

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Case No.: 2015-000810

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FEB 29 2016

SC Court of Appeals

Paula Y. Tucker.....Appellant,

v.

SC Department of Mental Health,
and State Accident Fund.....Respondents.

**FINAL BRIEF
OF APPELLANT**

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STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina Workers' Compensation Commission err in finding and concluding the Appellant had reached Maximum Medical Improvement for all injuries as of the hearing date of September 30, 2013?
2. Did the South Carolina Workers' Compensation Commission err in finding and concluding the Appellant was not entitled to any additional medical treatment?
3. Did the South Carolina Workers' Compensation Commission err in awarding benefits for permanent loss of use when the Appellant had not reached maximum medical improvement?
4. Did the South Carolina Workers' Compensation Commission err in finding and concluding the Appellant had received appropriate medical treatment through the Employer?
5. Did the South Carolina Workers' Compensation Commission err in finding and concluding the Appellant had suffered injuries only to her back, neck, and left shoulder?

STATEMENT OF CASE

This appeal involves claims for two separate Workers Compensation accidents which were consolidated for hearing before the Workers Compensation Commission. By Form 50 filed by the Claimant-Appellant Paula Tucker dated July 8, 2013, with WCC file number 1122060, the Appellant filed a claim for an accident which occurred on April 5, 2011, resulting in injuries to her left arm, left shoulder, left elbow, left wrist, left hand, back, right leg, right hip, right thigh, shin, and right foot. By Form 50 of the Claimant dated July 10, 2013, with WCC file number 1308013, Appellant filed a claim for a second accident which occurred on June 16, 2013, which resulted in injuries to her back, neck, right leg, right arm, left leg, left arm, both shoulders, and an aggravation of the prior injuries to her back, neck, right hip, and left shoulder. In both claims, the Employer Department of Mental Health denied she had suffered any injury, denied she was entitled to any medical treatment, and denied she was entitled to any compensation benefits.

The two claims were consolidated for a hearing held before the Hearing Commissioner on September 30, 2013. By Decision and Order issued on May 14, 2014, the Hearing Commissioner determined the Claimant was entitled to some of the relief requested, but ruled Claimant had reached maximum medical improvement, and provided an award for some permanent impairment, and ruled the Claimant was not entitled to any additional disability or medical benefits. Pursuant to Claimant's Form 30 of May 28, 2014, an Appellate Panel was held on September 15, 2014. By Appellate Panel Decision and Order issued on March 23, 2015, the Workers Compensation Commission affirmed the decision of the Hearing Commissioner. Thereafter, the Notice of Appeal of the

Claimant/Appellant was filed with the South Carolina Court of Appeals on April 20, 2015.

STATEMENT OF FACTS

In April of 2011 the Claimant/Appellant Paula Tucker worked as a mental health assistant for the SC Department of Mental Health providing assistance to live-in patients with mental disabilities. (R. p. 299, line 3-24). On April 5, 2011, the Appellant slipped on a bar of soap dropped on the floor by a patient and sustained injuries to her back, neck, left shoulder, left arm, right leg, and right hip. The accident was reported to her supervisor that same day, but no first report of injury was filed and the Employer, Department of Mental Health, did not authorize Ms. Tucker to receive any medical treatment. After a complaint to her Executive Director, Ms. Tucker was finally authorized to go to Doctor's Care on July 14, 2012, over a year after her accident had occurred and was reported. (R. p.302, line 6-9).

Doctor's Care, as the medical provider authorized by the Employer, diagnosed the Appellant as having suffered a cervical strain, injury to her left shoulder, and sciatica. (R. p. 69). Because of her injuries this authorized medical provider placed significant work restrictions on Appellant including no lifting more than five pounds; no driving; no climbing; no repetitive bending, stooping, squatting, or pushing; no continuous standing or sitting; and no overhead lifting. She was also given a return appointment for reevaluation at Doctor's Care for July 24, 2012. (R. p.7).

Despite the diagnosis and recommendations by Doctor's Care, Ms. Tucker was denied further medical treatment and was not allowed to return for the second visit

scheduled by Doctor's Care. (R. p. 303, line 14-15). Additionally, the work restrictions placed upon the Appellant by Doctor's Care were ignored and Ms. Tucker was required to continue with her normal work duties which were not within her restrictions. (R. p. 304, line 1-7). Despite suffering pain from her injuries Ms. Tucker continued to perform her regular duties for approximately the next year. She worked in pain as her supervisor constantly threatened to move her to the third shift. These threats were documented in a letter written by the supervisor in January of 2013. (R. p. 130). Ms. Tucker continued to work despite her pain because she could not move to the third shift. She had two children at home, one six years of age and one fourteen, and could not leave them at home alone overnight. (R. p. 305, line 7-9).

On June 16, 2013, while attempting to perform the duties outside of the job restrictions placed upon her by Doctor's Care, Ms. Tucker sustained a second compensable accident. At that time she was bending down to lift heavy pans when she felt excruciating pain and slipped and fell. (R. p. 306, line 1-8). The second injury aggravated her preexisting injuries, but also injured her left side, back, right leg, right side, and left leg. (R. p. 308, line 10-15). After this accident the Employer did authorize her to return to Doctor's Care where she was seen on June 21, 2013. She was diagnosed as having injured her lower back with radiating symptoms into her right leg. Doctor's Care directed her to remain out of work until she saw an orthopedic and Doctor's Care recommended that she receive an orthopedic referral "ASAP". (R. p. 238-240).

She did not return to work after the second accident. (R. p. 309, line 11-15). Employer never authorized her to see an orthopedic. (R. p. 309, line 8-10).

The uncontroverted evidence of record shows Ms. Tucker suffered a slip and fall accident on April 5, 2011. Although she reported the accident to her supervisor, the accident was never properly documented and Ms. Tucker was not allowed to see a doctor until she was seen at Doctor's Care on July 14, 2012. This medical provider authorized by the Employer noted the injuries sustained by Ms. Tucker as a result of her on the job fall, placed substantial work restrictions on her, and scheduled her to return in two weeks. Despite the recommendations of the authorized treating medical provider, the Employer disregarded the restrictions and did not allow her to return to Doctor's Care.

It should be noted Ms. Tucker did seek medical treatment on her own as a result of Employer's refusal to provide medical treatment. After her first accident she went to the emergency room at Kershaw Health Medical Center on October 28, 2011. The pain in her right hip and leg was noted and she was prescribed Hydrocodone and Prednisone for her injuries. (R. p. 65). She was also seen by her internist, Dr. Balogun, from January 2013, through April 2013. (R. p. 83-106). The reports of Dr. Balogun document her injuries and complaints. She was also seen at Palmetto Health Pain Management and Rehabilitation Center by Dr. Stephen Storick in July of 2013. Dr. Storick noted she was continuing to have significant neck pain, pain in her left shoulder and arm, and low back pain continuing through her legs. He prescribed physical therapy and gave her an epidural steroid injection without much improvement. (R. p. 120). Dr. Storick deferred to a spine surgeon to determine whether or not she may require surgery. It is important to note no doctor placed Ms. Tucker at maximum medical improvement and her treatment through her doctors was continuing at the time of the hearing on September 30, 2013. She was never seen by an orthopedic.

At the time of the hearing before the Hearing Commissioner on September 30, 2013, Ms. Tucker was continuing with medical treatment for her injuries. She had been unable to return to work since her second accident of June 16, 2013. To be clear, the Doctor's Care, the medical provider authorized to see Ms. Tucker by Employer after both accidents determined she had suffered injury, recommended additional treatment, and placed work restrictions upon her. After the second accident the providers at Doctor's Care directed that she not return to work until she was seen by an orthopedic. This recommended treatment was never authorized by the Employer. No medical records were submitted to indicate Ms. Tucker had completed medical treatment. Furthermore, no medical records were submitted as evidence to indicate Ms. Tucker had reached maximum medical improvement for her injuries. At the hearing Ms. Tucker requested payment of temporary total disability benefits from the time of her second accident. She also requested that the Employer be directed to provide her with necessary medical care.

Despite the evidence set forth above the Hearing Commissioner determined Ms. Tucker had suffered a compensable injury to only her neck, low back, and left shoulder as a result of the April 5, 2011 accident. The Commissioner went on to find Ms. Tucker had received medical treatment at the direction of the Employer and did not have any permanent disability from those injuries. The Hearing Commissioner then found Ms. Tucker suffered a second compensable on the job injury to only her neck, lower back and left shoulder in the second accident of June 16, 2013. The Commissioner found this accident also aggravated her preexisting back and left shoulder condition from the first injury. The Commissioner concluded Ms. Tucker had reached maximum medical improvement as of the date of the hearing of September 30, 2013, and awarded loss of

use for Appellant's spine and left shoulder. The Commissioner also found the Appellant was not in need of any additional medical treatment. These findings were fully affirmed by the Full Panel. (R. p. 1). Ms. Tucker, the Appellant, respectfully submits the Commission was in error in reaching these findings and conclusions.

STANDARD OF REVIEW

“The South Carolina Administrative Procedures Act governs judicial review of a decision of the workers’ compensation commission.” Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1982); Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, (Ct. App. 2005) cert. dismissed as improvidently granted Aug. 2007; Hargrove v. Titan Textile Co., 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). Pursuant to the APA, an appellate Court’s review is limited to deciding whether the Appellate Panel’s decision is unsupported by substantial evidence or is controlled by some error of law. Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007); S.C. Code Ann. Section 1-23-380(A)(5)(Supp. 2006).

The judicial review of the Appellate Panel’s factual findings is governed by the substantial evidence standard. Gadson v. Mikasa Corp., 368 S.C. 214, 221, 628 S.E.2d 262, 266 (Ct. App. 2006); Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004); Corbin v. Kohler Co., 351 S.C. 613, 617, 571 S.E.2d 92, 94-95 (Ct. App. 2002); Lockridge v. Santens of America, Inc., 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001). The Appellate Panel’s decision must be affirmed if supported by substantial evidence in the record. Shuler v. Gregory Elec., 366 S.C. 435, 440, 622 S.E.2d 569, 571 (Ct. App. 2005) (citing Sharpe v. Case Produce, Inc., 366 S.C. 154, 160, 519 S.E.2d 102, 105 (1999)). A reviewing court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. S.C. Code Ann. Section 1-23-380(A)(5)(d)(e)(Supp. 2006), see, also, Hall v. United Rentals, Inc., 371 S.C. 69, 77, 636 S.E.2d 876, 881, (Ct. App. 2006). However, a reviewing court may reverse or modify a decision of the Appellate Panel if the findings, inferences,

conclusions, or decisions of them are “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” S.C. Code Ann. Section 1-23-

380(A)(5)(e)(Supp. 2006); Bass v. Kenco Group, 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct. App. 2005); Bursey v. S.C. Dep’t of Health & Env’tl. Control, 360 S.C. 135, 141, 600 S.E.2d 80, 84 (Ct. App. 2004) aff’d, 369 S.C. 176, 631 S.E.2d 899 (2006).

ARGUMENT I

THE WORKERS’ COMPENSATION COMMISSION ERRED IN CONCLUDING THE APPELLANT, WAS NOT IN NEED OF ADDITIONAL MEDICAL TREATMENT AND IN CONCLUDING SHE HAD REACHED MAXIMUM MEDICAL IMPROVEMENT AND MAKING AN AWARD FOR PERMANENT LOSS OF USE. (ISSUES 1 THROUGH 5)

Based on the testimony and medical records submitted by the parties, the Commission had no choice but to conclude, as it did, the Appellant Ms. Tucker suffered compensable injuries as a result of both of her on the job accidents. The evidence further required the Commission to conclude, as it did, the Appellant was entitled to temporary total disability benefits from the time of the second accident through the time of the hearing. It is respectfully submitted, however, the Commission was in error in finding and concluding Ms. Tucker had reached maximum medical improvement for her injuries, was not entitled to additional temporary total disability benefits, and was not entitled to additional medical treatment.

The purpose of the Workers' Compensation Act is to provide for medical care and disability benefits to workers injured while at work. Under the Workers' Compensation Act, an Employer is responsible for the costs of all casually related medical treatment required to an injured employee. SC Code Section 42-15-60; Dodge v. Brucoli Clark Laymon, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999); Hall v. United Rentals, Inc., 371 SC 69, 636 S.E.2d 876 (Ct. App. 2006). Doctor's Care, the only medical provider authorized by Employer clearly directed Appellant was in need of additional medical care. On her very first visit for the first accident, substantial work restrictions were placed upon her and she was scheduled to return in two weeks. The Employer never allowed her to return. Employer allowed her to return to Doctor's Care shortly after the second accident. This time Doctor's Care directed that she not return to work and that she should see an orthopedist "ASAP". Again Employer denied this recommended treatment.

The medical evidence submitted for the first accident evidenced and detailed injuries to Ms. Tucker's back, left arm, left shoulder, both hips, and right leg. (R. p. 83-89). Medical records for the second accident evidenced and detailed injuries to Appellant's entire back, both shoulders, and both legs. Although Appellant was treated for pain management by Dr. Storick, Dr. Storick stated it would be up to a spine surgeon to determine if Appellant was in need of surgery. (R. p. 120). Appellant was never seen by an orthopedic as directed by Doctor's Care.

Ms. Tucker was continuing with treatment at the time of her Workers' Compensation hearing. She had not yet been seen by an orthopedic. She had no yet been seen by a spine surgeon. No medical report stated she had reached maximum medical

improvement for any of her workers' compensation injuries. It is respectfully submitted the substantial evidence of record did not support a finding Ms. Tucker had reached maximum medical improvement for her injuries. Furthermore, no doctor had provided any impairment rating for any of her injuries. Under these circumstances Appellant respectfully submits the findings of maximum medical improvement and the award of permanent loss of use for the spine and left shoulder by the Commission were premature and should be reversed. The Commission was also in error in failing to determine the Appellant suffered injuries to other body parts as detailed by her medical records.

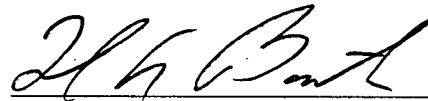
CONCLUSION

The testimony and evidence of record clearly required the Commission to find Paula Tucker was injured as a result of her two workers' compensation accidents. The Commission correctly determined the Appellant had been injured in both accidents and was entitled to temporary total disability benefits from the time of her second accident when she no longer returned to work. The substantial evidence of record did not, however, support a finding or conclusion Ms. Tucker had received adequate medical care, had reached maximum medical improvement, and was not in need of any additional care. As the evidence did not support a finding she had reached maximum medical improvement it was also premature to make an award of loss of use of her spine and left shoulder. It was also err for the Commission to ignore the documented injuries to other body parts.

It is respectfully submitted this case should be remanded to the Commission for a determination Appellant is entitled to additional medical treatment, additional temporary total disability payments, and a determination she incurred injuries to other body parts as documented in her medical records.

Respectfully submitted,

February 24, 2016
West Columbia, South Carolina

A handwritten signature in cursive script, appearing to read 'F. A. Barton', written over a horizontal line.

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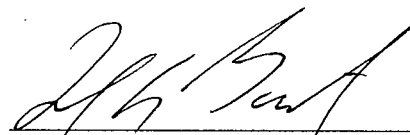
SC Department of Mental Health,
and State Accident Fund,.....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the **BRIEF OF APPELLANT** dated February 24, 2016, and filed on February 29, 2016, complies with Rule 211(b) of the South Carolina Appellate Court rules.

Respectfully submitted,

West Columbia, South Carolina
February 29, 2016



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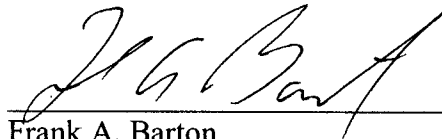
SC Department of Mental Health,
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PROOF OF SERVICE

The undersigned does hereby certify three copies of the **FINAL BRIEF OF APPELLANT** was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon and return address clearly visible on February 29, 2016, addressed to the following:

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February 29, 2016



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