
19 Commissioner.

20 MR. HYLTON: That works.

21 MR. WUKELA: So those are the
22 stipulations, I believe, Commissioner as to
23 causation and periods of disability. Of
24 course, the compensability itself remains
25 denied on the issue of notice which is the soul

1 issue before the Commission now to determine
2 compensability.

3 In that regard, the parties have
4 also stipulated and agreed to the removal and
5 withdrawal of certain APAs that we intended to
6 offer. I think the simplest way, Commissioner,
7 is for me to tell you on my APA list what's in
8 now. So what is in is APA 1, APA 2, APA 3, APA
9 4, APA 12, and APA 13. The balance of the APAs
10 are withdrawn by the claimant. The defendants
11 also have APAs, and I think all those are in.

12 MR. HYLTON: Yes.

13 MR. WUKELA: Which includes APAs 18
14 through 22.

15 THE COURT: All right. Why don't we
16 go off the record.

17 (Off the record.)

18 THE COURT: All right. Gentlemen,
19 with that understanding, Mr. Wukela has taken
20 back some of the APAs that he intended to have
21 as a part of the record. Are there -- now with
22 the edited APAs, are there objections to APAs,
23 jurisdiction or venue or any other items?

24 MR. WUKELA: Nothing from the
25 claimant, Commissioner.

Attachment B

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1315636

KATHEY L. STATON,

Employee,

Claimant,

vs.

MOHAWK INDUSTRIES, INC.,

Employer,

AND

LIBERTY MUTUAL

Carrier,

Defendants.

DECISION AND ORDER

Hearing:

Held in Hartsville, South Carolina, on October 2, 2014.

Appearances:

Claimant, Kathey Staton, represented by Stephen J. Wukela, Esquire, of the Wukela Law Firm, of Florence, South Carolina.

Defendants represented by J. Brandon Hylton, Esquire of McAngus, Goudelock & Courie, P.C. of Florence, South Carolina.

Purpose of Hearing:

The purpose of the hearing is determine issues set forth in the Hearing Notice, issues pled on the Forms 50 and 51, and any other issues which may timely come before the Commission.

Decision and Order

Gene McCaskill, Commissioner

Filed:

January 26, 2015

CLAIMANT'S APA EVIDENTIARY SUBMISSIONS

APA#	PRACTICE	DATES	PAGES
1	FirstHealth Family Care Centers	11/20/2012 – 6/12/2013	1-12
2	FirstHealth Surgical Specialties	4/2/2013 – 7/16/2013	13-21
3	Sandhills Neurologist, P.A.	7/3/2013	23-24
4	Dillon Internal Medicine Associates, P.A.	8/30/2013 – 5/19/2014	25-123
5	Hand Surgery Associates, LLC	11/25/2013 – 5/2/2014	124-126
6	McLeod Health	12/4/2013	137-143
7	Chesterfield General Hospital	1/9/2014 – 1/16/2014	144-162
8	Matthew Welsch, Pee Dee Orthopaedic Associates	5/19/2014 – 8/8/2014	163-177
9	Carolinas Hospital System	6/2/2014 – 6/3/2014	178-182
10	Wal-Mart Pharmacy		183-185
11	Mohawk records	3/31/2006 – 11/25/2013	186-201
12	Workers' compensation filings	7/3/2013 – 8/1/2014	202-210
13	Commission Activity Report	6/17/2014 – 8/29/2014	211-212
14	Inspection video	5/30/2014	
15	Deposition of Kathy Lee Staton	5/9/2014	
16	Deposition of Dr. Matthew D. Welsch	6/23/2014	
17	Deposition of Dr. Robert Moore	7/2/2014	

DEFENDANTS' APA EVIDENTIARY SUBMISSIONS

APA#	PRACTICE	DATES	PAGES
18	FirstHealth Family Care Centers	09/19/2012 to 11/20/2012	213 - 217
19	FirstHealth Surgical Specialties	05/30/2014	218 - 219
20	McLeod Health	12/04/2013	220 - 221
21	Pee Dee Orthopaedic Associates	07/11/2014	222
22	Records of Employer	11/01/2012 – 09/18/2014	223 - 237

Prior to the call of the case, the parties had a prehearing conference and decided that several APA submissions were not going to be submitted due to the fact that Defendants were not contesting causation. At that time, the parties agreed to remove APA Nos. 5, 6, 8, 16 and 17. The remaining APA submissions were placed into evidence, pursuant to the Administrative Procedures Act.

STIPULATIONS

Counsel for both parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is determine issues set forth in the Hearing Notice, issues pled on the Forms 50 and 51, and any other issue which may timely come before the Commission.
2. Notice of Hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage and compensation rate are \$705.60 and \$470.2, respectively.
4. Venue set in Darlington County is proper.
5. Claimant seeks benefits under the *South Carolina Workers' Compensation Act*, based upon a repetitive injury with the date of injury of June 28, 2013.

STATEMENT OF THE CASE

Claimant was originally unrepresented. She filed a *pro se* Form 50 on November 14, 2013. In that Form 50, the Claimant alleged an injury to her hands on June 28, 2013. She stated she was not sure about how the accident occurred, but did state that she did "repeated work." Claimant stated that notice of the accident was given to the Employer on June 28, 2013. She alleged a partial disability and asserted an average weekly wage of \$0 a week. A hearing on the Claimant's Form 50 was scheduled for March 26, 2014 in front of Commissioner Aisha Taylor. After a prehearing conference, the Claimant decided to withdraw her Form 50 and seek legal counsel.

The Claimant then retained Stephen J. Wukela, Esquire to represent her. The Claimant, through Mr. Wukela, filed a Form 50, Request for Hearing, on July 3, 2014 alleging injury of November 17, 2013. The Claimant alleged a repetitive trauma injury to both wrists and neck due to her work as a CFN twist operator. Claimant asserted that she gave notice to her Employer on June 28, 2013. She was requesting additional medical examination and treatment for both wrists and her neck, and temporary benefits from various dates and times since November 17, 2013. Claimant alleged that a determination of permanent disability is premature at this time. The Defendants responded with a Form 51 in which they denied Claimant's injuries. The denial was based on the assertion that Claimant's injuries were not caused by repetitive trauma and the Claimant failed to provide timely notice. Defendants further denied that the Claimant was entitled to any temporary total disability benefits, any additional past or future causally-related medical treatment, and was not entitled to permanent disability. They further asserted that the Claimant sought medical treatment outside of the workers' compensation system.

At the hearing, the Defendants asserted that their sole defense was whether the Claimant provided timely notice. They agreed that the Claimant's injuries were caused by a repetitive trauma at Mohawk. The Defendants relied on the case of *King v. International Knife & Saw*, 718 S.E.2d 227, 395 S.C. 437 (SE Ct. App. 2011) in asserting the notice defense. Specifically, the portion of the Order where the court opined that for a work-related repetitive trauma injury, the

90-day reporting clock does not start until the injured employee discovered or should have discovered to be qualified to receive benefits for medical care, treatment, or disability due to his condition. In the case at hand, the Claimant began having problems with carpal tunnel syndrome as early as November 20, 2012. In her deposition, the Claimant testified that she knew in November of 2012 that the pain in her hands were coming from work and testified that she did not provide notice to her Employer until June 28, 2013, which would have been more than 90 days. Defendants assert that, because the Claimant knew her problems were related to work and had sought medical treatment, according to *King*, the Claimant had a duty to report her injuries to her Employer in a timely manner.

The Claimant asserts that notice was timely. First, Claimant asserts that her last injury exposure was not until November 11, 2013 and that the 90 day time period should run from that date. Second, she asserts that the Defendants are barred from asserting the notice of defense based on the fact that the Claimant originally filed a Form 50 that was filed with the Commission on November 14, 2013 and Defendants failed to file a Form 51 in response to that 50 and, therefore, their affirmative defense of failure to provide timely notice is barred. Finally, she asserts that she did not know the claim was compensable until she met with her attorney and thus the 90-day time period should run from that date.

In response, the Defendants assert that the last injury exposure rule no longer applies based on the revisions of the *South Carolina Workers' Compensation Act* in 2007, which establishes repetitive trauma and provided a notice provision in Section 42-15-20(C), which states that, "A claimant must report a repetitive trauma injury within 90 days of the date that the employee discovered or could have discovered by exercising reasonable diligence that his condition is compensable, unless reasonable excuse is made to the satisfaction of the Commission for not giving timely notice and the Commission is satisfied that the employer has not been unduly prejudiced thereby." Further, that under the interpretation of *King*, the 90-day clock starts when the injured employee discovered or should have discovered that she was qualified to receive benefits for medical care, treatment, or disability due to her condition.

With regard to the argument that the Claimant did not know her claim was compensable until she met with her attorney, the Defendants would also argue that that was not the proper test pursuant to Section 42-15-20 and *King v. International Knife & Saw*. Finally, with regard to the argument that because Defendants failed to file a timely Form 51 they can no longer assert the affirmative defense of notice, the Defendants assert that the Claimant withdrew her prior Form 50 at the prior hearing in front of Commissioner Taylor. They assert that the Form 51 was timely as it relates to the Claimant's subsequent Form 50, as evidenced by a printout on eCase.

TESTIMONY

The Claimant was the sole witness who testified at the hearing. Claimant testified that she is 54 years old. She was hired at Mohawk as a twist operator in February of 2006. She described her job as essentially twisting yarns. She explained that she worked a series of rows and spinners that bear between 144 and 188 of spinners spinning yarn at a time. She explained her job is to load spools of thread, tie them in and take off finished spools of thread, cut them out and fix any breakouts that may have occurred during the process. Claimant testified that she began experiencing pain and numbness in her wrist, but did not have any idea of when the pain

began. However, she testified that she would first notice it when she would wake up and then when she would go to sleep the pain would be numb. She stated that when she first started having the problem, she would shake her hand at night and the feeling would come back. Upon questioning from her attorney, she indicated that the first time she saw a doctor was in November of 2012. Claimant testified that she continued to work with her condition which continued to worsen. Claimant testified that in 2012 she went to see Dr. Lingler, but that Dr. Lingler was out and she saw Dr. Steven Millen. She testified that she complained of pain in both of her hands. Claimant testified that she was then referred to Dr. Wohlrab, who is a neurologist. Claimant testified that she saw Dr. Wohlrab on April 2, 2013. She explained her symptoms to him and he provided an injection in both wrists. He recommended a nerve conduction study. She testified that after the nerve conduction study, she went back to the plant and was telling her supervisor she was having problems with her wrists. A First Report of Injury was then filed. Claimant was then sent by Mohawk to see Dr. Wallace. Claimant testified that Dr. Wallace told her that her condition was work-related; however, he stated in the beginning of his medical notes that it was not work-related. Claimant indicated that at some point Dr. Wallace gave her forms stating that her injury was, indeed, work-related. Claimant identified the long-term disability form of February 2014. Claimant testified she was eventually referred to Dr. Moore, who performed surgery. Claimant testified that when Dr. Wallace filled out the forms that her injury was work-related in 2014 was the first time that any doctor had told her that her condition was work-related. Claimant testified that November 17, 2013 was her last day of work. She testified that she has been out of work since that time, except for a couple of days that she tried to go back to work, but her hands bothered her too bad and she had to leave. She testified that her last full day of work was May 7, 2014. Claimant testified that she has now had surgery to both hands and was interested in going back to work. She is scheduled to go back to work on Sunday, October 5, 2014.

Upon cross-examination, the Claimant testified the pain in her hands began prior to November of 2012, but that November 2012 is the first time that she went to a doctor for the pain. Claimant testified that in November of 2012 she was having pain in her hands that consisted of burning and tingling, and that she had to shake her hands at night. Claimant testified that in November 2012 it was her belief that the pain in her hands was coming from work. When asked if she notified anybody at Mohawk of the pain in her hands until June 28, 2013, the Claimant stated that she did say something before, but they did not write it up. The Claimant was then confronted with her deposition testimony in which she stated that she did not report her injury until June 28, 2013; however, she stated that she had forgot when she talked to her supervisor before. It was then pointed out that the Claimant had stipulated in her Form 50 and APAs that notice was given on June 2, 2013. She was questioned by her attorney regarding the time in the past that she told her employer that her hands were bothering her. Claimant agreed that she did not tell them she had a work-related injury and that she did not tell them that she wanted to file a workers' compensation claim.

The Claimant then testified regarding her background. She testified she was a high school graduate and could read and write without any problems, and could perform basic math. Claimant then went under re-direct examination from her attorney.

SUMMARY EVIDENCE

First, records from **Kimberly Lingler** were reviewed. The dates of the records range from November 20, 2012 to June 12, 2013. In the medical record dated November 20, 2012, the Claimant was complaining of pain to her right hand up to her elbow that started two days prior. She notes that she gets up and walks, shaking her hands. She states that she is using braces at night. The history section notes that the Claimant states that she was told four years ago that her pain was from carpal tunnel syndrome, but never went to a specialist. Claimant was assessed as having carpal tunnel syndrome and was advised to continue using her wrist braces. She was referred to an orthopedic and prescribed Naproxen. Claimant followed up on December 12, 2012 for problems listed as carpal tunnel syndrome.

Next, the medical records of **First Health Surgical Specialties** were reviewed. The records were dated April 2, 2013 through July 16, 2013. Claimant treated on April 2, 2013 for bilateral hand numbness. Claimant alleged that she had repetitive motions that aggravated her pain and that she had numbness worse at night. Claimant also noted that she had bilateral hand numbness for three years. Claimant described her pain was worse in her right hand than her left. She denied an injury. Under the plan subjective section it notes that the Claimant was evaluated for bilateral carpal tunnel. She reported that she was diagnosed with carpal tunnel years ago. Under the physical examination, the Claimant had a positive phalen's and positive tinell's bilaterally, right greater than left. She was assessed with bilateral carpal tunnel syndrome. She was administered an injection into both hands and recommended an EMG. On July 1, 2013, the Claimant treated for left wrist pain. It notes the Claimant underwent a bilateral carpal tunnel injection on April 2, 2013. The injection helped the left wrist two months ago. Claimant was assessed with carpal tunnel syndrome. Again, she had positive phalen's and positive tinell's; however, on this visit the Claimant's right-sided symptoms had resolved and her pain was in her left hand and wrist. Claimant was administered another injection into her left carpal tunnel and the Claimant was recommended to undergo an EMG/NCV of the left upper extremity.

Next, the Claimant treated on May 30, 2014. It notes the Claimant had carpal tunnel release on December 3, 2013 and was scheduled for right carpal tunnel syndrome on June 3, 2014. The Claimant reported minimal pain in her left wrist and noted that her numbness had resolved. She did report bilateral wrist and left shoulder pain. She is assessed with pain in her shoulder and was diagnosed with a rotator cup sprain. Claimant reported good relief from her left carpal tunnel surgery. It was also reported that Claimant had a new injury to her shoulder as a result of a motor vehicle accident.

Next, the medical records of **Sandhills Neurologists** were reviewed. The Claimant was seen on July 3, 2013 for a nerve conduction study. It came back abnormal and noted that the data was consistent with mild left and moderately severe right median neuropathy across the wrist (carpal tunnel syndrome). There was no electro diagnostic evidence for ulnar neuropathy or cervical radiculopathy.

Next, the records from **Dillon Internal Medicine** were reviewed. Claimant treated from August 8, 2013 through May 19, 2014. Claimant treated on August 8, 2013 complaining of pain in her left wrist and noted that it may be carpal tunnel syndrome, and that it was work from Mohawk. Then the record notes that the Claimant was sent over by Mohawk with complaints of

carpal tunnel syndrome. She reported numbness and paresthesias of the hand and also reported some neck issues. She reported some pain in her left elbow, but denied any trauma. She noted she had worked for Mohawk for approximately seven years. Claimant was assessed with carpal tunnel syndrome. X-rays were taken of the cervical spine, which showed no spondylosis and normal alignment. The impression was that Claimant had a normal cervical spine. X-rays of the left wrist were normal as well. An x-ray of the cervical spine did reveal degenerative joint disease. An addendum to the note indicated that Claimant had probable carpal tunnel syndrome of the left wrist and also noted the possibility of a double crush with cervical spine degenerative joint disease. It reported that Claimant had a ganglion cyst on the left wrist but did not impinge on the carpal tunnel syndrome or median nerve. Dr. Wallace noted the Claimant could return to work without restrictions on August 8, 2013. A workers' comp verification sheet was completed on August 7, 2013 and noted that the areas of the body covered by the workers' compensation claim was the left wrist and hand. Next, Claimant treated on August 21, 2013. Again, she reported carpal tunnel syndrome in the left wrist. Symptoms included hand pain, hand numbness and hand weakness. Dr. Wallace noted that the Claimant probably had a double crush syndrome with arthritic changes at the neck. Next, Dr. Wallace completed a questionnaire on August 22, 2013 and indicated that the symptoms of the left hand and wrist were not related to the work accident. Instead, Dr. Wallace indicated that the Claimant's current symptoms were related to normal aging/degeneration pre-existing condition. Dr. Wallace completed another questionnaire on September 6, 2013, again noting that the pain in her left wrist and hand were not related to her work, but were rather related to the normal aging process. Claimant followed up with Dr. Wallace on September 19, 2013. Again, she presented with carpal tunnel syndrome in the left wrist. The medical note indicates that the Claimant was upset that the doctor had deemed her carpal tunnel syndrome was not work-related. He reviewed the case and stated that the Claimant may have double crush syndrome in that she has cervical spine degenerative joint disease and noted that he was still trying to obtain the nerve conduction studies. Next, the Claimant followed up on October 3, 2013. Again, she reported pain related to carpal tunnel syndrome in her left wrist. Dr. Wallace noted he still did not have the nerve conduction studies. Again, he prescribed medication for carpal tunnel syndrome. Claimant then followed up on October 8, 2013, again for pain and numbness related to carpal tunnel syndrome. Dr. Wallace reviewed the carpal tunnel syndrome and noted the Claimant had right moderately severe carpal tunnel syndrome and mild carpal tunnel syndrome in the left wrist. He referred the Claimant to Dr. Moore for her carpal tunnel syndrome. Dr. Wallace then provided a work release note that noted the Claimant was seen in his office on October 8, 2013 and could return to modified duty for two weeks. Claimant followed up with Dr. Wallace on November 19, 2013. Again, she reported carpal tunnel syndrome in both wrists. Dr. Wallace noted he had spoken with Michael Williams and that Liberty Mutual has denied her carpal tunnel as workers' compensation and that the Claimant would like medical leave and Mr. Williams said that she would have to go through her regular medical. Dr. Wallace noted he was going to take her out of work for three weeks until she can see Dr. Moore. Dr. Moore wrote a letter to Dr. Wallace dated November 25, 2013 providing a copy of his medical record of November 25, 2013 regarding his diagnosis of bilateral carpal tunnel syndrome and bilateral palmer wrist ganglion cyst which were asymptomatic. Dr. Wallace then saw the Claimant on November 25, 2013, again for carpal tunnel syndrome. Claimant saw Dr. Wallace for FMLA paperwork. Dr. Wallace note the approximate date of the condition commenced on November 19, 2013 and the probable duration of the condition was December 12, 2013, with a return to work December 13, 2013. He noted that he referred the

Claimant to Dr. Robert Moore for carpal tunnel surgery of the left wrist. Next Dr. Wallace completed Section 4 of the attending physician statement for the short-term disability income benefits. He noted that Claimant's condition was a result of illness. He also noted that the carpal tunnel syndrome was related to her work. He opined the Claimant has severe limitation of functional capacity and was incapable of minimal sedentary activity. Claimant followed up with Dr. Wallace on January 31, 2014. Claimant was complaining of pain in her left hand. She notes that her job position required her to pull and push which has caused pain in her hands on the first day back to work. Again he diagnosed the Claimant with left mild carpal tunnel syndrome. Claimant followed up on February 19, 2014. Again, she reported trouble with her left hand as her position requires her to push and pull. Claimant followed up on March 14, 2014 with the same report. There is an addendum which states that the Claimant does have numbness in the clips of her right hand. She further states that she was out on leave and that this was not a workers' comp related injury. He diagnosed the Claimant with left mild carpal tunnel syndrome and referred the Claimant to Dr. Moore. He then provided a work release for March 14, 2014 through April 18, 2014, noting the Claimant could return to work without restrictions on April 21, 2014. A follow-up work release was completed and noted that the Claimant was out of work from May 19, 2014 through May 21, 2014 and to return to work without limitations on May 21, 2014. Finally, a third work release was completed excusing the Claimant from work from May 19, 2014 through September 3, 2014 and noted that the Claimant could return to work without limitations on September 3, 2014.

Next, the medical records of **McLeod Health** were reviewed. The Claimant treated on February 4, 2013 under an anesthesia evaluation. It noted the Claimant had carpal tunnel syndrome on the left wrist and that she had neuropathy in her left hand.

Next, the records of **Pee Dee Orthopaedic Associates** were reviewed. The Claimant had a post-operative examination on November 11, 2014 which she underwent right carpal tunnel release. It noted that her right wrist incision was fully healed, but she had mild scar tenderness and was negative for tinels's. The Claimant reported that she felt that she could not get back to work in her normal duties. He advised her to avoid lifting greater than five pounds and repetitive use for the next month.

Next, **non-medical records** were reviewed. Claimant submitted a First Report of Injury completed on July 3, 2013 which notes that the Claimant was alleging pain in both wrists. The date of injury was listed as August 1, 2008 and the date the Employer was notified was July 3, 2013. Next, a Form 19 was completed on September 9, 2013 showing a date of injury of August 1, 2008 and that the case was denied. Next is a Form 32 Request to Waive Appeal Filing Fee completed by the Claimant requesting fee waiver. Next, the Claimant completed a Form 50 dated November 22, 2013 indicating that she injured her hands. She stated that she was not sure how the injury occurred, but that she had to do repetitive work. She further stated that notice was given to the Employer on June 18, 2013. Next is a First Report of Injury dated December 10, 2013 noting a date of injury of June 28, 2013 and that the Employer was notified on December 21, 2013. It was noted that this was filing for litigation purposes only. A Form 18 was completed on December 26, 2013 showing no payment of TTD or medical benefits. A Form 50 was then completed by the Claimant's attorney on July 3, 2014 asserting that the Claimant sustained an injury to both wrists and neck as a result of an injury occurring on November 17, 2013 noting that that was the last day of injurious exposure. The Form 50 notes that notice was

given to the Employer on June 28, 2013. A Form 51 was completed and filed on August 1, 2014 in which the Defendants asserted that the Claimant's injury was not caused by the repetitive trauma and noted that the Claimant failed to provide timely notice. Defendants further assert that the Claimant sought treatment outside of the workers' compensation system. Finally, reports to the South Carolina Workers' Compensation Commission were reviewed that showed a timeline of documents being filed with the Commission and confirms that a Form 51 was not filed after the Claimant's *pro se* Form 50, but that a Form 51 was timely filed after the Claimant's attorney's subsequent Form 50. Next, records of the Employer were reviewed, which showed the Claimant's earnings from November 1, 2012 through September 18, 2014.

FINDINGS OF FACT

Based upon the evidence submitted at the hearing and the testimony of the witness, it is found as a fact that:

1. The Claimant alleges that she sustained a repetitive trauma injury to both wrists arising out of and within the course and scope of her employment.
2. She alleges on her Form 58 a date of injury of 11/17/13.
3. The Defendants deny her claim based on the lack of timely notice to her employer. They allege 06/28/13 as the date of injury in their pre-hearing brief.
4. The sole issue before the Commission at this hearing is a determination of compensability.
5. The Claimant initially filed this case *pro se* on 11/13/13. No Form 51 was filed. That Form 50 was withdrawn.
6. The Claimant then hired Mr. Wukela to represent her and he filed another Form 50 on her behalf. The Defendants responded by filing a Form 51 in response.
7. The Claimant's position is that since the Defendants did not file a Form 51 in response to her initial filing on 11/13/13, defensive notice was forfeited per the regulation.
8. The Claimant's position as to notice would be correct had she not withdrawn the Form 50 filed on 11/13/13. She, however, did withdraw that Form 50 and, as such, afforded the Defendants the opportunity to file a timely response – which they did – when she filed a new Form 50 on 07/03/14.
9. Both sides argue King v. International Knife and Saw as applicable case law. They are correct.
10. The Claimant's condition becomes compensable when she knew or should have known that she qualified for benefits for medical care and treatment, as well as disability due to her condition.

11. The Court of Appeals writes in King, “King’s condition was not compensable until it either required medical care or interfered with his ability to perform his job, whichever occurred first.

12. The Claimant testified at the hearing that the pain started in 2012, and that is when she first went to see a doctor.

13. She also testified that she thought at that time that her pain was work-related.

14. The medical note from Dr. Kimberley Linger dated 09/19/12, states in the Assessment/Plan section – “CARPAL TUNNEL SYNDROME – New problem...”

15. The Claimant does not provide notice to her employer until 06/28/13.

16. Given the timeline, the Claimant has failed to provide notice to her employer within the statutorily designated time period.

17. That being said, the Claimant has disqualified herself from any benefits that would have been due her had notice been timely.

18. When the evidence is viewed as a whole, the Claimant has failed to meet her burden as to compensability and the claim is dismissed.

CONCLUSIONS OF LAW

1. Section 42-1-160 of the South Carolina Code of Law (1976, as amended) is applicable in defining injury and personal injury.
2. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in defining the period of time within which medical treatment and supplies shall be furnished.
3. Section 42-15-20 of the South Carolina Code of Law (1976, as amended) is applicable in determining when a claimant must provide notice to the employer regarding a repetitive trauma injury.
4. Section 42-17-40 of the South Carolina Code of Law (1976, as amended) is applicable in governing the conduct of hearings and renderings of awards.
5. *King vs. International Knife and Saw*, 395 S.C. 437; 718 S.E. 2d 227, (SC Ct. App. 2011) is applicable in determining when a claimant must report an injury to the employer after suffering a repetitive trauma injury and states that notice must be made within 90 days of when claimant knew or should have known that the repetitive trauma injury was compensable. Compensability is determined when the condition requires medical treatment or interferes with an employee’s ability to perform his or her job, whichever occurs first.

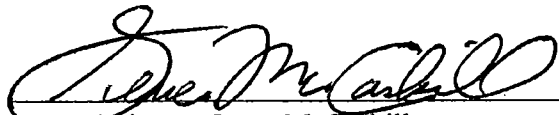
ORDER

Based on the Findings of Fact and Conclusions of Law, the undersigned Commissioner orders as follows:

1. **IT IS ORDERED** that the Claimant sustained an injury to her bilateral wrists in the form of carpal tunnel syndrome.
2. **IT IS FURTHER ORDERED** that the Claimant failed to provide timely notice of her injury, as she began having pain in her wrists in 2012 and sought and received medical treatment in November of 2012 and was diagnosed with carpal tunnel syndrome at that time. Further, the Claimant stated that in 2012 she knew that the pain in her wrists was coming from her work at Mohawk. The Claimant did not provide notice of a work-related injury to her employer until June 28, 2013.
3. **THEREFORE, IT IS ORDERED** that because the Claimant failed to provide timely notice, she has disqualified herself from any benefits that would have been due to her had notice been timely.
4. **THEREFORE, IT IS FURTHER ORDERED** that when the evidence is viewed as a whole, the Claimant failed to meet her burden as to compensability and the claim is dismissed.

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Gene McCaskill

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).
January 26, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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OCT 13 2015

W.C.C. File No.: 1315636

SC Court of Appeals

Kathey L. Staton, Employee, Appellant,


v.

Mohawk Industries, Inc., Employer, and
Liberty Mutual, Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 9th day of October 2015, I served the Respondents' **Motion to Strike Portions of Initial Brief of Appellant and Designation of Matter** on Kathey L. Staton by depositing a copy of it in the United States Mail, postage prepaid, addressed to her attorney of record:

Stephen J. Wukela, Esq.
Wukela Law Firm, LLC
P.O. Box 13057
Florence, SC 29504-3057



Jami L. Richards
Legal Assistant to Helen F. Hiser
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(843) 576-2900

Attorneys for Respondents

mgc

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

October 9, 2015

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OCT 13 2015
SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Kathey Staton vs. Mohawk Industries and Liberty Mutual Insurance
 Company
 Date of Accident: June 28, 2013
 WCC File No.: 1315636
 Our File No.: 2095.14124
 Claim No.: WC555-C21415
 Appeal No.: 2015-001675

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike Portions of Appellant's Initial Brief and Designation of Matter, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC


Helen F. Hiser

Enclosures

cc: Stephen J. Wukela, Esq.

mgc

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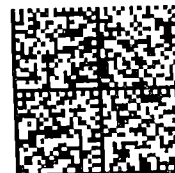
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The Honorable Jenny Abbott Kitchings
South Carolina Court Of Appeals
1220 Senate St
Columbia SC 29201-3769

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