

**DECISION AND ORDER OF THE
APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION**

STATE OF SOUTH CAROLINA

MARTHA PEREZ, CLAIMANT,

VS.

ALICE MANUFACTURING COMPANY, INC., EMPLOYER,

AND

GREAT AMERICAN ALLIANCE INSURANCE COMPANY, CARRIER,

DEFENDANTS

WCC FILE NUMBERS 1321387 & 1407915

FULL AFFIRMATION

An Appellate Panel Review was held in Columbia, South Carolina, on April 18, 2016, notice of which was timely and properly served upon all parties of interest.

The Claimant/Respondent was represented by W. Grady Jordan of Smith, Jordan & Lavery, P.A. The Defendants/Appellants were represented by E. Ros Huff of Huff & Hapeshis.

BACKGROUND AND PROCEDURAL HISTORY

This matter comes before the Appellate Panel of the Commission upon a Form 30 appeal filed on behalf of the Defendants. The parties, through their respective attorneys, appeared before the Appellate Panel on April 18, 2016, after appellate briefs were filed by the parties, and oral argument was conducted.

Four (4) separate cases were heard before the Single Commissioner (Gene McCaskill) on May 20, 2015, for judicial economy upon the consent of the parties. Of those four (4) cases, two (2), bearing filed numbers 1321387 (Back - date of injury August 8, 2013) & 1407915 (Back - date of injury May 19, 2014), are before the Full Commission on Appeal to which this Order is

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directed. Although all of the Single Commissioner's Findings of Fact and Conclusions of Law are set out below, only those pertinent to file numbers 1321387 and 1407915 are relevant for purposes of this Order.

The Single Commissioner's Findings of Fact and Conclusions of Law are as follows:

FINDINGS OF FACT

(SINGLE COMMISSIONER)

1. The Claimant has alleged four separate claims. Each has been assigned its own file number.
2. In the interest of judicial economy, given that all four alleged injuries occurred in the employ of the same Employer and given that the carrier is the same in all four claims, one hearing was held on 05/20/15 to address each claim.
3. In WCC File #1321387 with an alleged date of accident of 08/08/13, the Claimant alleges that she suffered a work-related injury to her back arising out of and within the course and scope of her employment.
4. In WCC File #1407915 with an alleged date of accident of 05/19/14, the Claimant alleges that she suffered a work-related injury to her back arising out of and within the course and scope of her employment.
5. In WCC File # 1322319 the Claimant alleges repetitive trauma to both legs, specifically her knees, in August 2013.
6. In WCC File # 1421002 the Claimant alleges an injury by accident to both legs, specifically to her knees, in February 2014.
7. As to the alleged knee injuries, I have read all of the medicals in this case several times. The lack of specificity as to date of injury encumbers the Claimant's ability to establish compensability.

8. Clearly, there are subjective complaints by the Claimant as to knee pain. As to the August 2013 claim, she tells Dr. Michael Welborn, who is the company, doctor that she doesn't have a date as to when it started.
9. Dr. Welborn has x-rays taken and they are normal.
10. Dr. Welborn opines that he believes that she has tendinitis in her knees. He also opines as to a mechanism of injury. Dr. Welborn believes that her problem results from her stepping up and down off of a box in the weave room.
11. In his report of 08/28/13, Dr. Welborn writes as to the issues the Claimant is having with her knees, "This is more of a repetitive motion problem rather than an injury."
12. While all of these facts align to perfect a repetitive trauma claim, the Claimant fails to meet her burden in several ways. First, there is no objective medical imaging that indicates any problems with her knees. While she does report this issue to Dr. Welborn and he addresses it, the records as to this period of time end rather abruptly. The note from 08/28/13 concludes, "Continue modified duty of no repetitive step climbing, no stairs." Come back only if needed. This is the last note from Dr. Welborn in the APAs.
13. The Claimant sees Dr. Michelle Wilson of Steadman Hawkins Clinic of the Carolinas. On the Health History Questionnaire, completed on 03/25/14, the Claimant indicates that she is having problems with both of her knees as well as her back.
14. Dr. Wilson's note from that same visit reads in part, "She still is having bilateral knee pain that has developed over the last two months."
15. There is no claim as to the knees citing a date of injury of January 2014.
16. On 06/18/14, she reports her problem is back pain. She does not mention her knees.

17. On 07/24/14, she reports that she has low back pain and that her right knee is numb. The reason for that visit was her head. (Claimant has or has had another claim as to her head which is not before me.)
18. In the ER report from 04/10/15 at St. Francis Hospital, the Claimant reported that she was hurt at work a little over a year ago. She reports she has had continued back pain, knee pain and some periods of numbness in her right leg. The primary focus of that visit is her back.
19. In his deposition, David Cooper who is the second shift manager for the Employer, testified that the Claimant never reported problems with her knees to him. "I don't remember about any knees." (page 24, line 6)
20. When the evidence is viewed as a whole, there are too many inconsistencies as to her complaints with her knees. While the Claimant may well have knee issues, she has not developed a narrative needed to establish compensability. The Claimant has simply failed to meet her burden as to an injury by accident or repetitive trauma claim as to her alleged knee injuries.
21. The back claims, however, are very different. On both occasions the Claimant reported those alleged injuries in a timely manner. The record is clear and consistent as to her subjective complaints and an injury by accident to her back.
22. The company sent the Claimant to their doctor for treatment. He then refers the Claimant to Dr. Wilson at Steadman Hawkins who is treating the Claimant. While the x-rays as to her back are negative, Dr. Wilson orders a MRI which the carrier would not authorize.
23. The Claimant was treating with authorized treating physicians for work-related injuries to her back.

24. The medical records are clearly treatment records. If Dr. Wilson did not believe the Claimant had suffered a back injury or injuries, she would not have taken the Claimant out of work pending the results of the MRI.
25. The first reports of injury as to the back claims are in the record. Mr. Cooper testifies that the Claimant duly reported them and the treatment records are clear and consistent as are the Claimant's subjective complaints.
26. The release to return to work the Defendants cite in their APAs is from the Department of Surgery – Regional Urology. That release has nexus to a suspected kidney stone, not the issues with her back.
27. When the evidence is viewed as a whole, I find that the Claimant has suffered compensable work-related injury or injuries to her back on 08/08/13 and 05/19/14.
28. The Claimant is entitled to medical care and treatment for those injuries. The authorized treating physician is to be Dr. Michelle Wilson. The Claimant is entitled any and all treatment modalities prescribed or directed by Dr. Wilson to include imaging - specifically the MRI she has already ordered.
29. Given that Dr. Wilson has taken the Claimant out of work pending that MRI, the Claimant is entitled to TTD from 06/18/14 to the present and continuing.
30. The Claimant is not at MMI.
31. All other issues are held in abeyance.

CONCLUSIONS OF LAW

- 1) Pursuant to S.C. Code Ann '42-1-130 (1976), the Claimant was a covered Employee and pursuant to the S.C. Code Ann '42-1-140 (1976), the Employer Alice Manufacturing Company, Inc., was a covered Employer under the Workers= Compensation Act.

- 2) Pursuant to S.C. Code Ann. '42-1-160 (1976), the Claimant sustained a compensable injury by accident to her back on August 8, 2013 and on May 19, 2014, accident arising out of and during the course of her employment with the Defendant Employer. The Claimant's claims for her knees are not compensable.
- 3) Pursuant to S.C. Code Ann. '42-15-60 (1976), the Defendants shall pay for the past causally-related medical treatment the Claimant has received for her back injuries, and they shall further provide additional causally-related medical care for her back injuries until the Claimant has reached MMI, with said treatment being with Michelle Wilson, M.D., or care directed by her.
- 4) Pursuant to S.C. Code Ann. '42-9-10 (1976), the Average Weekly Wage is \$584.06 with a corresponding Compensation Rate of \$389.57.
- 5) Pursuant to S.C. Code Ann., §42-9-10 (1976) and §42-9-30 (1976) the Defendants shall pay unto the Claimant TTD benefits from June 18, 2014, and continuing until further order of the Commission.

(END SINGLE COMMISSIONER)

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the respective briefs of Appellants and Respondent, as well as those issues raised at the Full Commission Review hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby fully affirm the Order of the Single Commissioner in its entirety as to the two cases with file numbers 1321387 & 1407915.

Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as

to these two claims:

1. In WCC File #1321387 with an alleged date of accident of 08/08/13, the Claimant alleges that she suffered a work-related injury to her back arising out of and within the course and scope of her employment.
2. In WCC File #1407915 with an alleged date of accident of 05/19/14, the Claimant alleges that she suffered a work-related injury to her back arising out of and within the course and scope of her employment.
3. On both occasions the Claimant reported the alleged back injuries in a timely manner. The record is clear and consistent as to her subjective complaints and an injury by accident to her back.
4. The company sent the Claimant to their doctor for treatment. He then refers the Claimant to Dr. Wilson at Steadman Hawkins who is treating the Claimant. While the x-rays as to her back are negative, Dr. Wilson orders a MRI which the carrier would not authorize.
5. The Claimant was treating with authorized treating physicians for work-related injuries to her back.
6. The medical records are clearly treatment records. If Dr. Wilson did not believe the Claimant had suffered a back injury or injuries, she would not have taken the Claimant out of work pending the results of the MRI.
7. The first reports of injury as to the back claims are in the record. Mr. Cooper testifies that the Claimant duly reported them and the treatment records are clear and consistent as are the Claimant's subjective complaints.

8. The release to return to work the Defendants cite in their APAs is from the Department of Surgery – Regional Urology. That release has nexus to a suspected kidney stone, not the issues with her back.
9. When the evidence is viewed as a whole, the Appellate Panel finds that the Claimant has suffered compensable work-related injury or injuries to her back on 08/08/13 and 05/19/14.
10. The Claimant is entitled to medical care and treatment for those injuries. The authorized treating physician is to be Dr. Michelle Wilson. The Claimant is entitled any and all treatment modalities prescribed or directed by Dr. Wilson to include imaging - specifically the MRI she has already ordered.
11. Given that Dr. Wilson has taken the Claimant out of work pending that MRI, the Claimant is entitled to TTD from 06/18/14 to the present and continuing.
12. The Claimant is not at MMI.
13. All other issues are held in abeyance.

CONCLUSIONS OF LAW

- 1) Pursuant to S.C. Code Ann '42-1-130 (1976), the Claimant was a covered Employee and pursuant to the S.C. Code Ann '42-1-140 (1976), the Employer Alice Manufacturing Company, Inc., was a covered Employer under the Workers' Compensation Act.
- 2) Pursuant to S.C. Code Ann. '42-1-160 (1976), the Claimant sustained a compensable injury by accident to her back on August 8, 2013 and on May 19, 2014, arising out of and during the course of her employment with the Defendant Employer.
- 3) Pursuant to S.C. Code Ann. '42-15-60 (1976), the Defendants shall pay for the past causally-related medical treatment the Claimant has received for her back injuries, and they shall

further provide additional causally-related medical care for her back injuries until the Claimant has reached MMI, with said treatment being with Michelle Wilson, M.D., or care directed by her.

4) Pursuant to S.C. Code Ann. §42-9-10 (1976), the Average Weekly Wage is \$584.06 with a corresponding Compensation Rate of \$389.57.

5) Pursuant to S.C. Code Ann., §42-9-10 (1976) and §42-9-30 (1976) the Defendants shall pay unto the Claimant TTD benefits from June 18, 2014, and continuing until further order of the Commission.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Decision and Order of the Single Commissioner in the matters of W.C.C. File Numbers 1321387 & 1407915, is hereby and shall be **FULLY AFFIRMED** in its entirety.

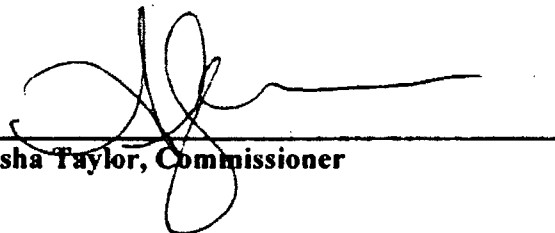
IT IS SO ORDERED.



Susana S. Barden, Commissioner



Melody L. James, Commissioner



Aisha Taylor, Commissioner

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 24, 2016