

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

W.C.C. FILE NO. 1122060 & 1308013
APPELLATE CASE NO. 2015-000810

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FEB 23 2016

SC Court of Appeals

Paula Tucker.....Appellant,

vs.

S.C. DEPARTMENT OF MENTAL HEALTH,
and STATE ACCIDENT FUND,,Respondents.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. Did the South Carolina Workers' Compensation Commission properly find that Appellant reached maximum medical improvement on September 30, 2013?
2. Did the South Carolina Workers' Compensation Commission properly find that Appellant was not entitled to any additional medical treatment?
3. Did the South Carolina Workers' Compensation Commission properly make an award pursuant to §42-9-30?
4. Did the South Carolina Workers' Compensation Commission properly find that Appellant received appropriate medical treatment from the employer?
5. Did the South Carolina Workers' Compensation Commission properly find that Appellant suffered permanent injuries solely to the back, neck and left shoulder?

STATEMENT OF THE CASE

On April 5, 2011, Appellant alleges she sustained an injury by accident arising out of and within the course and scope of her employment with the Respondent, S. C. Department of Mental Health. Appellant alleged she suffered injuries to the left arm, left shoulder, left wrist, left hand, back, right leg, right hip, right thigh, right shin and right foot pursuant to the Form 50 filed on July 8, 2013. This claim was denied by the Respondents. The Appellant alleged a second injury on June 16, 2013. Appellant alleged injuries to the back, neck, right leg, left arm, left leg, right arm, both shoulders and an aggravation of a pre-existing condition to the back, neck, right hip and left shoulder pursuant to the Form 50 filed on July 10, 2013. This claim was denied by the Respondents.

The two matters were consolidated for a hearing held before the single commissioner on September 30, 2013. The single commissioner issued an order on May 14, 2014. This Decision and Order found that the Appellant suffered a compensable injury on April 5, 2011 to the neck, back and left shoulder and determined the Appellant suffered no permanent disability. The commissioner found the June 16, 2013 accident compensable and determined that the Appellant was at maximum medical improvement and suffered ten percent (10%) permanent disability to her neck and low back and eight percent (8%) permanent disability to the left shoulder as a result of the June 13, 2013 accident pursuant to S.C. Code §§ 42-9-30(14)(1976, as amended) and S.C. Code §§ 42-9-30(31)(1976, as amended).

The May 14, 2014 Decision and Order was appealed by the Appellant by way of a timely filed Form 30. This matter was heard by the Appellate Panel on September 15,

2014. The Appellate Panel affirmed the Decision and Order on March 23, 2015. This matter was timely appealed by the Appellant to the South Carolina Court of Appeals.

STATEMENT OF THE FACTS

Appellant alleged she suffered an injury by accident within the course and scope of her employment with the Department of Mental Health on April 5, 2011. She alleged injuries to the left arm, left shoulder, neck, left wrist, left hand, back, right leg/hip, thigh knee, shin and foot when she slipped on a bar of soap in a patient's room. This injury was denied by the Respondent. The first record indicating that the Appellant sought medical treatment was over six months after her alleged accident. The record in this case indicates she was seen at Kershaw Health Medical Center on October 28, 2011. (R. pp. 156-169) On this date she presented at Kershaw Health Medical Center complaining of only the right hip, stating that the pain began "yesterday" and indicated it was not a result of any trauma. (R. p. 156) She did not complain of any of the body parts alleged to be injured in the April 5, 2011 work accident at this visit. She also did not relay any information about a work accident to the doctor seeing her for hip pain. Appellant was diagnosed with sciatica and advised to follow up with her primary care physician. (R. pp. 157 & 164) The medical records from this visit specifically indicate that Appellant began experiencing pain the day prior to the visit at Kershaw Health and that the Appellant had no recollection of any injury or trauma. (R. pp. 156, 159, 161 & 166) Had the Appellant been in pain as a result of the alleged work accident, Respondents argue that she would have mentioned this to the doctor at Kershaw Health Medical Center.

Upon filing of the 12A eight months after being seen by Kershaw Health Medical Center, the Respondent set up care for the Appellant with Doctors Care on July 14, 2012.

(R. p. 170) She presented at Doctors Care with complaints of pain to the neck, left arm, low back and right leg. (*Id.*) Appellant received prescriptions for medications and work restrictions from this medical appointment (R. pp. 17-18) Appellant was instructed to follow up in ten days. (*Id.*) Appellant did not follow up with Doctors Care, nor did she request for additional medical care from the Respondent Employer. There is no evidence in the record of any medical care received between October 28, 2011 and July 14, 2012.

Six months after her visit to Doctors Care, the Appellant began treatment under her private health insurance with Dr. Olajide Balogun on January 21, 2013. (R. pp. 172-188) There is no evidence in the record of any medical care received between July 14, 2012 and January 21, 2013. Appellant presented complaining of problems with her left arm, back and right leg, back pain and pain in both hips, and stated to the doctor that she wanted the work restrictions given by Doctors Care lifted so her shift would not be changed at work. (R. p. 172) Dr. Balogun ordered an MRI of the left shoulder on January 21, 2013; this was denied by the Respondents. (R. pp. 173-174) A review of the x-rays of the back showed Appellant suffered from degenerative disc disease. (R. p. 174) Dr. Balogun provided treatment which included physical therapy, a steroid injection, and prescription medications, and he also recommended that she lose weight throughout his course of treatment. (R. pp. 172-188) Appellant reported the injection did not provide any improvement for her shoulder pain (R. p. 200) MRIs of the Appellant's left shoulder and back were obtained on April 17, 2013. (R. p. 190) On April 18, 2013, Dr. Balogun reviewed the MRIs and concluded that the left shoulder MRI was consistent with tendinosis, with no evidence of a rotator cuff tear, and the lumbar MRI shoulder multilevel degenerative disc disease. (R. p. 181) Dr. Balogun further opined that the

Appellant was not a candidate for surgery based upon the MRI findings, recommended that she continue physical therapy, and referred her to a pain clinic. (R. p. 182)

Appellant underwent physical therapy from February 19, 2013 until May 8, 2013 with Kershaw Physical Therapy. Physical therapy discharged the Appellant from care as she had plateaued and she demonstrated inconsistent range of motion during her treatment with Kershaw Physical Therapy (R. pp. 109-116 & 186)

Appellant received pain management from Dr. Steven Storick from May 29, 2013 until August 6, 2013. (R. pp. 116A-120, 200-209) In his initial evaluation of the Appellant, Dr. Storick observed that she had "full range of motion of the hips with internal and external rotation non-painful. Deep compression of the hip bursae nontender" (R. p. 116F) He further reported that she had "[n]ormal range of motion in the neck and low back in flexion and extension." (R. p. 116G) Dr. Storick provided cervical epidural steroid injections on May 30, 2013 and July 22, 2013. (R. pp. 116I & 119) At her last appointment with Dr. Storick on August 6, 2013 he opined, "[e]xtensive workup has only noted mild age-appropriate degenerative changes." (Claimant's R. p. 120) He reviews the extensive workup and noted that nerve studies showed no evidence of radiculopathy, and that Appellant underwent physical therapy and epidural steroid injections with minimum improvement. (*Id.*) He referenced that the MRI of the shoulder showed tendinosis but no full thickness tear. (*Id.*) He opines he has nothing else to offer her and that she should follow up with her primary care physician. (*Id.*) There is no referral to an orthopedist or a spine surgeon from Dr. Storick and no other care was recommended by Dr. Storick as he advised he had nothing else to offer the Appellant. (*Id.*)

Appellant alleged another worked injury on June 16, 2013, injuring and/or aggravating her left arm, left shoulder, neck, left wrist, left hand, back, right leg/hip, thigh, knee, shin and foot. She alleges an unwitnessed fall. She was seen at Palmetto Health Baptist on May 29, 2013. (R. pp. 191-199) Appellant was supposed to follow up with Palmetto Health Baptist on June 13, 2013 but she failed to attend this appointment (R. p. 199)

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-35, 276 S.E.2d 304, 307 (1981). An Appellate panel may reverse or modify the Workers' Compensation Commission's decision only if the Appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, or substantial evidence on the whole record. *Thompson v. South Carolina Steel Erectors*, 369 S.C. 606, 632 S.E.2d 874 (S.C. Ct. App. 2006). Our Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 319 S.E.2d 695, 696 (1984). "Where there are conflicts in the evidence over a factual issue, the findings of the Appellate Panel are conclusive." *Langdale v. Harris Carpets*,

395 S.C. 194, 203, 717 S.E.2d 80, 85 (S.C. Ct. App. 2011) (See Stokes v. First Nat'l Bank, 306, S.C. 46, 50, 410 S.E.2d 248, 251 (1991)).

ARGUMENT

1. **THE WORKERS' COMPENSATION COMMISSION PROPERLY FOUND THAT THE APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT, DID NOT NEED ADDITIONAL MEDICAL TREATMENT, RECEIVED APPROPRIATE MEDICAL TREATMENT FROM THE EMPLOYER AND SUFFERED INJURIES TO THE BACK, NECK AND LEFT SHOULDER.**

Appellant claims to have suffered significant injuries as a result of her work accidents occurring on April 11, 2011 and June 16, 2013; however, she did not seek any medical treatment for the first accident from the Respondent Employer until July 13, 2012 (R. p. 262). By failing to file the report with her Employer timely, the Respondent was unable to provide any medical treatment until the receipt of the 12A. The period of time between the alleged incident and Appellant's first request for medical treatment from the Respondent Employer was over fifteen months. The Statement of the Facts demonstrates inconsistent complaints of pain and requests for medical treatment. It shows that the Appellant did not seek medical treatment from the Respondent Employer again until July 8, 2013 and July 10, 2013 by way of Form 50s. It also demonstrates that the Appellant was seen by various medical providers, underwent multiple diagnostic studies, and received a variety of treatment modalities, none of which made any significant improvement in her pain, per the Appellant.

Appellant argues that she still needs to see an orthopedist. The referral to an orthopedist was made by Doctors Care on June 21, 2013 after her second work accident.

(R. p. 239) At that time, Appellant was in active treatment with Dr. Storick who did not and has not recommend an orthopedic evaluation.

Respondents argue that the single commissioner reviewed the medical evidence and testimony of the Appellant in reaching the conclusion that the Appellant had reached maximum medical improvement. The recommendation from Dr. Balogun to see a pain specialist was fulfilled, and the pain specialist opined that he had nothing else to offer the Appellant.

The Appellate Panel issued a full affirmation of the single commissioner's Decision and Order. Respondents contend that this affirmation should be upheld pursuant to *Langdale v. Harris Carpets* which states, "[t] final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel and it is not the task of courts to weigh the evidence as found by the single commissioner." *Langdale v. Harris Carpets*, 395 S.C. 194, 203, 717 S.E.2d 80, 85 (S.C. Ct. App. 2011) (citing *DeBruhl v. Kershaw Cnty. Sherriff's Dep't*, 303 S.C. 20, 24, 397 S.E.2d 782, 785 (S.C. Ct App. 1990)).

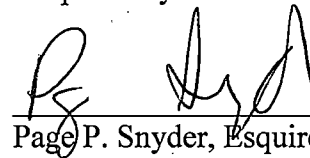
It is clear from the Final Decision and Order that the single commissioner reviewed and weighed all testimony and medical evidence which includes two separate treating physicians finding that they had nothing else to offer the Appellant. The single commissioner made a point to reference the Appellant's "frequent references to seeking long-term disability to several treating physicians" and noted that this fact weighed heavily upon her determinations that the Appellant reached maximum medical improvement and did not need future medical care. (R. p. 23) These findings were

affirmed in the Appellate Panel Decision and Order. (R. pp. 9-10) Respondents argue that the Appellants brief points to no error of law committed by the single commissioner.

CONCLUSION

For the foregoing reasons, Respondents contend that the Order of the Appellate Panel South Carolina Workers' Compensation Commission should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Page P. Snyder', is written over a horizontal line.

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February 22, 2016

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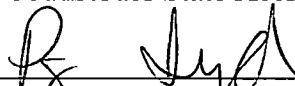
State Accident Fund,

Carrier, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondents complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Chief Counsel for State Accident Fund

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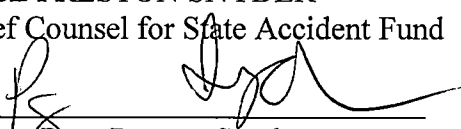
State Accident Fund,

Carrier, Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Respondents' Certificate of Counsel on Appellant on February 22, 2016 by depositing a copy of it in the United States Mail, postage prepaid, to POB 7757, Columbia, South Carolina 29202.

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February 22, 2016



**SOUTH CAROLINA
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HARRY B. GREGORY, JR., Director

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February 22, 2016

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SC Court of Appeals

VIA US MAIL

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
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**RE: Paula Tucker , Appellant v. S.C. Department of Mental Health and
State Accident Fund, Carrier/Respondents
Workers' Compensation File No. 1122060 & 1308013
Appellant Case No.: 2015-000810**

Dear Ms. Kitchings:

Enclosed please find the original and three (3) copies of the Final Brief of Respondents, Certificate of Counsel and Certificate of Service as it relates to the above-referenced matter. I would appreciate you returning the clocked-in copies to me in the self-addressed stamped envelope provided.

By copy of this letter, I am serving Frank Barton, attorney for the Appellant with a copy of the same.

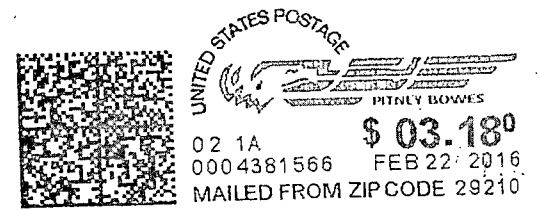
Sincerely,

Page P. Snyder
Chief Counsel, State Accident Fund
S.C. Bar Number 100239

/bjt

Enclosures

cc: Frank Barton, Esquire



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