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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
APPELLATE PANEL, WORKERS' COMPENSATION COMMISSION

(S.C. Ct. App. Orders dated Aug. 29, 2014 and March 19, 2015)

Shannon Cook Respondent,

v.

Spartanburg Steel Products, Inc. Petitioner.

MOTION TO DETERMINE AUTOMATIC STAY

This motion is filed pursuant to 240 of the South Carolina Appellate Court Rules, which governs motions and petitions generally. It is also filed pursuant to *State v. Cooper*, which provides that when there is a dispute about whether the automatic stay applies, the authority to resolve that dispute is vested in this Court and in the Court of Appeals. See 342 S.C. 389, 398, 536 S.E.2d 870, 875-76 (2000).

This is a workers' compensation case in which this Court is currently considering a petition for a writ of certiorari. This motion is being filed because the parties disagree over whether Spartanburg Steel Products must provide Mr. Cook's medical care during this appeal. The parties also disagree over whether the commission should immediately hear disputes about delayed medical treatment even though this appeal is pending. Spartanburg Steel Products has taken opposite positions in this Court and the commission. This issue merits a prompt decision as it is delaying Mr. Cook's treatment.

BACKGROUND

In May of 2014, the Workers' Compensation Commission determined that this claim was compensable and designated an authorized treating physician. Spartanburg Steel Products was ordered to provide medical care through Dr. Charles Kanos. All other issues in the case were held in abeyance pending a final order. The commission's order is attached to this motion. See **Exhibit 1**. The relevant sections appear on page 16.

The reason medical treatment is important in this case is that every doctor who has seen Mr. Cook has opined that he needs surgery. The commission noted this in its decision, observing that there was no evidence to the contrary. See **Exhibit 1**, p.13 ¶9.

Spartanburg Steel Products appealed the commission's order to the Court of Appeals, and the Court of Appeals dismissed the appeal because the commission's order is not a "final decision." C-TRACK Appellate Case No. 2014-001372. Spartanburg Steel then petitioned this Court for a writ of certiorari, and after Mr. Cook argued in his return that he still had not received the surgery the commission authorized, Spartanburg filed a reply admitting it was obligated to provide medical care while the case was on appeal. See **Exhibit 2**, page 7.

But the surgery has never been provided. On March 17, 2015, Mr. Cook requested a hearing seeking additional medical treatment as well as temporary total disability benefits. The pre-hearing brief he filed with the commission explained he is *still waiting* for the surgery Dr. Kanos recommended. See **Exhibit 3**.

Spartanburg Steel responded to Mr. Cook's hearing request by filing a motion to stay. The motion summarily claimed that the hearing on Mr. Cook's case should be postponed pending this Court's decision. See **Exhibit 4**.

Mr. Cook opposed this motion and filed a motion to compel. He cited *Johnson v. Sonoco Products Co.* for the proposition that a lower court retains jurisdiction to enforce a workers' compensation award (and to award penalties for non-payment) even though an appeal is pending. See **Exhibit 5** (both filings, citing 381 S.C. 172, 672 S.E.2d 567 (2009)).

Spartanburg Steel opposed the motion to compel by repeating the same argument from its motion to stay. See **Exhibit 6**. It has never cited any authority for its position.

The commission ruled in Spartanburg Steel's favor; denying the motion to compel and granting the motion to stay. Both decisions expressly note that the commission is apparently waiting for this Court to rule on the certiorari petition. See **Exhibit 7**.

ARGUMENT

Section 42-17-60 of the South Carolina Code acknowledges that an appeal in a workers' compensation case is not a supersedeas and that the employer is liable for medical benefits while an appeal is pending. Spartanburg Steel did not dispute this in its filings in this Court. Indeed, its reply on certiorari acknowledged this principle. The statute is clear.

Yet, when Mr. Cook sought to enforce the commission's order that Spartanburg Steel was to provide the medical treatment Dr. Kanos recommended, Spartanburg Steel obstructed that effort. It did not explain why medical treatment has not been provided, and it did not claim that Mr. Cook was somehow mistaken. It sought instead—through two (2) filings that cited no authority—to postpone the hearing so the commission would not decide the issue. See **Exhibits 4 & 6**.

Thus, although the certiorari filings would suggest that there is no disagreement about the automatic stay's application, the filings at the commission tell a different story. In one

forum, Spartanburg Steel claims to acknowledge its obligation to prove Mr. Cook's surgery. In the other forum, not so.

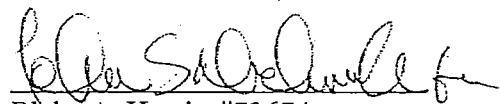
The Court should issue an order explaining that the automatic stay does not apply. Section 42-17-60 establishes—quite firmly—that the pendency of an appeal has no effect on this issue, and *Johnson* confirms that a lower tribunal has the power to award penalties for non-compliance. This is also supported by the Workers' Compensation Act itself, which explains that if the commission determines that a party has failed to comply with an order and lacks good cause for such non-compliance, the at-fault party must pay attorneys fees and costs, and the commission may impose a fine of up to \$500 per day. See S.C. Code Ann. § 42-3-175. Fines and fees are well and good, but Mr. Cook needs medical treatment now, is entitled by statute to receive it now, and his employer should pay for it now.

CONCLUSION

This Court should issue an order explaining that the automatic stay does not apply. The Court should instruct the commission that it must consider the motion to compel medical treatment and any request for penalties. Mr. Cook will now be seeking attorneys' fees and costs when he re-files his motion.

July 29, 2015

Respectfully submitted,



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Exhibit 1

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: **0726308**

Shannon Cook)	
)	
Claimant/Respondent)	
)	
v.)	<u>APPELLATE PANEL DECISION AND ORDER</u>
)	
Spartanburg Steel Products, Inc.)	
)	
Defendant/Appellant)	

A hearing before the Single Commissioner, Susan S. Barden, was heard September 27, 2013. The Claimant/Respondent, Shannon Cook, was represented by attorney Ryan Montgomery of Ryan Montgomery Attorney at Law, LLC. The Defendant/Appellant, Spartanburg Steel Products, Inc. was represented by Brad B. Easterling of McAngus, Goudelock and Courie. The matter was set on the claimant's Form 50 request for a Change of Condition. At that hearing, the Single Commissioner found that the claimant had sustained a change of condition for the worse as identified in the Single Commissioner Findings of Fact herein and below. Defendants' timely filed a Form 30 request for Appeal. This matter came before the Appellate Panel of the Full Commission on March 17, 2014 to address the issues raised in the Form 30.

I. STATEMENT OF CASE

A. Employee's Position

It was the position of the employee that he had sustained a change of condition for the worse to include a need for surgery. Procedurally, this matter was originally handled by attorney Tom Gagne of Greenville, South Carolina. The underlying matter went to hearing on June 8, 2011 at which time permanency and the need for future medical was addressed. Commissioner Wilkerson awarded Claimant 25% permanent partial disability to the spine, which was paid on

June 27, 2011 On May 9, 2012 less than one year later, counsel for the claimant, Tom Gagne, filed a Form 50 (claim only) alleging a change of condition for the worse and attached a medical report from Dr. Tony Rana indicating the claimant had sustained a change of condition for the worse. Between that filing and May 17, 2013, the claimant terminated his legal representation with Tom Gagne and retained, attorney Ryan Montgomery of Greenville, South Carolina. On May 17, 2013 Mr. Montgomery filed a supplemental Form 50 requested a hearing to address the change of condition for the worse previously filed by Tom Gagne.

From a medical perspective and once the claimant alleged a change of condition for the worse as of May 9, 2012, the defendants referred the claimant to Dr. Marco Rodriguez who opined that the claimant needed a lumbar fusion. The defendants then referred the claimant to Dr. Charles Kanos who opined that the claimant was in need of a CT Myelogram to definitely determine whether or not the Claimant was in need of surgery. Dr. Kanos recommended against the lumbar fusion as recommended by Dr. Rodriguez. At this point the medical treatment from defendants was discontinued except for the medical treatment with Dr. Phillip LaTourette, the claimant's authorized pain management physician. Claimant on his own obtained the CT Myelogram and a return visit to Dr. Charles Kanos. At that appointment it was the medical opinion that Dr. Kanos that the claimant needed surgery and that his condition had worsened. The claimant took the position on the date of the hearing, Drs. Latourette, Kanos, Rodriguez and Rana had all opined that the claimant has sustained a change of condition for the worse.

Realizing that the defendants would argue that the case was a legal issue based upon the Form 50 Claim only and the case of the Allen v. Benson Outdoor Advertising, 236 S.C. 22 (1960), claimant responded to the case of Allen v. Benson but arguing the distinction in that case and the case at bar. In the Allen case, the issue was whether the case must be heard within the twelve month period. Allen timely filed an application but it was not heard within one year.

That case did not address anything associated with filing the application for a claim only in order to toll the statutory one year requirement as required in §42-17-90. The Allen Court goes on to cite and incorporate additional jurisdictional opinions noting that “the filing of a claim for further compensation within the statutory period and partial but not complete development thereof with such period, with loss of jurisdiction by the Commissioner would be an absurd result which the legislature certainly did not have in mind...a claim if filed within the statutory period applicable to the nature of the claim filed”. The Allen court held and only held that the application for review was made within one year and so they had jurisdiction to hear the claim. It did not go beyond that and extrapolating sentences out of context does not change that.

In addition, when claimant filed the Form 50 hearing request, the medical report of Dr. Tony Rana had already been filed in support of the change of condition.

During the argument on appeal in front of the Full Commission Appellate panel, claimant by and through his attorney specifically requested a finding that the defendants were estopped from arguing a statute of limitations issue as their actions of providing medical caused the claimant to detrimentally rely upon those actions and reasonable inferred that the Defendants were going to provide medical treatment for the change of condition. See Full Commission Tr., pp. 13-14.

B. Employer's Position

The employer argues claimant has not sustained a change of condition for the worse. However, the defendants' primary position(s) are that the Commission need not reach that decision as it lacks jurisdiction to hear the case based upon the following three arguments:

First, the defendants argue claimant's claim is barred by S.C. Code 42-17-90. The last sentence under 42-17-90 reads: "...the review [on a claim for change of condition] **must not** be

made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title." (emphasis added). Defendants submitted the case of Allen v. Benson Outdoor Advertising, 236 S.C. 22 (1960), which defendants contend requires that a Request for Hearing be filed within one year from the date of the last payment of compensation. Defendants argue this requires the filing of a Form 50, Request for Hearing, and not simply a Form 50 – Notice of Claim Only. On May 9, 2012, claimant's prior counsel, Tom Gagne, only filed a Form 50 -- Notice of Claim alleging a change of condition but did not request a hearing. Based on Allen, defendants contend the claimant is barred from proceeding under a change of condition argument and the undersigned Commissioner does not have jurisdiction over the claim.

Second, the defendants argued that, even if the Form 50 - Notice of Claim only did toll the statute of limitations, the claimant still cannot proceed with his change of condition request as the claimant's prior counsel relied upon (submitted with the May 9, 2012 Form 50 – Notice of Claim only) a medical report from Dr. Tony Rana, which defendants contend is nebulous in nature and gives no factual basis upon which the opinion is based. For this argument, defendants rely on the case of Young v. Tide Craft, 270 S.C. 453, 242 S.E.2d 671 (1978), which holds that expert opinion is inadmissible if its factual foundation is nebulous. In his February 16, 2012 report, which claimant relies upon to support his claim for change of condition, relative to claimant's lumbar spine, Dr. Rana assigned the exact same medical impairment rating as his did in his earlier July 14, 2010 report. In his February 16, 2012 report, Dr. Rana, as he also did in his July 14, 2010 report, opines claimant remains at MMI for the injuries received as result of his September 17, 2007 work accident. Defendants submit that, inherently, there can be no change of condition if claimant's MMI status is unchanged subsequent to the last payment of compensation. The only difference noted in Dr. Rana's two IME reports is found in his February 16, 2012 report where he references claimant's thoracic disc herniation at the T8/T9 level.

However, nowhere in his February 16, 2012 report does Dr. Rana causally relate claimant's thoracic condition to his September 17, 2007 work injury.

Finally, defendants argue that claimant's claim should be barred by South Carolina Workers' Compensation Regulation 67-602 C., which requires the moving party to attach to the hearing request form a medical report(s) indicating a change in claimant's condition. In this claim, there was no medical report attached to the May 17, 2013 Form 50 nor to the August 9, 2013 Form 50, the only two Forms 50 requesting a hearing.

II. EVIDENCE OF CASE

The claimant by way of previous counsel submitted a Form 50 Change of Condition Application (Claim Only) on and in number 11a of the application states "Claimant comes for a change of condition". See APA 8, pp. 176-177. Pursuant to §42-17-90, the previous counsel included a medical report from Tony Rana, M.D. dated February 16, 2012. See APA 8, pp. 178-180. Dr. Rana notes that the claimant "returns for evaluation of a worsening of condition". Id. at 178. Dr. Rana went on to provide a basis for his opinion in that he identifies "treatment since his prior evaluation has included psychological counseling by Dr. Tollison and transforaminal epidural steroid injections by Dr. LaTourette" Id.

Following the application for a change of condition, Dr. Latourette referred Mr. Cook on August 15, 2012 for an evaluation with Dr. Marco Rodriguez at Orthopaedic Specialties which was authorized by the defendants. See Clmt. APA 3. Dr. Rodriguez opined that the claimant "shows a positive straight leg raise on the left side". Id. at 136. Dr. Rodriguez recommended and prescribed a MRI conducted at Piedmont Imaging on September 13, 2012. Clmt. APA 4, p. 14. Presumably, Dr. Rodriguez reviewed the MRI film studies and added to his report indicating the MRI showed "L5-S1 recurrent herniation compression the L5 and S1 nerve roots on the left

side". Id. "It is truly a recurrent herniation". Id. Dr. Rodriguez, further opined that the claimant should be scheduled for surgery to include a lumbar fusion". Rodriguez also opined that the recurrent herniation was causally related to his work injury of 9/17/07 and that Mr. Cook had sustained a change of condition for the worse. Id. at 146.

The employer/carrier referred Mr. Cook for another medical opinion. This time he was sent to Charles Kanos, M.D. of SouthEastern Neurosurgical. According to the Kanos report of December 14, 2012 "new patient is seen at the neurosurgical consultation at the request of WC for evaluation of low back pain". Clmt. APA 5, p. 149. Kanos noted he had positive straight leg raise on the left. Kanos saw the claimant again on February 27, 2013 on a "WC follow up on low back pain". Id. at 152 Claimant was noted to have post-surgical changes on L5-S1 and noted that the most appropriate treatment plan would be a Lumbar CT myelogram with emphasis on film myelography looking for fill defects which if there was a defect then a decompression surgery would help. Id. at pp. 152-153.

Claimant terminated his relationship with previous counsel and hired Ryan Montgomery on May 16, 2013. See record as a whole and claimant's testimony. Current counsel amended the previously filed Form 50 Claim only and filed an application for change of condition by way of a Form 50 requesting a hearing on May 17, 2013 and subsequently filed another Form 50 on August 9, 2013. See Commission file.

On June 25, 2013, Dr. Kanos opined that the claimant's need for the CT Myelogram was medically necessary and causally related to his workers' compensation injury and that the claimant had sustained a change of condition for the worse. Clmt. APA 5, p. 155. Despite the opinion from their own doctor, Dr. Kanos, the carrier failed to provide this CT Myelogram and the claimant underwent that examination on his own the results of which are located at Clmt. APA 6 and incorporated herein by reference.

The claimant then returned to the workers' compensation carrier selected physician, Dr. Kanos, but this time at his own expense. Clmt. APA, p. 155e. In that appointment, Dr. Kanos opined that the claimant was in need of a L5-S1 decompression and a left L4-5 foraminotomy Clmt APA, p. 155c-d. In addition, Dr. Kanos completed another questionnaire indicating that Mr. Cook had sustained a change of condition for the worse as he needs additional medical treatment. See Clmt. APA, p. 155a.

In addition to these authorized physicians (Dr. Rodriguez and Dr. Kanos), the claimant also treated with Dr. Phillip LaTourette, the authorized treating physician for Mr. Cook's pain management. After reviewing the reports from Rodriguez and Kanos, Dr. LaTourette concurred that Mr. Cook had sustained a change of condition for the worse. Clmt. APA, p. 128a.

The defendants submitted a surveillance video received without objection wherein the claimant works under the hood of a vehicle for approximately 1 hour and moves a commercial car jack in the video. The video was taken approximately 9-10 months prior to the hearing. See Defendants' APA and the Hr. Tr. testimony of the claimant generally.

On cross examination, claimant testified that he was offered a light duty position by the employer before the hearing with Commissioner Wilkerson June 8, 2011 but to date he has not contacted the employer with respect to that light duty position. See. Hr. Tr. generally.

III. SINGLE COMMISSIONER FINDINGS OF FACT

Based upon a review of the above evidence as well as the entire record, the Single Commissioner made the following Findings of Fact:

1. In an admitted accident on September 17, 2007, Claimant injured his back (resulting in bilateral radiculopathy) and sustained admitted psychological overlay. He alleges that (a) he has sustained a change of condition for the worse; or alternatively, (b) Defendants should be required to provide the surgery recommended for Claimant as a *Dodge*/future medical.

2. Claimant is 33 years of age (medical evidence establishing Claimant's date of birth as 4/26/80).
3. Prior to the hearing with Commissioner Wilkerson, Claimant (a) underwent two lumbar surgeries for a "large" herniated disc; and (b) failed a spinal cord stimulator trial (Claimant's APA #1, pages 3, 7, 11, and 19).
4. Commissioner Wilkerson awarded Claimant permanency benefits to the spine (25%) on June 8, 2011. I base this finding on the Commission's file (See also Claimant's APA #7).
5. Defendants paid the permanency award on June 27, 2011.
6. Claimant's counsel (Mr. Gagne) timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse. Attached to the Form 50 was an opinion from Dr. Rana that Claimant has sustained a change of condition for the worse (Claimant's APA #8).
7. On May 17, 2013, Claimant's current counsel (Mr. Montgomery) filed a Form 50 requesting a hearing on the change of condition for the worse (Claimant's APA #9).
8. Pursuant to Section 42-17-90 and a sequential review of the treatment records dated after the hearing before Commissioner Wilkerson, I find that Claimant's lumbar spine condition has significantly worsened: after the permanency award was paid, Claimant's back and leg pain increased, and a cane was prescribed for "antalgic gait and leg weakness." Claimant's medications were no longer relieving his pain, and were therefore changed/increased. Treatment records note that (a) morphine was having "very little effect;" (b) Claimant's Waddell's signs were consistently "0/5;" and; most importantly; (c) Claimant has "*severe [post-surgical] scar tissue formation.*" Claimant has also undergone multiple injections since the date of the permanency award, and he requested another surgical consult/opinion in December 2011. As all these records are from authorized providers, Defendants had notice of Claimant's worsening condition as well as notice of his request for another surgical opinion (e.g., Claimant's APA #1, pages 5-6, 8, 10, 13, 21, 26, 33, 36, 38-39, 45, 48, 50, 53, 57, 59, 75, 80, 85, 97, 102, 108, 110, 114, and 116; See also Claimant's APA #3, page 143).
9. Three **authorized physicians** state that Claimant has sustained a change of condition for the worse, and that Claimant needs further surgery. There is no competing questionnaire or evidence to the contrary (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 128-128A; Claimant's APA #3, pages 136, 143, and 146; Claimant's APA #5, pages 155, 155A, and 155D).
10. The questionnaires referenced *supra* are clearly supported by the treatment records in evidence, and I therefore accord the questionnaires great weight (medical evidence in its entirety).
11. At the hearing, Claimant appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. I considered the fact that Dr. Kanos found some

“exaggerated response” during his exam of Claimant, but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), I find that Claimant may be merely appealing for help. Moreover, Claimant has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, Claimant volunteered the fact that he went out to dinner and a movie with his son, and that he is “trying to do some walking and he is praised.” If Claimant were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything (Claimant’s APA #1, pages 122 and 126; observations of the undersigned; medical evidence in its entirety; Commission file containing pleadings and Orders).

12. Surgery was not a future medical ordered by Commissioner Wilkerson. Although there is no dispute that Claimant now needs surgery, I am unable to order surgery as a future medical under Commissioner Wilkerson’s Order. (See ORDER language, page 16 of Commissioner Wilkerson’s Order, which limits future medicals to those listed on the Form 14B).
13. Claimant has not reached maximum medical improvement, a finding I base on the opinions of three authorized physicians (e.g., Claimant’s APA #1, page 128A).
14. Claimant shall receive reimbursement for his \$25 filing fee, such that he is not charged or responsible for the cost of his Motion to Compel (Claimant’s APA #10).
15. Claimant shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos: Dr. Kanos (Defendants’ IME) requested a CT Myelogram prior to rendering a surgical opinion. Once Dr. Kanos reviewed the results of the CT Myelogram, he agreed that Claimant needs surgery, although Dr. Kanos does not recommend fusion surgery (Claimant’s APA #5, pages 155, 155A, and 156; Claimant’s APA #6, pages 156-157).
16. Dr. Kanos is hereby named the treating surgeon. He is very familiar with Claimant’s spinal condition, and his surgical approach in Claimant’s case is more conservative than that recommended by other physicians in this case.
17. Permanency is premature.
18. I find that the opinion from Dr. Rana is not inadmissible. Dr. Rana’s physical examination mentions the lumbar spine no fewer than 5 times, and he opines that Claimant sustained a change of condition to the spine. Whether or not Dr. Rana found Claimant to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission’s involvement would be unnecessary. Dr. Rana does opine that Claimant has an “additional” problem of thoracic spine involvement; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to “punish” Claimant for any deficiencies with regard to Dr. Rana’s record/opinion, **when the authorized treatment records clearly support an opinion of a worsened condition** (Claimant’s APA #2).

19. I considered Defendants' video surveillance, but it does nothing to persuade the undersigned to deviate or retreat from this decision.
20. Claimant's average weekly wage is \$846.64, yielding a compensation rate of \$564.46. I base this finding on the Order of Commissioner Wilkerson.
21. Any issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse;
22. Based upon the medical records as a whole to include Dr. Kanos' medical notes, I find that the claimant is entitled to additional medical treatment through Dr. Kanos, including but not limited to the recommended surgery, as it is causally related to the underlying injury, medically necessary and will tend to lessen the period of disability.

IV. SINGLE COMMISSIONER CONCLUSIONS OF LAW

Based upon a review of the above evidence and Findings of Fact as well as the entire record, the Single Commissioner made the following Conclusions of Law:

1. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, the claimant has sustained a change of condition for worse;
2. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, claimant's previous counsel timely filed an application for a change of condition;
3. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed his Form 50 on or about May 9, 2012;
4. Pursuant to §42-17-90, the evidence as a whole, the above findings of fact and the case of Young v. Tide Craft, Inc. Dr. Rana's opinion was based enough on fact to create an issue as to the merits to be adjudicated at this hearing and does not preclude the claimant from now pursuing a change of condition request;
5. Pursuant to the South Carolina case of Allen v. Benson Outdoor Advertising Co. 236 S.C. 22; 112 S.E2d 722 (1960) this case at bar is not precluded from being brought for a

change of condition. The undersigned Commissioner notes the language within the Allen case which allows for “the filing of a claim for further compensation within the statutory period” is enough and that loss of jurisdiction by the commission would be an *absurd* result which legislature certainly did not have in mind. Id. at 30;

6. Pursuant to §42-15-60; the claimant is entitled to additional medical treatment with Dr. Charles Kanos as this treatment is medically necessary, casually related and will tend to lessen the period of disability;
7. Pursuant to §42-15-60, all medical treatment with Dr. Kanos was causally related, medically necessary and would tend to lessen the period of disability. Claimant is entitled to reimbursement of any and all expenses and co-pays associated with this treatment;
8. Pursuant to Title 42 of the South Carolina Code Annotated, et. seq., all issues not addressed herein are hereby held in abeyance, including but not limited to additional permanency.

V. SINGLE COMMISSIONER ORDER

IT IS, THEREFORE, ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein verbatim and this Order is based upon the above cited Findings of Fact and Conclusions of Law. It is further Ordered:

1. The defendants shall reimburse the claimant his \$25.00 fee associated with the Motion to Compel and previously ordered by Order of the Commission;
2. The defendants shall reimburse the claimant for any and all expenses associated with the medical treatment as directed by or provided by Dr. Charles Kanos;
3. The defendants shall provide ongoing medical care through Dr. Charles Kanos; and
4. All other issues not addressed herein are hereby held in abeyance pending a final order of the Commission;

VI. FULL COMMISSION FINDINGS OF FACT

After considering all of the evidence contained in the record, by unanimous Affirmation, we affirm the Single Commission Order in its entirety and therefore make the following Findings of Fact:

1. In an admitted accident on September 17, 2007, Claimant injured his back (resulting in bilateral radiculopathy) and sustained admitted psychological overlay. He alleges that (a) he has sustained a change of condition for the worse; or alternatively, (b) Defendants should be required to provide the surgery recommended for Claimant as a *Dodge* future medical.
2. Claimant is 33 years of age (medical evidence establishing Claimant's date of birth as 4/26/80).
3. Prior to the hearing with Commissioner Wilkerson, Claimant (a) underwent two lumbar surgeries for a "large" herniated disc; and (b) failed a spinal cord stimulator trial (Claimant's APA #1, pages 3, 7, 11, and 19).
4. Commissioner Wilkerson awarded Claimant permanency benefits to the spine (25%) on June 8, 2011. We base this finding on the Commission's file (See also Claimant's APA #7).
5. Defendants paid the permanency award on June 27, 2011.
6. Claimant's counsel (Mr. Gagne) timely filed a Form 50 on May 9, 2012, alleging a change of condition for the worse. Attached to the Form 50 was an opinion from Dr. Rana that Claimant has sustained a change of condition for the worse (Claimant's APA #8).
7. On May 17, 2013, Claimant's current counsel (Mr. Montgomery) filed a Form 50 requesting a hearing on the change of condition for the worse (Claimant's APA #9).
8. Pursuant to Section 42-17-90 and a sequential review of the treatment records dated after the hearing before Commissioner Wilkerson, we find that Claimant's lumbar spine condition has significantly worsened: after the permanency award was paid, Claimant's back and leg pain increased, and a cane was prescribed for "antalgic gait and leg weakness." Claimant's medications were no longer relieving his pain, and were therefore changed/increased. Treatment records note that (a) morphine was having "very little effect," (b) Claimant's Waddell's signs were consistently "0/5," and, most importantly, (c) Claimant has "*severe [post-surgical] scar tissue formation.*" Claimant has also

undergone multiple injections since the date of the permanency award, and he requested another surgical consult/opinion in December 2011. As all these records are from authorized providers, Defendants had notice of Claimant's worsening condition as well as notice of his request for another surgical opinion (e.g. Claimant's APA #1, pages 5-6, 8, 10, 13, 21, 26, 33, 36, 38-39, 45, 48, 50, 53, 57, 59, 75, 80, 85, 97, 102, 108, 110, 114, and 116; *See also* Claimant's APA #3, page 143).

9. Three **authorized physicians** state that Claimant has sustained a change of condition for the worse, and that Claimant needs further surgery. There is no competing questionnaire or evidence to the contrary (medical evidence in its entirety, including but not limited to Claimant's APA #1, pages 128-128A; Claimant's APA #3, pages 136, 143, and 146; Claimant's APA #5, pages 155, 155A, and 155D).
10. The questionnaires referenced *supra* are clearly supported by the treatment records in evidence, and I therefore accord the questionnaires great weight (medical evidence in its entirety).
11. At the hearing, Claimant appeared to be in genuine discomfort, a presentation which did not appear to be feigned or contrived. We considered the fact that Dr. Kanos found some "exaggerated response" during his exam of Claimant, but given the fact that there is objective pathology after both an MRI and a CT myelogram (such that three physicians, including Dr. Kanos, recommend surgery), we find that Claimant may be merely appealing for help. Moreover, Claimant has not exaggerated his condition to authorized treating physicians; in fact, the opposite is true. To treating physicians, Claimant volunteered the fact that he went out to dinner and a movie with his son, and that he is "trying to do some walking and he is praised." If Claimant were being untruthful about his condition, it would have been far more expedient for him to claim he cannot go anywhere or do anything (Claimant's APA #1, pages 122 and 126; observations of the undersigned; medical evidence in its entirety; Commission file containing pleadings and Orders).
12. Surgery was not a future medical ordered by Commissioner Wilkerson. Although there is no dispute that Claimant now needs surgery, we are unable to order surgery as a future medical under Commissioner Wilkerson's Order. (*See* ORDER language, page 16 of Commissioner Wilkerson's Order, which limits future medicals to those listed on the Form 14B).
13. Claimant has not reached maximum medical improvement, a finding we base on the opinions of three authorized physicians (e.g., Claimant's APA #1, page 128A).
14. Claimant shall receive reimbursement for his \$25 filing fee, such that he is not charged or responsible for the cost of his Motion to Compel (Claimant's APA #10).
15. Claimant shall receive reimbursement for the CT Myelogram and visits with Dr. Kanos: Dr. Kanos (Defendants' IME) requested a CT Myelogram prior to rendering a surgical opinion. Once Dr. Kanos reviewed the results of the CT Myelogram, he agreed that Claimant needs surgery, although Dr. Kanos does not recommend fusion surgery

(Claimant's APA #5, pages 155, 155A, and 156; Claimant's APA #6, pages 156-157).

16. Dr. Kanos is hereby named the treating surgeon. He is very familiar with Claimant's spinal condition, and his surgical approach in Claimant's case is more conservative than that recommended by other physicians in this case.
17. Permanency is premature.
18. We find that the opinion from Dr. Rana is not inadmissible. Dr. Rana's physical examination mentions the lumbar spine no fewer than 5 times, and he opines that Claimant sustained a change of condition to the spine. Whether or not Dr. Rana found Claimant to be at maximum medical improvement is not dispositive any more than is a statement by a physician to a reasonable degree of medical certainty that a claimant has sustained a repetitive trauma injury. Otherwise, the Commission's involvement would be unnecessary. Dr. Rana does opine that Claimant has an "additional" problem of thoracic spine involvement; whether or not the Commission or any other physician agrees with that statement is a merits issue for adjudication. The undersigned is unwilling to "punish" Claimant for any deficiencies with regard to Dr. Rana's record/opinion, **when the authorized treatment records clearly support an opinion of a worsened condition (Claimant's APA #2).**
19. We considered Defendants' video surveillance, but it does nothing to persuade the undersigned to deviate or retreat from this decision.
20. Claimant's average weekly wage is \$846.64, yielding a compensation rate of \$564.46. We base this finding on the Order of Commissioner Wilkerson.
21. Any issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse;
22. Based upon the medical records as a whole to include Dr. Kanos' medical notes, we find that the claimant is entitled to additional medical treatment through Dr. Kanos, including but not limited to the recommended surgery, as it is causally related to the underlying injury, medically necessary and will tend to lessen the period of disability.

VII. FULL COMMISSION CONCLUSIONS OF LAW

After considering all of the evidence contained in the record, by unanimous Affirmation, we affirm the Single Commission Order in its entirety and therefore make the following
Conclusions of Law:

2. Pursuant to §42-17-90, the evidence as a whole and the above findings of facts, claimant's previous counsel timely filed an application for a change of condition;
3. All applicable time limits in S.C. Code Ann., §42-17-90 were tolled, or satisfied, when claimant filed his Form 50 on or about May 9, 2012;
4. Pursuant to §42-17-90, the evidence as a whole, the above findings of fact and the case of Young v. Tide Craft, Inc. Dr. Rana's opinion was based enough on fact to create an issue as to the merits to be adjudicated at this hearing and does not preclude the claimant from now pursuing a change of condition request;
5. Pursuant to the South Carolina case of Allen v. Benson Outdoor Advertising Co. 236 S.C. 22; 112 S.E2d 722 (1960) this case at bar is not precluded from being brought for a change of condition. The undersigned Commissioner notes the language within the Allen case which allows for "the filing of a claim for further compensation within the statutory period" is enough and that loss of jurisdiction by the commission would be an *absurd* result which legislature certainly did not have in mind. Id. at 30;
6. Pursuant to §42-15-60, the claimant is entitled to additional medical treatment with Dr. Charles Kanos as this treatment is medically necessary, causally related and will tend to lessen the period of disability;
7. Pursuant to §42-15-60, all medical treatment with Dr. Kanos was causally related, medically necessary and would tend to lessen the period of disability. Claimant is entitled to reimbursement of any and all expenses and co-pays associated with this treatment;

8. Pursuant to Title 42 of the South Carolina Code Annotated, et. seq., all issues not addressed herein are hereby held in abeyance, including but not limited to additional permanency.

VIII. FULL COMMISSION ORDER

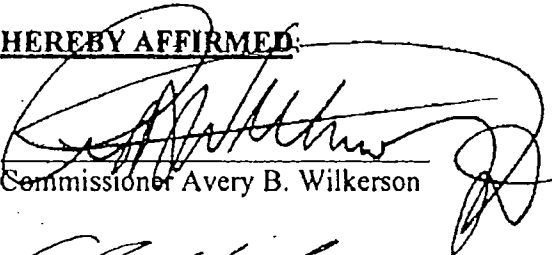
After considering all of the evidence contained in the record, by unanimous Affirmation, we affirm the Single Commission Order in its entirety and hereby Ordered, Adjudged and Decreed that:

1. The defendants shall reimburse the claimant his \$25.00 fee associated with the Motion to Compel and previously ordered by Order of the Commission;
2. The defendants shall reimburse the claimant for any and all expenses associated with the medical treatment as directed by or provided by Dr. Charles Kanos;
3. The defendants shall provide ongoing medical care through Dr. Charles Kanos;
4. All other issues not addressed herein are hereby held in abeyance pending a final order of the Commission; and
5. The Single Commissioner Findings of Fact, Conclusions of Law, and Order is hereby affirmed by unanimous affirmation.

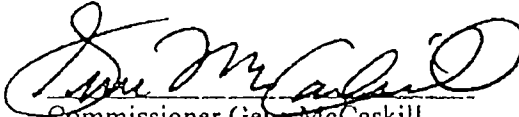
(signatures to follow)

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

HEREBY AFFIRMED:


Commissioner Avery B. Wilkerson


Commissioner Andrea C. Roche


Commissioner Gene McCaskill

Date: May 20, 2014
Columbia, SC

Copies to:
Ryan S. Montgomery, Esquire
Brad Easterling, Esquire

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 20, 2014

Exhibit 2

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC Case No. 0726308

Shannon Cook, Claimant, Respondent,

v.

Spartanburg Steel Products, Inc., Defendant, Petitioner.

REPLY TO RESPONDENT'S RETURN TO
PETITION FOR WRIT OF CERTIORARI

McANGUS GOUDELOCK & COURIE, LLC

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Nothing in Respondent Shannon Cook's ("Claimant") Return to Petition for Writ of Certiorari ("Return") negates the critical need for this Court to accept Petitioner's Petition for Writ of Certiorari ("Petition"). At a minimum, this Court must review the Court of Appeals' dismissal of this appeal in order to clarify how finality rules under S.C. Code Ann. § 1-23-380 are applied to workers' compensation claims involving post-July 2007 injuries. Not only is the Court of Appeals' dismissal in conflict with this Court's decision in Shatto v. McLeod Reg. Med. Center, 406 S.C. 470, 753 S.E.2d 416 (2013), it is also in direct conflict with this Court's acceptance of the petition for certiorari review in Fore v. Griffco of Wanpee, Inc., 409 S.C. 360, 762 S.E.2d 37 (Ct. App. 2014), which involved a substantive remand from the Court of Appeals to the Commission.

The issue that this Court needs to address is whether a Workers' Compensation Commission decision involving a post-2007 injury is a final decision for purposes of appellate review where the Commission decides all of the issues raised to and argued before it, where there is no remand, and where there is no proceeding remaining before the Commission to determine the rights of either party but, instead, any further determination of any issue would require the filing of a request for hearing.

In addition, Claimant's restatement of the issue on appeal should be rejected. It is narrowly and artificially tailored in an attempt to force the result Claimant desires, rather than to elucidate the statutory and appealability issues raised in the Petition. It ignores key facts and issues raised in the Petition and, therefore, should be rejected. Instead, Petitioner's statement of the Question Presented should be adopted by this Court.

- I. Claimant incorrectly asserts that neither the APA nor this Court recognizes the distinction between a “final decision” as referenced in Section 1-23-380 and a “final judgment” as referenced in Section 1-23-390,

Claimant asserts there is no distinction between the phrase “final decision” as used in S.C. Code Ann. § 1-23-380 and the phrase “final judgment” as used in S.C. Code Ann. § 1-23-390. However, these sequential provisions in the APA use different terminology to address different appellate paths for administrative decisions. Patently, the legislature is presumed “to have intended to accomplish something by its choice of words and would not do a futile thing.” Florence County Dem. Party v. Florence County Rep. Party, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). Furthermore, where the legislature uses different terms in “proximate subsections of the same statute, courts are obligated to give that choice effect.” Ex parte State ex rel. Wilson, 391 S.C. 565, 576-77, 707 S.E.2d 402, 408 (2011). The General Assembly easily could have used the phrase “final judgment” in both Sections 1-23-380 and 1-23-390; however, it did not do so. Instead, the legislature consciously chose to use the phrase “final decision” with respect to appeals of contested cases before administrative agencies, and “final judgment” with respect to appeals from the circuit court or the Court of Appeals.

Petitioner was not the first to note this difference – this Court clearly set this distinction out in Shatto. In fact, Claimant utterly fails to address the issues arising from this Court’s footnote 2 in Shatto, which distinguishes between the appealability rules for “final judgments” under Section 1-23-390 and “final decisions” under Section 1-23-380 and Rule 242(a), SCACR. 406 S.C. at 474 n.2, 753 S.E.2d at 418 n.2. If, in fact, this distinction did not exist for post-July 2007 workers’ compensation claims, this Court’s grant of certiorari review of the Court of Appeals’ decision in Fore would have been

incorrect, as the Court of Appeals remanded that case to the Commission for consideration of additional testimony and a reconsideration of the Commission's award. If the Court of Appeals' decision in Fore, which remanded for substantive rehearing, was final for purposes of appellate review, then the Commission Decision in this case, which decided all of the issues admittedly before it and involved no remand is also final for purposes of appellate review.

Claimant asserts that, because he sought "all of the benefits available under the law," the Commission Decision is not final for purpose of appellate review. First, a blanket statement that one seeks all the remedies available to it at law is not a specific claim for any particular remedy. Such a broad, generalized statement is insufficient to preserve an issue for appeal, Holly Woods Assoc. v. Hiller, 392 S.C. 172, 185, 708 S.E.2d 787, 794 (Ct. App. 2011); *see also* Busillo v. City of North Charleston, 404 S.C. 604, 607, 745 S.E.2d 142, 144 (Ct. Ap. 2013) (arguments not adequately presented to the trial court are not preserved for appellate review), nor can it serve to defeat the appeal of an otherwise final decision. Claimant has not and cannot identify any additional issues that were presented to the Commission for its consideration. Furthermore, the claimant in a workers' compensation proceeding bears the burden of proving he is entitled to benefits, *e.g.*, Coleman v. Quality Concrete Prods., Inc., 245 S.C. 625, 630-31, 142 S.E.2d 43, 45 (1965) (the burden is on the claimant to prove he is entitled to benefits, which award cannot be based "on surmise, conjecture or speculation"), and any failure to present argument and/or evidence on those other "benefits" to which he now intimates he is entitled falls on him.

As to Claimant's having checked off the box on the Form 50 seeking TTD, it is important to note that he never completed that claim which asks the claimant to identify the period for which he or she is claiming compensation for lost time from work due to the injury. (Appx. pp. 31, 38). Thus, this issue was never properly identified or argued to the Commission.¹ Although Claimant argues that "[t]hose issues have not been decided," (Return p. 7), the truth is that those issues simply have not been litigated. As noted in the Petition, Claimant's counsel specifically objected to a line of cross-examination regarding whether Claimant had been offered a light-duty position with Petitioner following his compensable injury, asserting, "Objection. We're here on a change of condition. I don't know what relevance this has." (Appx. p. 73, lines 3-5). Claimant cannot take one position below (that the only issue raised to the Commission was change of condition) and an opposite position on appeal (that issues regarding TTD and Claimant's entitlement to "all of the benefits available under the law" were raised to the Commission). See Vaughan v. Kalyvas, 288 S.C. 358, 362, 342 S.E.2d 617, 619 (Ct. App. 1986) (refusing to allow a party to assert a position on appeal that is contrary to the position argued below); Holly Woods Assoc., 392 S.C. at 191, 708 S.E.2d at 798 (a party cannot acquiesce to an issue below and then object on appeal). Even now, Claimant admits that the only issues he "presented at the hearing were whether his change of condition claim was compensable and whether the petitioner should be ordered to pay for his medical treatment ..." (Return p. 2). Again, the burden was on Claimant to present his full case to the Commission. Coleman, 245 S.C. at 630-31, 142 S.E.2d at 45; S.C.

¹ Nonetheless, the Commission did find that Respondent's average weekly wage was \$846.64 and his compensation rate was \$564.46, based on a prior order by Commissioner Wilkerson. (Appx. p. 126). Thus, that issue is completely resolved.

Code Reg. § 67-613(A) (instructing that “[e]ach party shall arrange and present all evidence at the hearing”).

Furthermore, there was no remand for a determination of either other potential benefits under the law or TTD. As noted in the Petition, there were no further proceedings anticipated at the Commission. Even more importantly, either Claimant or Petitioner would have to file a hearing notice in order for the Commission to determine any other issues. For all intents and purposes, this proceeding was ended by the Commission’s May 20, 2014 Decision.

Interestingly, Claimant concedes that workers’ compensation cases often go through numerous proceedings before every potential issue is resolved. At each stage, once the Commission has decided all of the issues raised to and litigated before it, its decision at that stage is final for purposes of appellate review. That has been the case in countless workers’ compensation cases where compensability and entitlement to medical treatment are decided before the claimant reaches MMI – which determination typically is premature at that point. The very nature of workers’ compensation cases means that permanent disability, if any, is not determined at that point in time. “Essentially, workers’ compensation benefits accrue along a time continuum ...” Curiel v. Environmental Mgmt. Servs (MS), 376 S.C. 23, 29, 655 S.E.2d 482, 484 (2007). TTD is not always awarded at the time an injury is found to be compensable, depending on the facts of each case. For example, Section 42-9-260 requires that an employee be “out of work due to a reported work-related injury,” and not due to some other reason. S.C. Code Ann. § 42-9-260. As noted above, Claimant presented no evidence regarding TTD and attempted to block any inquiry into any issue other than change of condition below.

(Appx. p. 73, lines 3-5). He cannot now say the decision is not final for purposes of appellate review because the Commission did not determine TTD. Vaughan, 288 S.C. at 362, 342 S.E.2d at 619; Holly Woods Assoc., 392 S.C. at 191, 708 S.E.2d at 798.

Claimant incorrectly asserts that the final judgment rule as applied to the Workers' Compensation Commission requires that "no more hearing request [will be made] at the agency level, no more administrative proceedings, and that everything in the case is done." (Return p. 8). As noted above and in the Petition, the vast majority of workers' compensation cases properly appealed to appellate forums involve the determination of rights at one stage or another of a worker's pursuit of compensation and/or medical care but do not necessarily resolve every issue or every right that potentially could be asserted under the Act.

The Commission Decision in this case is not an intermediate decision – instead, it decided all of the issues raised to it that were ripe for decision. As such, it is a final decision for purposes of appellate review pursuant to Section 1-23-380. Respondent's suggestion that, in order for this case to be appealable, Section 1-23-380 would have to be rewritten is simply incorrect. All that is required is for the agency decision to be final – meaning all of the issues raised to the agency at that time have been adjudicated. That is precisely the posture of the present case.

Under Claimant's theory, no Commission decision would be final for purposes of appellate review until every possible issue had been litigated and the time for raising new claims (based on change of condition or other provisions of the Workers' Compensation Act) had expired. Alternatively, Claimant's position would allow a claimant to check off various boxes on a Form 50, pick and choose his strongest arguments to actually present

to the Commission, but then argue that the ensuing Commission decision was not final because he had not presented every possible claim to the Commission yet. Such a result is both unfair and untenable. Note that that game could be "played" by both sides, leaving the losing party, whether employee or employer, sitting for years before important rights are determined.

Claimant's incorrect assertion that the "reason the petitioner did not argue that this order qualifies as an interlocutory order that is immediately appealable," is because if Petitioner had made such an argument, it "would still have to provide Mr. Cook's medical treatment while the appeal was pending," is as perplexing as it is wrong. (Return p. 5). Regardless of how a Commission decision is characterized on appeal, Section 42-17-60 provides, in pertinent part, that "[i]n case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title." S.C. Code Ann. § 42-17-60. Thus, any appeal of legal conclusions reached by the Commission is subject to the requirement that the employer/carrier pay compensation and provide medical treatment during the pendency of the appeal. Which is what has occurred here -- Petitioner was ordered to and is obligated to provide medical care through Dr. Kanos during the pendency of the appeal. There has been no attempt to circumvent Section 42-17-60.

This is not a "back-door" attempt to determine compensability before monetary benefits are awarded. As Claimant acknowledges, Petitioner is responsible for payment

for medical care as ordered by the Commission during the pendency of the appeal. In addition, Claimant completely fabricates the argument that Petitioner somehow is making the same arguments made in Bone – that immediate review is necessary because of the obligation to comply with the Commission Decision to provide medical treatment during the appeal – and then proceeds to knock it down. (Return pp. 10-11). Telling, Claimant does not cite to any pleading where this argument was raised, precisely because Petitioner has never raised it. Thus, Claimant's comments on this point can and should be disregarded.

II. Petitioner's arguments were sufficiently and properly raised to the Court of Appeals.

Claimant asserts that various arguments were not timely raised to the Court of Appeals. First, Claimant suggests that Petitioner failed to challenge the Commission's finding that permanency was premature. Petitioner specifically raised the issue of “[w]hether the Hearing Commissioner erred in Finding of Fact No. 17, wherein she states ‘Permanency is premature’ ...” (Appx. p. 154). This statement in the attachment to Petitioner's Form 30 is sufficient to preserve this issue for appeal.

Next, Claimant argues that Petitioner did not raise the distinction between a final judgment and a final decision until their petition for rehearing. However, Petitioner clearly addressed the different language in Section 1-23-380 and 1-23-390 in their Appellant's Return to Claimant's Motion to Dismiss. (Appx. pp. 142-143) (asserting the Commission's final decision is immediately appealable, that Bone v. U.S. Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012), which was decided under the “final judgment” language found in Section 1-23-390 does not apply and that, even if it did, would not render this case non-final for purposes of review). Oddly enough, in his counter-

statement of the case Claimant acknowledges that this argument was raised. (Return p. 4).

Finally, Petitioner's description of the language added to the Commission Decision by Claimant's counsel as "boilerplate" language is not a new argument, but rather employment of an accurate descriptor. Although Commissioner Barden's request for a proposed order indicated "Permanency is premature," (Appx. p. 78), the language "all issues not addressed herein are hereby held in abeyance, including but not limited to additional permanency," was added by Claimant's counsel. (Appx. p. 128). Of course permanency was premature at that point – as is the case in every other workers' compensation case where compensability is determined but the claimant has not reached MMI. If compensability is all that is sought at a hearing and compensability is addressed in a Commission decision, then that decision is final for purposes appeal even though the claimant has not reached MMI. This Court has heard many such appeals. *See, e.g., Nicholson v. South Carolina Dept. of Soc. Servs.*, 405 S.C. 537, 748 S.E.2d 256 (Ct. App. 2013), *rev'd* 769 S.E.2d 1, 2015 S.C. LEXIS 3 (2015) and (Appx. pp. 168-175). This appeal should be treated no differently.

In fact, the Court of Appeals rendered a decision on the merits in *Lee v. Bondex, Inc.*, 406 S.C. 97, 749 S.E.2d 155 (Ct. App. 2013), despite the fact that the Commission only decided whether certain body parts were compensable and whether the claimant was entitled to TTD, but held in abeyance any decision as to whether injuries to other body parts were compensable. Rather than dismissing the appeal as interlocutory, the Court of Appeals decided the two issues raised to it, and remanded for the Commission to dispose of the rest of the claimant's claim, specifically finding that it was improper for the

Commission to have held those issues in abeyance. 406 S.C. at 103-104, 749 S.E.2d at 158. The fact that the Court of Appeals heard the appeal in Lee but dismissed the appeal in the instant case as interlocutory only highlights the need for this Court to accept this appeal and clarify the issue of finality in worker compensation claims involving post-July 2007 injuries.

III. A number of facts asserted by Claimant are incorrect and unsupported by the record.

Claimant's Return is marred by numerous factual inaccuracies and allegations that are unsupported by the record in this case. For example, Claimant avers that Petitioner continues to refuse to authorize surgery that the Commission ordered. (Return p. 2). There is not a shred of evidence in this record that supports any suggestion that Petitioner has not complied with the Commission's order to "provide ongoing medical care through Dr. Charles Kanos." (Appx. pp. 127-128).

Similarly, Claimant's suggestion that Petitioner has failed to provide the ordered medical care is both unwarranted and wrong. In fact, at some point, Commissioner Roche determined that Petitioner had not been "dilatatory" in providing the care that had been ordered. (See Appx. p. 55, lines 13-21; Appx. p. 68, lines 12-24). Such allegations are diversionary tactics inserted solely for inflammatory purposes and should be disregarded.

Claimant also asserts that he had to pay for a CT myelogram ordered by Dr. Kanos out of his own pocket. (Return pp. 2, 10). However, he testified before Commissioner Barden that Medicare paid for that test. (Appx. p. 70, lines 18-22). At most, Claimant paid a co-pay fee for this test. He testified that the carrier paid for his treatment with Dr. Rodriguez. (Appx. 62, lines 4-11).

Contrary to Claimant's repeated assertion otherwise, Petitioner did defend this claim at the Commission level on the merits, as well as raising procedural issues. (*See, e.g.*, Appx. p. 56, lines 11-15; Appx. p. 57, line 7 – 58, line 14; Appx. p. 68, line 25 – 26, line 21; Appx. p. 100, lines 14-16; Appx. p. 102, line 14 – 105, line 20; Appx. p. 110, line 10 – 111, line 18;). Conversely, Claimant admits in his Return that the only issues he presented to the Commissioner were “whether his change of condition claim was compensable and whether the petitioner should be ordered to pay for his medical treatment ...” (Return p. 2).

Claimant's assertions that the Commission “knew a final order was yet to come” and that the Commission Decision “recognizes that other issues are pending,” (Return pp. 7, 9), are incorrect and should be rejected. In taking that position, Claimant disregards the explanatory portion of the sentence on which he relies: “[a]ny issue relating to TTD and permanency is held in abeyance, as the only issue before the undersigned was whether the claimant has sustained a change of condition for the worse.” (Appx. 126) (emphasis added). Indeed, when an appellate court construes an order from a lower tribunal, it must discern the decision-maker's intent from the order as a whole, and not from an isolated portion, and particularly not based on language that is “not necessary to the decision of the issues presented.” White's Mill Colony, Inc. v. Williams, 363 S.C. 117, 124 n.1, 609 S.E.2d 811, 815 n.1 (Ct. App. 2005). Here, as was the case in White's Mill, there is a conflict between the Commission statement that certain issues are held in abeyance and its recognition, buttressed by all of the pleadings in this claim and the lack of any remand, that it had finally decided the sole issue before it. This Court should hear

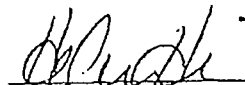
this appeal and hold that the Commission Decision is a final decision for purposes of appeal.

CONCLUSION

For all the reasons stated herein and in Petitioner's Petition, this Court should grant certiorari review of the Court of Appeals' Orders dismissing this appeal, and hold that the Commission Decision in this case is final for purposes of appellate review.

Respectfully submitted,
McANGUS GOUDELOCK & COURIE, LLC

June 9, 2015



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Exhibit 3



RYAN MONTGOMERY

ATTORNEY AT LAW, LLC

March 17, 2015

The Honorable Amy Bracy
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia, SC 29202-1715

Re: Claimant: Shannon Cook
Employer: Spartanburg Steel Products, Inc.
Carrier: Shannon Cook
WCC File No.: 0726308
Claim No.: YDS656635C
D.O.L.: 9/17/2007

Dear Director Crocker:

Please find enclosed for filing, our Form 50 requesting a hearing along with a check for \$25.00 to cover the cost of this filing. By copy of this letter to the Defense Attorney, I am serving him with a copy of this Form 50. A certificate of service accompanies this correspondence.

With warmest regards,

Yours very truly,

Cammy Ezell
Paralegal to Ryan S. Montgomery

cc: Mr. Shannon Cook

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: 0726308
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Shannon Cook SSN: _____ Employer's Name: Spartanburg Steel Products, Inc.
Address: _____ Address: 1290 New Cut Road
City: Pacolet SC City: Spartanburg State: SC Zip: 29303
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: Specialty Risk Services

Preparer's Name: Ryan Montgomery Law Firm: Ryan Montgomery, Attorney at Law, LLC Preparer's Phone #: 864/373-7333

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 9/17/07
 Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction

- The claimant sustained an injury to Back, bilateral legs, bilateral hips, and psyche (Part(s) of Body Injured) on 9/17/07 (Month/Day/Year) in Spartanburg county, state of SC.
- Body part(s) affected are: Back, bilateral legs, bilateral hips, and psyche
Briefly describe how the accident occurred. Claimant was lifting a box, twisted and injured his back
- Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
- The relationship of employer and employee existed at the time of injury.
- At the time of the injury the claimant was performing services arising out of and in the course of employment.
- Notice of the accidental injury was given to the Employer on 9/17/07 (Month/Day/Year) in the following manner:
Claimant reported his claim to his supervisor.

7. Due to injury, the claimant is in need of (check one):
 (a) medical examination and treatment for: _____
 (b) additional medical examination and treatment for: Back, bilateral legs, bilateral hips, and psyche

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
From the date of injury to the present and continuing.

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
 (1) General Disability: Total Partial (2) Specific Disability: Total Partial (3) Wage Loss

9a. A determination of permanent disability is premature at this time.

10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$Request Form 20, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

11. Further grounds or unusual aspects of claim: Medical treatment and TTD

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: St. Francis Workwell; VBS; St. Francis Hospital downtown; Oaktree Medical Center; Piedmont Spine & Neurosurgical Group; Diagnostic Health; Mary Black Physician; Group; Pain Management Associates; Palmetto Health Baptist Easley; Associates In General Surgery; Southeastern Neurosurgical & Spine; Carolinas Center for Advanced Management of Pain; Gaffney Family Physicians; Spartanburg Regional Occupational Health; Greenville Memorial Hospital; Piedmont Imaging; Spartanburg Regional Medical Center; Spartanburg Neurosurgical; Spartanburg Regional Rehab Services; Neurology Center of Spartanburg; Upstate Health Professionals; Adams & Wilkinson; Dr. L. Randolph Waid; Weldon & Associates; and Palmetto State Medical, Dr. Rana.

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time. 14. Estimated time needed for hearing: 30 min

13b. I am requesting a hearing. A \$25 fee is required.

Mediation a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 b. Mediation is required pursuant to Reg. 67-1802.
 c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
 d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to PLEASE SEE ATTACHED CERTIFICATE OF SERVICE

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] ATTORNEY Title: Ryan@RyanMontgomerylaw.com Email: _____ Date: March 17, 2015

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov
AMENDED 58



PRE-HEARING BRIEF
WCC File No: 0726308

Claimant's Name: Shannon Cook Employer's Name: Spartanburg Steel Products, Inc.
Address: _____ Address: 1290 New Cut Road
City: Pacolet State: SC Zip: _____ City: Spartanburg SC 29303
Home Phone: (_____) Work Phone: (_____) Preparer's Phone #: (864) 373-7333
Preparer's Name: Ryan S. Montgomery

A Claim for Workers' Compensation Benefits Under the Following Grounds:

Injury Illness Repetitive Trauma

1. Compensation Rate: \$564.46 2. AWW: \$846.64 Date of Injury: 9/17/07

3. Type of injury and body part(s): Back, bilateral legs, bilateral hips, and psyche

4. Facts in controversy: **TTD AND MEDICAL TREATMENT.** The authorized treating physician has recommended surgery for the claimant which has not been provided.

5. Legal issues involved: See no. 4

6. Unusual aspects:

7. Witnesses (designate if expert):* Claimant

8. Exhibits:

3. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): : SEE APA SUBMISSIONS

4. Name, address, and specialty, if any, of the treating physician: SEE APA SUBMISSIONS

5. Impairment rating(s); body part(s); physician and date of opinion: Premature

6. I am amending my Form 50/51 in the following manner:

Mediation

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: SEE ATTACHED CERTIFICATE OF SERVICE

Signature: Ryan Montgomery

Email: ryan@ryanmontgomerylaw.com

Date of hearing: 6/22/15 at 10:30am before Commissioner Wilkerson

Time needed for hearing: 30 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

Exhibit 4

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0726308

SHANNON COOK,

Employee,

Claimant,

vs.

SPARTANBURG STEEL PRODUCTS,

Employer,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.

Carrier,

Defendants.

MOTION TO STAY PROCEEDINGS

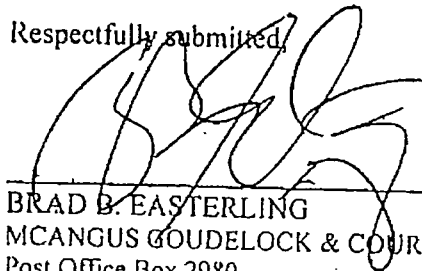
TO: THE HONORABLE COMMISSIONER AVERY WILKERSON AND RYAN
MONTGOMERY, ESQUIRE, ATTORNEY FOR THE CLAIMANT:

On behalf of the employer, Spartanburg Steel Products, the undersigned moves the Commission for an order staying the proceedings currently set before Commissioner Avery Wilkerson on June 22, 2015 at 10:30 a.m., based on the following:

The claim is currently on appeal as the defendants have petitioned for Writ of Certiorari to the South Carolina Supreme Court and are currently awaiting a response. A ruling from the Supreme Court will have a direct impact on the issues raised in claimant's most recently filed Form 50. For this reason, the hearing set for June 22, 2015 at 10:30 a.m. should be stayed pending a decision from the South Carolina Supreme Court.

Additionally, the undersigned has protection for the week of June 22, 2015 through June 26, 2015 as he will be on vacation (please see attached letter).

Respectfully submitted,



BRAD B. EASTERLING
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 2980
55 East Camperdown Way, Suite 300
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for the Employer/Carrier

Greenville, South Carolina
June 9, 2015

Exhibit 5

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 0726308

Shannon Cook,

Employee,

Claimant,

vs.

Spartanburg Steel Products, Inc.

Employer,

AND

Specialty Risk Services,

Carrier,

Defendants.

**OPPOSITION TO DEFENDANT'S MOTION
TO STAY PROCEEDINGS**

TO: THE HONORABLE AVERY B. WILKERSON, JR. AND BRAD EASTERLING, ESQ,
ATTORNEY FOR THE EMPLOYER/CARRIER

Comes now the claimant by and through his counsel and in Opposition to the Defendants' Motion to Stay Proceedings, submits the following in support thereof:

1 Claimant's Form 50 and Form 58 are filed respectively for two reasons and two reasons only:

A. To enforce a prior Order of Commissioner Barden instructing the defendants to provide surgery through the authorized treating physician, Dr. Charles Kanos; and

B. Seeking Temporary Total Disability (TTD) associated with the work status assigned by the authorized treating physician, Dr. Charles Kanos.

2. The hearing should not be postponed. The defendants have admitted they owe the claimant Temporary Total Disability Benefits and the surgery as prescribed by Dr. Kanos.

Part of the impetus for the Claimant's Form 50 is that the employer has refused to provide the surgery ordered by Dr. Kanos. Section 42-17-60 expressly provides that the Commission's decision ordering this surgery is effective immediately; thus, by refusing to comply, the Employer is ignoring the statute and the order of the commission. The Supreme Court has recognized that this sort of conduct can be the subject of a motion to compel. See Johnson v. Sonoco Products Co., 381 SC. 172, 672 S.E.2d 567 (2009). The Claimant has not filed a motion to compel as of this date, but if this hearing is postponed, the Claimant will do so immediately and will seek sanctions, which were sought and granted in Johnson. See also, Petitioner's (Defendants') Reply

"In any case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification under the questions at issue have been fully determined in accordance with this title, S.C. Code. Ann. §42-17-60, Thus any appeal of legal conclusions reached by the Commission is subject to the requirement that the employer/carrier pay compensation and provide medical treatment during the pendency of the appeal. Which is what has occurred here- Petitioner (defendant) was ordered to and is obligated to provide medical care through Dr. Kanos during the pendency of appeal." (emphasis added) . See Exhibit 1 at page 7.

Defendants, through their own brief, seem to admit that TTD and medical is owed. Defendants then seem represent to the Supreme Court that they are meeting these obligations when they know that no TTD is being paid and that they have not authorized the surgery recommended by Dr. Kanos.

3. Defendants argue that this entire case should be stayed because certain aspects are on appeal neither of which are the two issues scheduled to be heard and candidly are interlocutory in nature as was stated by the Court of Appeals in this case when they dismissed the Defendants' Appeal.


4. TTD was expressly reserved in the single Commissioner order. See Exhibit 2 at Finding of Fact 21 (note this was affirmed by the Full Commission chaired by your Honor, Avery B. Wilkerson, Jr.). Because it has not been adjudicated as of yet, it cannot be appealed much less stayed pending the outcome of an appeal that doesn't even appeal that issue.

5. The issue on appeal is whether or not the claimant sustained a change of condition. It should be noted that regardless of that outcome (despite the defendants losing that issue at the single commission, full commission and then their appeal being dismissed at the Court of Appeals) the claimant had an order in place granting him additional medical treatment through various carrier selected physician(s) change or not, he is still entitled to the surgery and TTD succinctly stated by the Defendants at Exhibit 1, Page 7.

Wherefore, the above grounds considered, the defendants Motion to Stay the entire case while an interlocutory issue is on appeal must be denied so this claimant can get the ordered medical treatment and TTD.

(Signature to Follow)

Respectfully submitted,



Ryan S. Montgomery
Ryan Montgomery Attorney at Law, LLC
108 Mills Avenue
Greenville, SC 29605
Attorneys for the Claimant

June 15, 2015
Greenville, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO: 0726308

Shannon Cook,

Employee,

Claimant,

vs.

Spartanburg Steel Products, Inc.

Employer,

AND

Specialty Risk Services,

Carrier,

Defendants.

Motion to Compel

TO: THE HONORABLE AVERY B. WILKERSON, JR. AND BRAD EASTERLING, ESQ,
ATTORNEY FOR THE EMPLOYER/CARRIER

Comes now the claimant by and through his counsel and in submits this Motion to Compel medical treatment:

1 Commissioner Barden Issued an Order on November 25, 2013 and affirmed by the Full Commission on May 20, 2014 wherein the defendants were ordered to provide a back surgery with Dr. Charles Kanos;

2. The defendants appealed to the Court of Appeals which was dismissed as interlocutory and have now petitioned the Supreme Court to address whether the claimant sustained a change of condition for the worse;

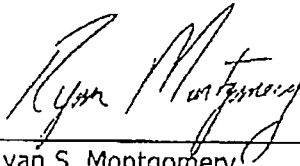
3. Section 42-17-60 expressly provides that the Commission's decision ordering this surgery is effective immediately; thus, by refusing to comply, the Employer is ignoring the statute and the order of the commission. The Supreme Court has recognized that this sort of conduct can be the subject of a motion to compel. See Johnson v. Sonoco Products Co., 381 SC. 172, 672 S.E.2d 567 (2009). See also Reply to Respondent's (Claimant) Return to Petition for Writ of Certiorari in which the Respondents (defendants) state:

"In any case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification under the questions at issue have been fully determined in accordance with this title,

S.C. Code. Ann. §42-17-60, Thus any appeal of legal conclusions reached by the Commission is subject to the requirement that the employer/carrier pay compensation and provide medical treatment during the pendency of the appeal. Which is what has occurred here- Petitioner (defendant) was ordered to and is obligated to provide medical care through Dr. Kanos during the pendency of appeal. (emphasis added) . See Exhibit 1 at page 7.

Wherefore, the above-grounds considered, the Claimant requests an Order directing the defendants to provide medical treatment.

Respectfully submitted,



Ryan S. Montgomery
Ryan Montgomery Attorney at Law, LLC
108 Mills Avenue
Greenville, SC 29605
Attorneys for the Claimant

June 29, 2015
Greenville, South Carolina

Exhibit 6

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0726308

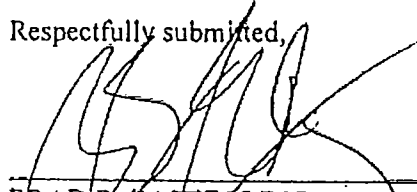
SHANNON COOK,	}	
Employee,	}	
	}	
Claimant,	}	
vs.	}	
	}	
SPARTANBURG STEEL PRODUCTS,	}	
Employer,	}	RETURN TO CLAIMANT'S
	}	MOTION TO COMPEL
AND	}	
	}	
SEDGWICK CLAIMS MANAGEMENT	}	
SERVICES, INC.	}	
Carrier,	}	
	}	
Defendants.	}	

TO: THE HONORABLE COMMISSIONER AVERY WILKERSON AND RYAN MONTGOMERY, ESQUIRE, ATTORNEY FOR THE CLAIMANT:

On behalf of the employer, Spartanburg Steel Products, the undersigned hereby responds to claimant's Motion to Compel based on the following:

The claim is currently on appeal as the defendants have petitioned for Writ of Certiorari to the South Carolina Supreme Court and are currently awaiting a response. A ruling from the Supreme Court will have a direct impact on the issues raised in claimant's most recently filed Form 50. For this reason, claimant's Motion to Compel should be denied and all proceedings stayed until the South Carolina Supreme Court has rendered its decision.

Respectfully submitted,



BRAD B. EASTERLING
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 2980
55 East Camperdown Way, Suite 300
Greenville, South Carolina 29602
(864) 239-4000
Attorneys for the Employer/Carrier

Greenville, South Carolina
June 29, 2015

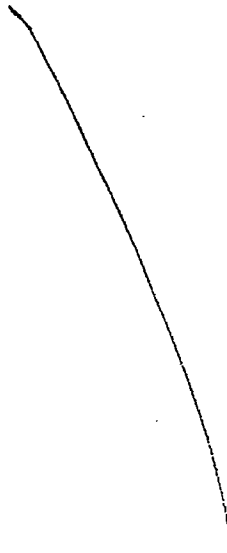


Exhibit 7

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0726308

Shannon Cook,)
)
 Claimant,)
 vs.)
 Spartanburg Steel Products,)
)
 Employer,)
 Spartanburg Steel Products,)
)
 Carrier,)
 Defendants)

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 eboyd on July 17, 2015

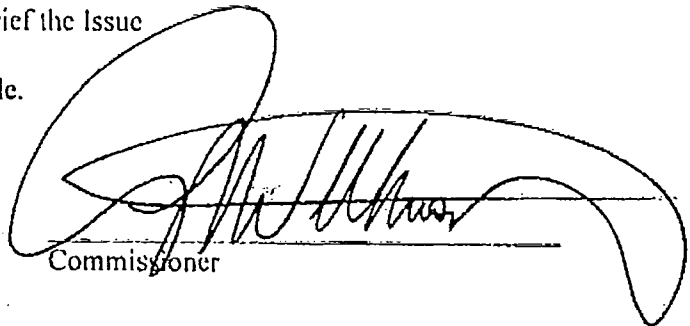
A Motion regarding the following issue(s) has been received.

- Motion to Stay
- Appointment of guardian Ad Litem
- Attorney's appearance before the Commission
- Withdrawal of Representation
- Attorney's Fee
- Claim Pending Commission Review
- Postpone
- Adjourned the Scheduled Hearing
- Self Insurance Privileges
- Penalties and Interest
- Third Party Practice
- Other:

The following disposition has been made: Granted Denied
 Set for Hearing
 Have Attorneys brief the Issue

Reasons: Waiting for higher court to rule.

Columbia, SC



Commissioner

Copies to: BBE
RSIM

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 0726308

Shannon Cook,)
)
Claimant,)
vs.)
Spartanburg Steel Products,)
)
Employer,)
)
Spartanburg Steel Products, Inc.,)
)
Carrier,)
Defendants)

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By eboyd on July 15, 2015

A Motion regarding the following issue(s) has been received.

- Motion to Compel
- Appointment of guardian Ad Litem
- Attorney's appearance before the Commission
- Withdrawal of Representation
- Attorney's Fee
- Claim Pending Commission Review
- Postpone
- Adjourned the Scheduled Hearing
- Self Insurance Privileges
- Penalties and Interest
- Third Party Practice
- Other:

The following disposition has been made: Granted Denied
 Set for Hearing
 Have Attorneys brief the Issue

Reasons:

Waiting on Higher Court to Rule *ABZ*

Columbia, SC

Copies to: RSM
BBE

[Signature]
Commissioner

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: 0726308
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Shannon Cook SSN: _____ Employer's Name: Spartanburg Steel Products, Inc.
Address: _____ Address: 1290 New Cut Road
City: Pacolet SC City: Spartanburg State: SC Zip: 29303
Home Phone: () - _____ Work Phone: () - _____ Insurance Carrier: Specialty Risk Services

Preparer's Name: Ryan Montgomery Law Firm: Ryan Montgomery, Attorney at Law, LLC Preparer's Phone #: 864/373-7333

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness: 9/17/07

Injury Illness Repetitive Trauma Occupational Disease Physical Brain Injury Concurrent Jurisdiction

RECEIVED

1. The claimant sustained an injury to Back, bilateral legs, bilateral hips, and psyche (Part(s) of Body Injured) on 9/17/07 (Month/Day/Year) in Spartanburg county, state of SC.

2. Body part(s) affected are: Back, bilateral legs, bilateral hips, and psyche

Briefly describe how the accident occurred. Claimant was lifting a box, twisted and injured his back.

3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

4. The relationship of employer and employee existed at the time of injury.

5. At the time of the injury the claimant was performing services arising out of and in the course of employment.

6. Notice of the accidental injury was given to the Employer on 9/17/07 (Month/Day/Year) in the following manner:

Claimant reported his claim to his supervisor.

SC SUPREME COURT

7. Due to injury, the claimant is in need of (check one):

(a) medical examination and treatment for: _____

(b) additional medical examination and treatment for: Back, bilateral legs, bilateral hips, and psyche

8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: From the date of injury to the present and continuing.

9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

(1) General Disability: Total Partial

(2) Specific Disability: Total Partial

(3) Wage Loss

9a. A determination of permanent disability is premature at this time.

10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$Request Form 20, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:

11. Further grounds or unusual aspects of claim: Medical treatment and TTD

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: St. Francis Workwell; VBS; St. Francis Hospital downtown; Oaktree Medical Center; Piedmont Spine & Neurosurgical Group; Diagnostic Health; Mary Black Physician; Group; Pain Management Associates; Palmetto Health Baptist Easley; Associates in General Surgery; Southeastern Neurosurgical & Spine; Carolinas Center for Advanced Management of Pain; Gaffney Family Physicians; Spartanburg Regional Occupational Health; Greenville Memorial Hospital; Piedmont Imaging; Spartanburg Regional Medical Center; Spartanburg Neurosurgical; Spartanburg Regional Rehab Services; Neurology Center of Spartanburg; Upstate Health Professionals; Adams & Wilkinson; Dr. L. Randolph Waid; Weldon & Associates; and Palmetto State Medical, Dr. Rana.

11b. To the best of your knowledge, did you have any prior permanent disability? No
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: 30 min

13b. I am requesting a hearing. A \$25 fee is required.

Mediation

a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.

b. Mediation is required pursuant to Reg. 67-1802.

c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to PLEASE SEE ATTACHED CERTIFICATE OF SERVICE

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

ATTOREY
Title

Ryan@RyanMontgomerylaw.com
Email

March 17, 2015
Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

Employee's Notice of Claim and/or
Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov
AMENDED 58



PRE-HEARING BRIEF
WCC File No: 0726308

Claimant's Name: Shannon Cook Employer's Name: Spartanburg Steel Products, Inc.
Address: _____ Address: 1290 New Cut Road
City: Pacolet State: SC Zip: _____ City: Spartanburg SC 29303
Home Phone: (_____) Work Phone: (_____) Preparer's Phone #: (864) 373-7333
Preparer's Name: Ryan S. Montgomery

A Claim for Workers' Compensation Benefits Under the Following Grounds:

Injury Illness Repetitive Trauma

1. Compensation Rate: \$564.46 2. AWW: \$846.64 Date of Injury: 9/17/07
3. Type of injury and body part(s): Back, bilateral legs, bilateral hips, and psyche
4. Facts in controversy: **TTD AND MEDICAL TREATMENT.** The authorized treating physician has recommended surgery for the claimant which has not been provided.
5. Legal issues involved: See no. 4
6. Unusual aspects:
7. Witnesses (designate if expert):* Claimant
8. Exhibits:
3. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): : SEE APA SUBMISSIONS
4. Name, address, and specialty, if any, of the treating physician: SEE APA SUBMISSIONS
5. Impairment rating(s); body part(s); physician and date of opinion: Premature
6. I am amending my Form 50/51 in the following manner:
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 - a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
 - b. Mediation is required pursuant to Reg. 67-1802.
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 - d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: SEE ATTACHED CERTIFICATE OF SERVICE

Signature: *Ryan Montgomery* Email: ryan@ryanmontgomerylaw.com
Date of hearing: 6/22/15 at 10:30am before Commissioner Wilkerson Time needed for hearing: 30 minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.