

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER**

**Darrell Strickland v NTCH
SCWCC: 1022189**

Commissioner: McCaskill, James, Wilkerson

RECEIVED

MAR 28 2016

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion for Rehearing**. The Commissioners considered the matter and ordered the matter handled in following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission hereby;

_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;

_____ Granted. Denied. ~~_____ Dismissed~~ _____ Set for Hearing.

BEFORE THE;

_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.

_____ Barden	_____ James	_____ Taylor
_____ Beck	_____ Campbell	_____ Wilkerson
	_____ McCaskill	

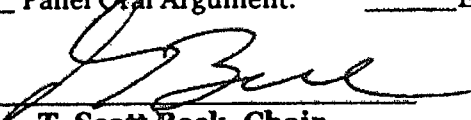
_____ Remand for Order consistent with the Order of the Court.

_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.

_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.


**T. Scott Beck, Chair
For the Commission**

Columbia, South Carolina

2/22 2016

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

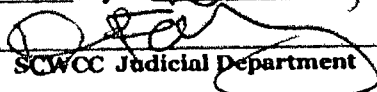
NOT PARTICIPATING:

DISSENTING:

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 22nd day of February, 2016.

By: 
SCWCC Judicial Department

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

W.C.C. FILE NUMBER 1022189

Darrell Strickland,

EMPLOYEE,

VS.

NTCH, Inc.,

EMPLOYER,

AND

Continental Casualty Insurance Company,

CARRIER.

Appellate Panel Review held in Columbia, South Carolina, on August 17, 2015, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed: December 23rd, 2015

APPEARANCES: Claimant/Appellant represented by Preston F. McDaniel, Esquire.
Defendants/Respondents represented by James P. Newman, Jr., Esquire.

STATEMENT OF THE CASE

This matter was heard before Commissioner Aisha Taylor on December 4, 2014, in St. Matthews, South Carolina. Following the hearing, the hearing Commissioner issued an Order dated April 2, 2015, from which the appellant seeks review pursuant to Section 42-17-50 of the South Carolina Code of Laws (1985 as amended).

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth assignments of error, copies of which were furnished to all interested parties prior to oral arguments before the Appellate Panel on August 17, 2015.

By his Brief to the Full Commission dated July 27, 2015, the Claimant raised the following exceptions to the Findings and Conclusions of the hearing Commissioner:

- I. The hearing Commissioner erred as a matter of law by going outside of the request for benefits for which the request for hearing was filed.
- II. The hearing Commissioner erred as a matter of law by denying the Claimant benefits and medical care for the left elbow contrary to the previous Order of the Commission and contrary to the medical care as authorized by the Defendants.
- III. The hearing Commissioner erred as a matter of law by denying the Claimant medical care for the awarded left elbow and wrist by finding that the Claimant had not met his burden of proof, which is by a preponderance of the evidence and by finding that this is a medically complex case.
- IV. That the hearing Commissioner's decision or lack of decision not to consider additional evidence should be overridden as a matter of law under the law and the decisions of the Supreme Court.
- V. That the hearing Commissioner erred as a matter of law in her Order by not addressing the Claimant's request for reopening the record and/or reconsideration prior to her final Order.
- VI. That the hearing Commissioner erred as a matter of law by failing to consider after discovered evidence.

Pursuant to S.C. Code Ann. Section 42-17-50 (1985), we, the Appellate Panel, have reviewed the Award and weighed the evidence presented at the initial hearing. We have also considered all issues raised in the briefs of the appellant and the respondent.

After careful review of the instant case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined that all of the hearing Commissioner's Findings of Fact and Rulings of law are correct as stated.

The Order of the hearing Commissioner from which this appeal has been taken is hereby affirmed by the Panel and the same shall constitute the final Decision and Order of the South Carolina Workers' Compensation Commission. Therefore, the Findings of Fact and Conclusions of Law by the Full Commission Panel are as follows:

FINDINGS OF FACT

- (1) A relationship of employer and employee existed at the time in question, and both were subject to the South Carolina Workers' Compensation Act with Darrell Strickland, Employee, NTCH, Inc., Employer, and Continental Casualty Insurance Company, Insurance Carrier.
- (2) The Claimant's average weekly wage is \$1,135.77 resulting in a compensation rate of \$689.71. This finding was determined by prior Order of the Commission. Jurisdiction and venue are also appropriate as determined by prior Order of the Commission.

(3) The Claimant failed to meet his burden of proving an aggravation or exacerbation of pre-existing carpal tunnel and cubital tunnel syndrome by a preponderance of the evidence as set forth above.

(4) Dr. Wright's opinion regarding causation was qualified based upon the receipt of additional medical evidence which was never provided to him. (See Claimant's APA page 5).

(5) As of Dr. Wright's last medical opinion dated October 20, 2014, it was noted that Dr. Wright's opinion on causation was based on Claimant's history only and not based on any medical documentation, as none was provided. (See Claimant's APA page 6).

(6) Claimant's request for additional medical treatment to include surgery to left elbow and left wrist is denied as it is outside the scope of Commissioner Williams' October 24, 2012 Order and is not causally related by a preponderance of the evidence as stated to a reasonable degree of medical certainty.

CONCLUSIONS OF LAW

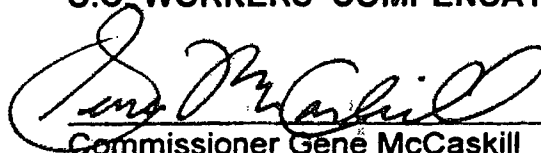
- A. Section 42-1-130 of the South Carolina Code of Laws (1985) defines "employee" and Section 42-1-140 defines "employer".
- B. Section 42-1-160 of the South Carolina Code of Laws (1985) governs injury by accident.
- C. Section 42-15-60 of the South Carolina Code of Laws (1985) governs medical treatment.
- D. Section 42-9-10 of the South Carolina Code of Laws (1985) governs permanent general disability and Section 42-9-30 of the South Carolina Code of Laws, (1985) governs permanent specific disability.

ORDER

WHEREFORE, IT IS ORDERED that the claim for medical treatment for left carpal tunnel syndrome and left cubital tunnel syndrome by Darrell Strickland shall be and is hereby denied as set forth in this Findings of Fact and Conclusions of Law above.

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



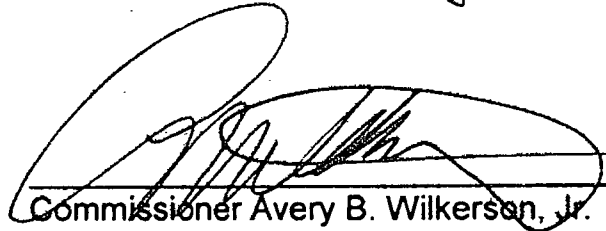
Commissioner Gene McCaskill
for the Appellate Panel

FULL AFFIRMATION

CONCUR:



Commissioner Melody L. James



Commissioner Avery B. Wilkerson, Jr.

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- (1) See also D. SHIPLEY, SOUTH CAROLINA ADMINISTRATIVE LAW at 5-109 (1983).
 - (2) It should be noted that the undisturbed findings of fact and rulings of law as contained in the Hearing Commissioner's Order are specifically referenced and included in toto in the "Order" portion of this Decision so as to comply with the requirements of Baldwin v. James River Corporation, 304 S.C. 485, 405 SE2d 4, as well as the Administrative Procedures Act of the State of South Carolina. In the interest of brevity they have not been repeated in the body of this Order.

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 December 23, 2015