

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO. 0822640

Thomas Contreras,  
Claimant,  
v.  
St. John's Fire District Commission,  
Employer,  
and  
State Accident Fund,  
Carrier.

**RECEIVED**  
JUN 10 2016  
SC Court of Appeals  
FULL COMMISSION ORDER

This matter came before the Full Commission on the Claimant's Form 30. As oral arguments were not requested by the Appellant, this case was decided on the briefs of the parties and a review of the record. This review arises out of an order issued October 22, 2015 by the Single Commissioner.

The Single Commissioner made the following findings of fact:

1. That the South Carolina Worker's Compensation Commission has jurisdiction over this matter.
2. That jurisdiction and venue are proper.
3. That the Defendants have only admitted an injury to the right shoulder.
4. Claimant suffered an admitted injury to his right shoulder on October 8, 2008 while in the course and scope of his employment at St. John's Fire District.
5. That the Claimant has an average weekly wage of \$1,174.20 making for a compensation rate of \$661.29, the maximum compensation rate for 2008.

6. The above cited case was heard by the undersigned on 05/14/13.
7. A Decision and Order was issued on 08/27/13.
8. Defendants filed a Form 30 (Notice of Appeal) on 09/03/13.
9. The Appellate Panel heard oral arguments on 12/16/13.
10. The Appellate Panel issued a Decision and Order on 05/05/14.
11. The Appellate Panel affirmed in part, reversed in part and remanded to the jurisdictional commissioner for a determination of an award to the Claimant's right shoulder under §42-9-30.
12. The Judicial Department assigned the case per its usual practice. As such, the case was assigned to this office as the undersigned was the jurisdictional commissioner at the time of assignment.
13. Given that I had heard the case and issued the Order affirmed in part, reversed in part, the parties were contacted by email to inquire if either or both wished me to recuse myself from ruling on the case per the directive of the Appellate Panel.
14. Neither party asked for a recusal.
15. As such, I asked the parties to brief the case consistent with the ruling of the Appellate Panel. Those briefs have been provided and have been made part of the record.
16. The Order of the Appellate Panel reads, "IT IS THEREFORE ORDERED AND, ADJUDGED AND DECREED that: The order of the single Commissioner is hereby affirmed in part, reversed in part and remanded by this Appellate Panel. This case shall be remanded to the Jurisdictional Commissioner for a determination of an award to the Claimant's right shoulder under § 42-9-30." That is the sole issue

before me. As a matter of review, I made the following applicable findings of fact following the hearing on 12/16/13:

17. The Claimant suffered an injury by accident to his right shoulder on 09/04/12 arising out of and within the course and scope of his employment.

18. The Defendants have provided the Claimant with medical care and treatment for this injury including four shoulder surgeries.

19. Dr. James DeMarco, the authorized treating physician, states on the Form 14B dated 05/16/11 that the Claimant is unable to return to work at his current employment.

20. The Claimant was 51 years old at the time of the 2013 hearing.

21. The Claimant is a high school graduate (1979).

22. The Claimant is a US Army veteran who was honorably discharged.

23. All of the Claimant's jobs prior to his work at the fire department were physical in nature.

24. The Claimant's job at the fire department which he held for over twenty-two years is physical by description.

25. As noted in Finding #19, the Claimant per Dr. DeMarco cannot return to his employment with the St. Johns Fire District Commission.

26. That finding is corroborated by Jean R. Hutchinson, M.Ed., who is a certified rehabilitation counselor and is certified in vocational evaluation. Dr. Charles Hughes also opines that he does not think the Claimant can return to his prior employment.

27. The Defendants did not choose to submit a vocational evaluation.

28. The Claimant was at MMI as of 08/07/12.

29. In addition to those findings to make a determination consistent with the directive from the Full Commission, I must consider the most recent impairment ratings in this case.

30. Dr. James DeMarco, who was the authorized treating physician, opined on 09/04/12, that the Claimant sustained a 9% permanent impairment to his right upper extremity which converts to a 15% permanent impairment of his right shoulder as a result of his work-related accident on 10/08/08.

31. Dr. Charles Hughes, who performed an IME, opined on 10/06/11 that the Claimant had suffered 14% permanent impairment to his right shoulder.

32. It is important to note that my directive from the Full Commission is very specific. I am to determine an award to the Claimant's right shoulder pursuant to §42-9-30.

33. While both parties make additional arguments in their briefs, this issue and this issue alone was before me in this remand.

34. Thus, when the evidence relevant to such a determination is considered, the Claimant has suffered 35% permanent partial disability to the right shoulder.

Claimant timely filed a Form 30 with the following grounds for appeal:

1. Whether the Single Commissioner on remand erred as a matter of fact and law in finding that the instructions on remand limited his findings to a permanent partial disability award under § 42-9-30 when the vacating of the previous Order required additional findings to be made regarding temporary partial disability and temporary total disability?

2. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to include, affirm or otherwise determine the amount of temporary partial disability compensation due?

3. Whether the Single Commissioner on remanded erred as a matter of act and law making a disability award which was unsupported by the evidence and failed to

take into account Claimant's actual loss of earnings capacity?

4. Whether the Single Commissioner on remand erred as a matter of fact and law in determining Claimant reached MMI on September 4, 2012?

5. Whether the Single Commissioner on remand erred as a matter of fact and law in failing to make specific and detailed findings of fact sufficient for appellate review?

After reviewing the briefs submitted by the parties and the record in its entirety, this Appellate Panel makes the following findings:

#### FINDINGS OF FACT

1. That the South Carolina Worker's Compensation Commission has jurisdiction over this matter.
2. That jurisdiction and venue are proper.
3. That the Defendants have only admitted an injury to the right shoulder.
4. Claimant suffered an admitted injury to his right shoulder on October 8, 2008 while in the course and scope of his employment at St. John's Fire District.
5. That the Claimant has an average weekly wage of \$1,174.20 making for a compensation rate of \$661.29, the maximum compensation rate for 2008.
6. The above cited case was heard by the Single Commissioner on 05/14/13.
7. A Decision and Order was issued on 08/27/13.
8. Defendants filed a Form 30 (Notice of Appeal) on 09/03/13.
9. The Appellate Panel heard oral arguments on 12/16/13.
10. The Appellate Panel issued a Decision and Order on 05/05/14.

11. The Appellate Panel affirmed in part, reversed in part and remanded to the jurisdictional commissioner for a determination of an award to the Claimant's right shoulder under §42-9-30.

12. The Judicial Department assigned the case per its usual practice. As such, the case was assigned to the same Single Commissioner that heard the case on May 14, 2013.

14. The Single Commissioner asked the parties to brief the case consistent with the ruling of the Appellate Panel. Those briefs have been provided and have been made part of the record.

15. The Order of the Appellate Panel of May 5, 2015 reads, "IT IS THEREFORE ORDERED AND, ADJUDGED AND DECREED that: The order of the single Commissioner is hereby affirmed in part, reversed in part and remanded by this Appellate Panel. This case shall be remanded to the Jurisdictional Commissioner for a determination of an award to the Claimant's right shoulder under § 42-9-30." That was the sole issue before the Commission. As a matter of review, the following applicable findings of fact were made following the hearing on 12/16/13:

16. The Claimant suffered an injury by accident to his right shoulder on 09/04/12 arising out of and within the course and scope of his employment.

17. The Defendants have provided the Claimant with medical care and treatment for this injury including four shoulder surgeries.

18. Dr. James DeMarco, the authorized treating physician, states on the Form 14B dated 05/16/11 that the Claimant is unable to return to work at his current employment.

19. The Claimant was 51 years old at the time of the 2013 hearing.
20. The Claimant is a high school graduate (1979).
21. The Claimant is a US Army veteran who was honorably discharged.
22. All of the Claimant's jobs prior to his work at the fire department were physical in nature.
23. The Claimant's job at the fire department which he held for over twenty-two years is physical by description.
24. As noted in Finding #19, the Claimant per Dr. DeMarco cannot return to his employment with the St. Johns Fire District Commission.
25. That finding is corroborated by Jean R. Hutchinson, M.Ed., who is a certified rehabilitation counselor and is certified in vocational evaluation. Dr. Charles Hughes also opines that he does not think the Claimant can return to his prior employment.
26. The Defendants did not choose to submit a vocational evaluation.
27. The Claimant was at MMI as of 08/07/12.
28. In addition to those findings to make a determination consistent with the directive from the Full Commission, we must consider the most recent impairment ratings in this case.
30. Dr. James DeMarco, who was the authorized treating physician, opined on 09/04/12, that the Claimant sustained a 9% permanent impairment to his right upper extremity which converts to a 15% permanent impairment of his right shoulder as a result of his work-related accident on 10/08/08.
31. Dr. Charles Hughes, who performed an IME, opined on 10/06/11 that the Claimant had suffered 14% permanent impairment to his right shoulder.

32. It is important to note that the directive from the Full Commission Order of May 5, 2014 is very specific. We are to determine an award to the Claimant's right shoulder pursuant to §42-9-30.

33. While both parties make additional arguments in their briefs, this issue and this issue alone was before the Commission on this remand.

34. Thus, when the evidence relevant to such a determination is considered, the Claimant has suffered 35% permanent partial disability to his right shoulder.

35. Appellant also raised issues from the prior Appellate Panel order dated May 5, 2014. We find that the Appellant cannot challenge the order from the Full Commission dated May 5, 2014 and that the only issues from the order of October 22, 2015 are properly before this review panel.

36. The Single Commissioner Order of October 22, 2015 is affirmed in its entirety.

#### CONCLUSIONS OF LAW


The following sections of the South Carolina Code of Law give the appropriate definition of divisions of the South Carolina Workers' Compensation Act as applicable to this case:

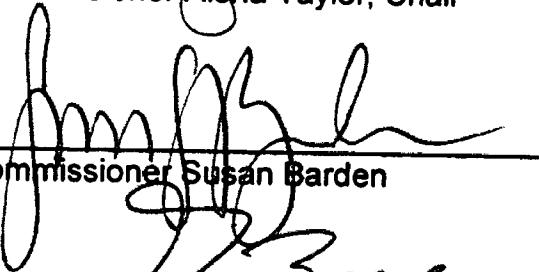
1. South Carolina Code Section 42-9-30 governs schedule of period of disability and compensation.
2. South Carolina Code Section 42-17-50 governs review and rehearing by the Commission.

#### ORDER

Therefore, the Order of the Single Commissioner is **affirmed** in its entirety.

IT IS SO ORDERED!

By:   
Commissioner Aisha Taylor, Chair

By:   
Commissioner Susan Barden

By:   
Commissioner Scott Beck

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 Eugenia Hollmon on May 27, 2016***