

66073

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
South Carolina Workers' Compensation Commission

Derrick L. Williams, Commissioner; Susan S. Barden, Commissioner; Andrea C. Roche,
Commissioner

W.C.C. File No.: 1105986
Appellate Case No.: 2012-212689

RECEIVED

OCT 30 2012

SC Court of Appeals

Pamela Proud,

Appellant,

v.

Palmetto Health Richland
and Key Risk Management Services, Inc.,

Respondents.

APPELLANT'S RETURN TO RESPONDENTS'
MOTION TO DISMISS APPEAL

Thomas P. Bellinger
McWhirter, Bellinger & Associates, P.A.
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Attorney for Appellant Pamela Proud

Pursuant to Rule 240(e), SCACR, Appellant submits this Return to Respondents' Motion to Dismiss Appeal. The grounds for this motion are that the ruling appealed from is a final judgment that terminates this particular proceeding. Thus, it is not interlocutory, and this appeal should not be dismissed.

FACTUAL AND PROCEDURAL BACKGROUND

This is an appeal from an Order of the Appellate Panel of the South Carolina Workers' Compensation Commission. This case originally came before the Single Commissioner on a Form 50 filed by the Claimant. This was a denied case. Before the Single Commissioner, Claimant contended that she suffered a compensable injury by accident to her left leg (ankle) on May 5, 2011, when she missed a step and fell in an employer provided parking garage. Claimant also alleged that her average weekly wage should be \$753.60 with a corresponding compensation rate of \$502.42, because of a pre-injury transfer within the hospital that resulted in a wage increase.

A copy of the Single Commissioner's Order is attached as Exhibit A. The Single Commissioner determined that Claimant suffered a compensable injury by accident, and awarded Claimant temporary total disability compensation as well as payment of causally related medical treatment, mileage, and prescription medication. (Ex. A at 11.) However, the Single Commissioner determined that Claimant's proper average weekly wage was \$585.04 with a corresponding compensation rate of \$395.05. (Ex. A at 10.)

Cross-appeals followed the Single Commissioner's ruling. Claimant appealed that part of the Order setting the average weekly wage at \$585.04 and compensation rate at \$390.05. Defendants appealed those parts of the Single Commissioner's Order finding that Claimant suffered a compensable injury, and several rulings concerning evidence proffered by Claimant.

The Appellate Panel's Order, which is attached as Exhibit B, affirmed in full the Single Commissioner's Order. (Ex. B at 13.)

This appeal follows the Order of the Appellate Panel affirming the Order of the Single Commissioner regarding Claimant's average weekly wage and compensation rate.

ARGUMENT

Respondents argue that this appeal is interlocutory, and should therefore be dismissed. It is true that a party may only appeal from final judgments of the Workers' Compensation Commission. The South Carolina Supreme Court recently stated that, "we note our long-standing rule that the APA governs the review of administrative agency matters, and is controlling over any provisions that conflict with its terms." *Bone v. U.S. Foodservice*, Op. No. 27153 (S.C. Sup. Ct. filed Aug. 1, 2012) (Shearhouse Adv. Sh. No. 26 at 113) (*reh'g granted* Sept. 14, 2012) (*citing Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981)). The Court further stated that "S.C. Code Ann. § 1-23-610(A)(1) (Supp.2009) of the APA allows judicial review only from "final decisions" of the ALC." .” *Id.* (*citing Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 692 S.E.2d 894 (2010)). In *Charlotte-Mecklenburg* the Court stated that a "final judgment disposes of the whole subject matter of the action or terminates the **particular proceeding** or action, leaving nothing to be done but to enforce by execution what has been determined." *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) (*citing Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)) (emphasis added).

The judgment of the Appellate Panel in this case is a final judgment because their Order terminates this "**particular proceeding or action.**" The Respondents assert that the Appellate

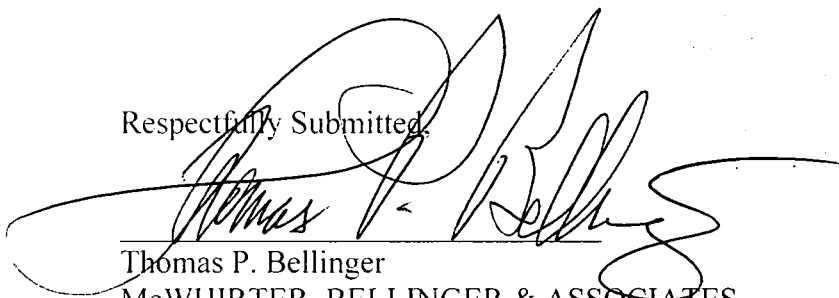
Panel's Order is not final because Appellant may be entitled to further benefits not provided for in either the Single Commissioner's Order or the Appellate Panel's Order. However, this reasoning is flawed. Appellant's entitlement to further benefits under the Act, a determination as to maximum medical improvement, permanency, etc., would necessarily require another proceeding. To obtain a ruling on these issues, Appellant would be required to file another Form 50 requesting a new and different hearing before a Commissioner. The Appellate Panel's Order finally decided all issues that were before the Single Commissioner in this **particular proceeding**. Any further issues that may come before the Commission would be decided in a different proceeding.

Since the Appellate Panel's Order finally decided all issues before the Single Commissioner on this Form 50, the Order is a final judgment from which an appeal may lie. Thus, this appeal should not be dismissed as interlocutory.

CONCLUSION

For the reasons stated herein, Appellant's appeal is from a final judgment and should not be dismissed as interlocutory.

Respectfully Submitted,



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Attorney for Appellant

Lexington, South Carolina
October 30th, 2012

The State of South Carolina
In the Court of Appeals

Appeal from the South Carolina
Workers' Compensation Commission

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SC Court of Appeals

W.C.C. File #: 1105986

Pamela Proud Appellant,

vs.

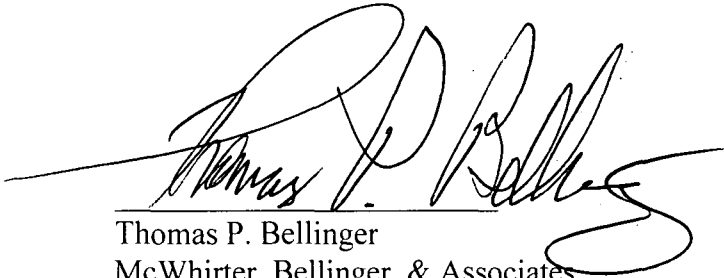
Palmetto Health Richland
and Key Risk Management Services, Inc., Respondents.

Appellant's
Proof of Service

I, on October 30, 2012, served the APPELLANT'S RETURN TO RESPONDENTS' MOTION TO DISMISS APPEAL upon Respondents by depositing a copy in the United States Mail, sufficient postage prepaid, addressed to the following:

Michael E. Chase, Esquire
Carmelo B. Sammataro
Turner Padgett Graham & Laney, P.A.
PO Box 1473
1901 Main Street, Suite 1700
Columbia, SC 29202

October 30, 2012
Lexington, South Carolina



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L. LISA McPHERSON
ELIZABETH McMAHON PENTZ
RICHARD W. SIMMONS, II
J. TYLER LEE, JR.
MELISSA G. MOSIER
JOHN P. MEADORS

October 30, 2012

VIA HAND DELIVERY:

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

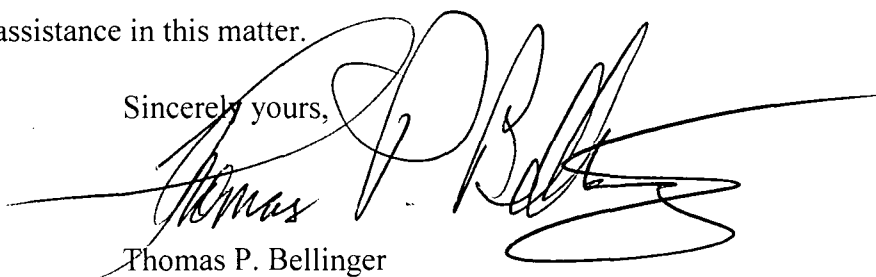
Re: *Pamela Earon Proud v. Palmetto Health Richland*
Appellate Case No.: 2012-212689
W.C.C. File #: 1105986

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Appellant's Return To Respondents' Motion To Dismiss Appeal and the original and one copy of the Proof of Service. Please file the original documents and return a clocked copy to my courier.

Thank you for your assistance in this matter.

Sincerely yours,


Thomas P. Bellinger

TPB:dlp

Enclosures

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OCT 30 2012

SC Court of Appeals

OFFICES
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Exhibit A

ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1105986

Pamela E. Proud,)
)
 Claimant,)
)
 -vs-)
)
 Palmetto Health Richland,)
)
 Employer,)
)
)
 Key Risk Management)
 Services, Inc.,)
)
 Carrier,)
 Defendants.)
 _____)

DECISION AND ORDER

Hearing: Columbia, South Carolina on August 17, 2011.

Appearances: Elizabeth McMahon Pentz, Esquire, McWhirter, Bellinger & Associates, P.A., Claimant; and
Michael E. Chase, Esquire, Turner, Padgett, Graham & Laney, P.A., Employer/Carrier.

Purpose of Hearing: To determine issues raised on the Forms 50 and 51.

Decision and Order: By G. Bryan Lyndon, Commissioner.

Filed: November 29, 2011

CLAIMANT'S APA SUBMISSIONS

APA # MEDICAL PROVIDER	DATES	PAGES
1. Palmetto Health Richland	05/05/11	1 - 38
2. David K. Lee, M.D. Carolina Orthopaedic & Sports Medicine	05/12/11 - 07/21/11	39 - 51
3. Lexington Medical Center	06/13/11	52-53

EMPLOYER/CARRIER APA SUBMISSIONS

APA # MEDICAL PROVIDER	DATES	PAGES
4. Lexington Family Practice	09/19/08 - 04/04/11	54 - 61

CLAIMANT'S EXHIBITS

5. 2010 Wage information:
6. 2011 Wage information (AWW \$753.60; CR \$502.42);
7. MAP/PHOTOS: Palmetto Health Richland Campus, Orientation material, Photographs (accident location);
8. 05/05/11 Claimant cell phone record (803-206-8461) to Judy Hardebeck (803-352-1600) (9:49am):
*ED Management & Support Staff phone list included;
9. 05/05/11 Judy Hardebeck email to Claimant with schedule (10:13am):
*Includes 05/07/11 & 05/09/11 email exchanges in response
10. 05/05/11 Claimant Facebook post regarding accident (11:18am);
11. 05/05/11 Employee Occurrence Intake form (4:24pm);
12. 05/05/11 Email Palmetto Health Employee Health Dept. Confirmed EOI form completed (4:31pm);
13. 05/05/11 Claimant text to Jordan Alta regarding accident (3:01pm);

14. Brazand Robinson-Thomas email to Claimant: "Have you heard back from Healthworks yet?";
15. 05/13/11 Brazand Robinson-Thomas email to Claimant; Acknowledged Claimant's conversation with Debby Harden previous week regarding accident;
16. Claimant email updates acknowledged accident/updated information to employer;
17. 05/16/11 Debby Harden letter - advised no workers' compensation claim;
18. 06/06/11 Turner Padgett, P.A. correspondence to MBA, P.A. with 05-05-11 Employee Occurrence Intake/05-05-11 Palmetto Emergency record printed 05-20-11/05-24-11 Form 12-A/05-24-11 email from Debbie Harden (Work Comp Case Mgr.) To Key Risk & Palmetto Health; and
19. Claimant left ankle photographs.

EMPLOYER/CARRIER EXHIBITS

20. Palmetto Health Employee Health Pre-Placement Health Questionnaire Dated 5/3/10 - 5/4/10
21. Statement of Debby Harden, RN dated 5/14/11; and
22. Medical Summary dated 7/27/11.

STIPULATIONS

The parties stipulated to the following matters:

1. The Commission retained proper jurisdiction to hear the matters presented;
2. The parties consented to venue in Richland County;
3. The parties received proper notice of the August 17, 2011 hearing. All parties were represented by Counsel;
4. This matter came before the Commission on the Claimant's Form 50 and Employer/Carrier's form 51.
5. The Commission's file, Commissioner's notes, and the Administrative Procedures Act submissions are part of the record.

OBJECTIONS

None.

STATEMENT OF THE CASE

Claimant alleged a May 5, 2011, injury to her left leg (ankle) arising out of and in the course of her employment. She requested causally related medical treatment and temporary total disability compensation from May 6, 2011, to present and on a running award under the Act.

Claimant worked as a Registered Nurse at Employer. Claimant parked in an employer-provided parking garage. Claimant contends that as she walked through the parking garage, she missed a step which caused her left ankle to roll. Claimant fell forward onto both knees. She sought treatment at Palmetto Health Richland, Carolina Orthopaedic & Sports Medicine, and Lexington Medical Center. Claimant was still in physical therapy treatment under David K. Lee, M.D., of Carolina Orthopaedic & Sports Medicine as of the date of this hearing.

Claimant's counsel argued that as a post July 1, 2007, medically complex case, the Claimant established her burden of proof under S.C. Code Ann. §42-1-160(E). Counsel asserted that the Dr. Lee's medical records provided medical causation that Claimant informed Dr. Lee she fell in Employer's parking garage, causing her left leg (ankle) injury. Opposing counsel relied upon contrary evidence that Claimant had eight (8) previous bilateral foot surgeries.

Claimant's counsel provided further evidence that Claimant's injury arose out of and in the course of her employment through an Employee Occurrence Intake Form, facebook posting, and text message.

Employer/Carrier asserted that Claimant did not incur an injury arising out of and in the course of her employment. Employer/Carrier stated that Claimant injured her ankle on a level

surface. Employer/Carrier further contended that Claimant's story later changed to state she was walking down the parking garage steps when she was injured.

EVIDENCE OF THE CASE

The Commission's file became a part of the record without exception. The Claimant began work at Employer May 7, 2010. The Commission heard the following testimony in order presented: Claimant, Pamela E. Proud; Jennifer Sorrenti; Judy Hardebeck; and Brazand Robinson Thomas.

Claimant worked as a Registered Nurse. She missed a step in the employer's parking garage after training on May 5, 2011, and injured her left leg (ankle). She reported her injury immediately by telephone to Judy Hardebeck. However, more than one (1) week after her accident, the Employer's Workers' Compensation case manager, Debby Harden, informed Claimant via a letter that Palmetto Health Richland did not find her injury compensable under the Act. To date, Workers' Compensation has paid mileage and prescription reimbursement, but it has not paid weekly benefits. Dr. Lee had Claimant out of work as of the date of this hearing.

Pamela E. Proud

The Claimant began work for the Employer in 2006, left, and returned in 2010. (Tr. Pg. 9, ll. 9-11). She transferred from Baptist to Richland and was in orientation training in May 2011 when the accident occurred. (Tr. Pg. 9, ll. 12 - 17). This began May 2, 2011. (Tr. Pg. 9, ln. 25 - Pg. 10, ln. 4. She parked in the employee parking garage and attended glucometer training May 5, 2011; and left approximately 9:40. (Tr. Pg. 10, ln. 19; ll. 5 -16). Claimant spoke to co worker Jennifer Sorrenti prior to her training meeting. (Tr. Pg. 11, 12-17). Claimant walked to the parking garage (Tr. Pg. 11, 21-22). She missed a step at the curb and "fell forward onto both of my knees and my palms or heels of my hands that the ankle twisted very badly." (Tr. Pg. 12, ll. 1 - 6).

The Claimant spoke with Judy Hardebeck who provided Claimant a wheelchair at the emergency room. (Tr. Pg. 12, ln. 15 - 25; Tr. Pg. 13, ll. 24-25). Claimant testified that she informed Ms. Hardebeck "that I missed a step, [t]he ankle rolled and I fell forward. (Tr. Pg. 14, ll. 8-9). The Claimant informed any attending emergency room personnel that her accident "occurred in the employee parking garage and that I missed a step. (Tr. Pg. 14, ll. 22-25).

The Claimant testified that she posted details of her accident on her facebook account from her cellular telephone during the emergency room wait. (Tr. Pg. 16, ln. 22 - Pg. 17, ln. 5; Cl. Exhibit F.). She also sent a text message via cellular telephone to a former manager, Elta Jordan, that mentioned the missed step. (Tr. Pg. 19, ll. 1-21; Cl. Exhibit I). The Claimant completed an Employee Occurrence Report via telephone. (Tr. Pg. 20, ll. 16-20; Cl. G). Further, she reported the missed step to Dr. Lee on May 12, 2011. (Tr. Pg. 22, ll. 23-24; Cl. APA pg. 39).

On cross-examination, Claimant testified to prior foot surgeries, prior workers' compensation claim, and that her vehicle was parked a few spaces from the elevator where she exited to the employee parking garage. (Tr. Pg. 27-29). Claimant stated she reported the missed step to emergency room personnel despite the absence of 'step' mentioned in the report. (Tr. Pg., ln. 21- pg. 30, ln. 18). She also reported the missed step to Palmetto Health Richland Nurse Case Manger for Workers' Compensation, Debby Harden; and Nurse Manager, Brazand Robinson. (Tr. Pg. 31, ln. 10- pg. 32, ln. 9).

Jennifer Sorrenti

Jennifer Sorrenti, Claimant's coworker, testified she met Claimant in 2007 and they were friends. (Tr. Pg. 41, ll. 12-19). Ms. Sorrenti stated that the Claimant sent her cellular telephone text messages, one with a photograph, regarding her fall from the missed step. (Tr. Pg. 42, ln. 17 - pg.

43. ln. 2). Ms. Sorrenti discussed the accident details, including the missed step, again after 11:00pm on May 5, 2011. (Tr. Pg. 43, ll. 6 - 22).

On cross examination, Ms. Sorrenti admitted, again, her friendship with the Claimant and that she was on a leave of absence recently from Palmetto Richland, but took a new job in the interim. (Tr. Pg. 46, ln. 8 - pg. 47, ln. 2).

Judy Hardebeck

Judy Hardebeck, Palmetto Richland Emergency Room Educator, testified that Claimant contacted her about falling and wanted her to meet at the emergency room. (Tr. Pg. 49, ll. 7-18). Ms. Hardebeck stated "I don't recall anything about that." when asked if Claimant reported missing a step. (Tr. Pg. 49, ln. 19- pg. 50, ln. 1).

On cross examination, Ms. Hardebeck, the ER Educator, remembered giving Claimant a tour, but did not remember that Claimant was present for glucometer training or what scrubs Claimant wore on May 5, 2011. (Tr. Pg. 51, ll. 20-23). Ms. Hardebeck testified she worked for the Employer for thirteen (13) years and was familiar with the Employer's policies. (Tr. Pg. 52, ll. 2-23). However, she did not initiate an incident form when Claimant arrived at the emergency room. (Tr. Pg. 53, ll. 5-11). Ms. Hardebeck admitted that the Claimant called her right after she left orientation. (Tr. Pg. 53, ll. 1-4). However, Ms. Hardebeck did not recall any specifics about where or how Claimant fell. (Tr. Pg. 53, ln. 12 - pg. 54, ln.13).

Debby Harden

Debby Harden, Palmetto Health Richland Nurse Case Manager for Workers' Compensation, testified that Claimant contacted her on May 5, 2011, for assistance in securing an orthopaedic appointment who needed workers' compensation verification. (Tr. Pg. 55, ll. 18-23). Ms. Harden

discussed the accident details with the Claimant, but did not initiate an incident report. (Tr. Pg. 56, ln. 4 - 22). However, Ms. Harden stated she would have "initiated those questions just out of routine. I ask if there's uneven surface, stairs, substance on the ground, any obstacles. And she said [Claimant] she, not to her knowledge, that she just rolled her ankle." (Tr. Pg. 56, ll. 11-15.). Ms. Harden testified that "normally it's [first occurrence report] done either by the employee themselves or with the aid of their manager or someone else in the - -." (Tr. Pg. 55, ln. 24 - pg. 56, ln. 3). Further, Ms. Harden acknowledged that there was nothing on the first occurrence report about a step. (Tr. Pg. 57, ln. 25 - pg. 58, ln.2).

On cross examination, Ms. Harden admitted that she is the first in line for workers' compensation notification. (Tr. Pg. 61, ln. 18 - pg. 62, ln. 3). She testified repeatedly that Claimant reported her accident on the day of the accident. (Tr. Pg. 59, ln. 9 - pg. 61, ln. 6; Tr. Pg. 67, ll. 6-8).

Brazand Robinson Thomas

Brazand Robinson Thomas, Palmetto Health Richland Emergency Department Nurse Manger, testified that she assisted Claimant in filling out an incident report. (Tr. Pg. 70, ln. 16 -pg. 71, ln. 21). Ms. Thomas documented that "Per Pam, she walked out of the elevator, walking to the care and rolled her ankle and fell forward." (Tr. Pg. 71, ll. 8-10; Cl. Ex. G). Ms. Thomas responded when asked about a missed step "No, not that I recall." (Tr. Pg. 71, ll. 11-14).

On cross examination, Ms. Thomas testified specifically that she did not recall her conversation with the Claimant on May 5, 2011. (Tr. Pg. 73, ll. 17 - 23).

FINDINGS OF FACT

The Claimant alleged she injured left leg in a May 5, 2011, work-related accident. The Employer/Carrier denied the claim. The issues for determination were compensability, medical

treatment, and temporary total disability benefits. Based upon the arguments presented, testimony, exhibits, and APA submissions, I find the greater weight of the evidence supports the following findings:

1. Claimant suffered a compensable left leg (ankle) injury from a May 5, 2011, accident arising out of and in the course and scope of her employment.

2. Employer/Carrier will pay all causally related medical treatment, mileage, and prescription reimbursements.

3. Claimant, an employee in training with Employer, exited the elevator and fell forward when she missed a step into the parking garage.

4. Employer/Carrier denied this claim based on intake reports at the emergency room and statements that there was no mention of a "miss-step" and fall.

5. Claimant stated that while she waited for emergency room treatment, she posted information about her accident on facebook and also texted a friend. (Tr. Pg. 16, 17, 19).

6. The text sent to Claimant's friend and the facebook post were both reproduced and entered as exhibits. (Cl. Exhibits F: 1).

7. I find that the immediate texting a friend about missing a step and falling was important to Claimant's case.

8. While waiting to be treated in the emergency room, Claimant had no idea she broke her ankle or that she had a compensable Workers' Compensation claim.

9. Claimant did not immediately pursue a Workers' Compensation claim, but she did file under the Family Medical Leave Act.

10. A witness for the Employer/Carrier did not remember exactly what the Claimant said

but testified that she did not "recall" Claimant saying she missed a step. (Judy Hardebeck; Brazand Robinson Thomas).

11. Later medical records mention Claimant fell down stairs. (Cl. APA. Pg. 39).

12. After considering all of the evidence, I find Claimant's injury was caused by her work, specifically, from missing or tripping down a step. The incident was not idiopathic in nature.

13. Claimant's average weekly wage is \$585.04; and compensation rate is \$390.05.

14. The Employer/Carrier is ordered to pay temporary total benefits from May 6, 2011 to the present date and continuing until Claimant reaches Maximal Medical Improvement or is otherwise allowed to suspend or terminate pursuant to the Act or Regulations. .

15. Permanency is premature.

16. The Employer/Carrier has the right to control all medical treatment.

CONCLUSIONS OF LAW

1. Claimant sustained a left leg (ankle) injury arising out of and in the course and scope of her employment in 2011 within the meaning of S.C. Code Ann. §42-1-160 (2009). This conclusion is supported by reliable, credible, and probative evidence in the record.

2. Claimant is entitled to additional medical treatment allowable under 42-15-60 necessary to lessen her period of disability. S.C. Code Ann. §42-15-60 (2007); Dodge v. Brucoli, Clar, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974).

3. The employer's representative shall provide and pay for medical care while Claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. In case of controversy arising between

employer and employee, the Commission may order such further medical, surgical, hospital, or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60.

4. Disability is defined as "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." Reg. 67-502. Claimant was disabled within the meaning of the Act from May 5, 2011, and is still disabled as of the date of this hearing. S.C. Code Ann. §42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260. As Claimant was incapacitated, she is entitled to temporary total disability compensation from May 6, 2011 until she reaches maximum medical improvement is otherwise allowed to suspend or terminate pursuant to the Act or Regulations.

AWARD

IT IS THEREFORE ORDERED that the Employer, Palmetto Health Richland, and the Carrier, Risk Management Services, Inc., shall pay to the Claimant temporary total disability compensation at the compensation rate of \$390.05 from May 6, 2011, until Claimant reaches MMI.

IT IS FURTHER ORDERED that the Employer and Carrier shall pay for all past casually related medical treatment as set forth above in the APA submissions.

IT IS FURTHER ORDERED that the Employer and Carrier shall provide casually related medical treatment to Claimant as ordered and directed by the Employer's chosen physician so long as such treatment will tend to lessen her period of disability until Claimant reaches Maximum Medical Improvement.

AND IT IS SO ORDERED.


G. Bryan Lyndon, Commissioner
South Carolina Workers' Compensation Commission

DATE: November 29, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Tamara Morris on November 29, 2011

Exhibit B

**DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL
W.C.C. FILE NO.: 1105986**

Pamela E. Proud,

CLAIMANT/APPELLANT/RESPONDENT,

vs.

Palmetto Health Richland,

EMPLOYER/RESPONDENT/APPELLANT

And

Key Risk Management Services, Inc.,

CARRIER, DEFENDANTS.

Appellate Panel review was held on April 16, 2012, per notices
timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed
7-13, 2012.

APPEARANCES:

Claimant/Appellant/Respondent represented by Thomas P. Bellinger, Esquire, of McWhirter,
Bellinger & Associates, P.A., Law Firm.

Defendants/Respondents/Appellants represented by Michael E. Chase, Esquire, of Turner,
Padgett, Graham & Laney, P.A., Law Firm.

The parties were heard by the Honorable G. Bryan Lyndon, Commissioner, on August 17, 2011,
and a resulting Order was filed on November 29, 2011, stating the following:

FINDINGS OF FACT

Claimant alleged she injured left leg in a May 5, 2011, work-related accident. The Employer/Carrier denied the claim. The issues for determination were compensability, medical treatment, and temporary total disability benefits. Based upon the arguments presented, testimony, exhibits, and APA submissions, I find the greater weight of the evidence supports the following findings:

1. Claimant suffered a compensable left leg (ankle) injury from a May 5, 2011, accident arising out of and in the course and scope of her employment;
2. Employer/Carrier will pay all causally related medical treatment, mileage, and prescription reimbursements;
3. Claimant, an employee in training with Employer, exited the elevator and fell forward when she missed a step into the parking garage;
4. Employer/Carrier denied this claim based on intake reports at the emergency room and statements that there was no mention of a "miss-step" and fall;
5. Claimant stated that while she waited for emergency room treatment, she posted information about her accident on facebook and also texted a friend. (Tr. Pg. 16, 17, 19);
6. The text sent to Claimant's friend and the facebook post were both reproduced and entered as exhibits. (Cl. Exhibits F; I);
7. I find that the immediate texting a friend about missing a step and falling was important to Claimant's case;
8. While waiting to be treated in the emergency room, Claimant had no idea she broke her ankle or that she had a compensable Workers' Compensation claim;
9. Claimant did not immediately pursue a Workers' Compensation claim, but she did file under the Family Medical Leave Act.
10. A witness for the Employer/Carrier did not remember exactly what the Claimant said

but testified that she did not "recall" Claimant saying she missed a step. (Judy Hardebeck; Braz and Robinson Thomas);

11. Later medical records mention Claimant fell down stairs. (Cl. APA. Pg. 39);

12. After considering all of the evidence, I find Claimant's injury was caused by her work, specifically, from missing or tripping down a step. The incident was not idiopathic in nature;

13. Claimant's average weekly wage is \$585.04; and compensation rate is \$390.05;

14. The Employer/Carrier is ordered to pay temporary total benefits from May 6, 2011 to the present date and continuing until Claimant reaches Maximal Medical Improvement or is otherwise allowed to suspend or terminate pursuant to the Act or Regulations;

15. Permanency is premature;

16. The Employer/Carrier has the right to control all medical treatment.

CONCLUSIONS OF LAW

1. Claimant sustained a left leg (ankle) injury arising out of and in the course and scope of her employment in 2011 within the meaning of S.C. Code Ann. §42-1-160 (2009). This conclusion is supported by reliable, credible, and probative evidence in the record;

2. Claimant is entitled to additional medical treatment allowable under §42-15-60 necessary to lessen her period of disability. S.C. Code Ann. §42-15-60 (2007); Dodge v. Bruccoli, Clar, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974);

3. The employer's representative shall provide and pay for medical care while Claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. In case of controversy arising between employer and employee, the Commission may order such further medical, surgical, hospital, or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. §42-15-60;

4. Disability is defined as "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." Reg. 67-502. Claimant

was disabled within the meaning of the Act from May 5, 2011, and is still disabled as of the date of this hearing. S.C. Code Ann. §42-9-10; §42-9-190 Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to §42-9-260. As Claimant was incapacitated, she is entitled to temporary total disability compensation from May 6, 2011 until she reaches maximum medical improvement or is otherwise allowed to suspend or terminate pursuant to the Act or Regulations.

AWARD

IT IS THEREFORE ORDERED that the Employer, Palmetto Health Richland, and the Carrier, Risk Management Services, Inc., shall pay to the Claimant temporary total disability (TTD) compensation at the compensation rate of \$390.05 from May 6, 2011, until Claimant reaches MMI:

IT IS FURTHER ORDERED that the Employer and Carrier shall pay for all past causally related medical treatment as set forth above in the APA submissions:

IT IS FURTHER ORDERED that the Employer and Carrier shall provide causally related medical treatment to Claimant as ordered and directed by the Employer's chosen physician so long as such treatment will tend to lessen her period of disability until Claimant reaches Maximum Medical Improvement.

STATEMENT OF THE CASE

This is an appeal from a hearing on Forms 50 and 51 alleging the Claimant injured her left leg (ankle) arising out of and in the course of her employment. Claimant requested payment of causally related medical treatment and temporary total disability compensation from May 6, 2011 and continuing. Defendants asserted that Claimant did not incur an injury arising out of and in the course of her employment. They also allege Claimant injured her ankle on a level surface and that Claimant's story changed to state she was walking down the parking garage steps when she was injured. The single Commissioner ordered Claimant suffered a compensable left leg (ankle) injury from a May 5, 2011, accident arising out of and in the course of her employment. Further, employer/carrier was ordered to pay all causally related medical

treatment, mileage, and prescription reimbursements. Additionally, employer/carrier was ordered to pay temporary total benefits from May 6, 2011, and continuing.

All parties filed timely Form 30s requesting Commission review.

Following briefs filed by all parties, a Full Commission appellate hearing was held on April 16, 2012.

FORM 30 QUESTIONS PRESENTED

I. BY CLAIMANT/APPELLANTS

1. Whether the hearing Commissioner erred as a matter of fact and/or law in not finding an average weekly wage of \$753.60 with a resulting compensation rate of \$502.42 as supported by the greater weight of the evidence?

2. Whether the hearing Commissioner erred as a matter of fact and/or law in finding as a fact the average weekly wage of \$585.04 resulting in a compensation rate of \$390.05, when this finding was wholly unsupported by the testimony and exhibits?

II. QUESTIONS PRESENTED BY DEFENDANTS/APPELLANTS

1. Whether the Commissioner erred in finding of fact #1 that Claimant sustained a compensable left leg injury when the preponderance of evidence indicates otherwise;

2. Whether the Commissioner erred in finding of fact #3 that employee fell as a result of missing a step in the parking garage, when the preponderance of the evidence indicates otherwise;

3. Whether the Commissioner erred in finding of fact #7 that Claimant's immediately texting a friend was important to her case, when the preponderance of the evidence indicates otherwise;

4. Whether the Commissioner erred in finding of fact #8 that while waiting to be treated in the emergency room, the Claimant had no idea she had a workers' compensation claim, when the preponderance of the evidence indicates otherwise;

5. Whether the Commissioner erred in finding of fact #10 that a witness for employer/carrier does not remember exactly what Claimant said when the preponderance of evidence indicates otherwise;

6. Whether the Commissioner erred in finding of fact #12 that after considering all of the evidence, the injury was caused by work, specifically missing a step, and that the incident was not idiopathic in nature when the preponderance of the evidence indicates otherwise;

7. Whether the Commissioner erred in finding of fact #2 and #12 in ordering medical treatment, mileage, prescription reimbursements and TTD when the preponderance of the evidence indicates that Claimant's alleged injuries are not compensable under the Act;

8. Whether the Commissioner erred in conclusion of law #1 that Claimant sustained a left leg injury arising out of and in the scope of employment when such conclusion is not supported by reliable and credible evidence which rises to the level of preponderance of evidence in the record;

9. Whether the Commissioner erred in conclusions of law #2, #3, and #4 on the basis that conclusion of law #1 is not supported by a preponderance of the evidence in the record.

EVIDENCE SUMMARY

The Commission's file became a part of the record without exception. The Claimant began work at Employer May 7, 2010. The Commission heard the following testimony in order presented: Claimant, Pamela E. Proud; Jennifer Sorrenti; Judy Hardebeck; and Brazand Robinson Thomas.

Claimant worked as a Registered Nurse. She missed a step in the employer's parking garage after training on May 5, 2011, and injured her left leg (ankle). She reported her injury immediately by telephone to Judy Hardebeck. However, more than one (1) week after her accident, the Employer's Workers' Compensation case manager, Debby Harden, informed Claimant via a letter that Palmetto Health Richland did not find her injury compensable under the Act.

Pamela E. Proud

The Claimant began work for the Employer in 2006, left, and returned in 2010. (Tr. Pg. 9,

ll. 9-11). She transferred from Baptist to Richland and was in orientation training in May 2011 when the accident occurred. (Tr. Pg. 9, ll. 12 - 17). This began May 2, 2011. (Tr. Pg. 9, ln. 25 - Pg. 10, ln. 4). She parked in the employee parking garage and attended glucometer training May 5, 2011; and left approximately 9:40. (Tr. Pg. 10, ln. 19; ll. 5 -16). Claimant spoke to coworker Jennifer Sorrenti prior to her training meeting. (Tr. Pg. 11, 12-17). Claimant walked to the parking garage (Tr. Pg. 11, 21-22). She missed a step at the curb and "fell forward onto both of my knees and my palms or heels of my hands that the ankle twisted very badly." (Tr. Pg. 12, ll. 1 - 6).

The Claimant spoke with Judy Hardebeck who provided Claimant a wheelchair at the emergency room. (Tr. Pg. 12, ln. 15 - 25; Tr. Pg. 13, ll. 24-25). Claimant testified that she informed Ms. Hardebeck "that I missed a step. [t]he ankle rolled and I fell forward. (Tr. Pg. 14, ll. 8-9). The Claimant informed any attending emergency room personnel that her accident "occurred in the employee parking garage and that I missed a step. (Tr. Pg. 14, ll. 22-25).

The Claimant testified that she posted details of her accident on her Facebook account from her cellular telephone during the emergency room wait. (Tr. Pg. 16, ln. 22 - Pg. 17, ln. 5; Cl. Exhibit F.). She also sent a text message via cellular telephone to a former manager, Elta Jordan, that mentioned the missed step. (Tr. Pg. 19, ll. 1-21; Cl. Exhibit I). The Claimant completed an Employee Occurrence Report via telephone. (Tr. Pg. 20, ll. 16-20; Cl. G). Further, she reported the missed step to Dr. Lee on May 12, 2011. (Tr. Pg. 22, ll. 23-24; Cl. APA pg. 39).

On cross-examination, Claimant testified to prior foot surgeries, prior workers' compensation claim, and that her vehicle was parked a few spaces from the elevator where she exited to the employee parking garage. (Tr. Pg. 27-29). Claimant stated she reported the missed step to emergency room personnel despite the absence of 'step' mentioned in the report. (Tr. Pg., ln. 21- pg. 30, ln. 18). She also reported the missed step to Palmetto Health Richland Nurse Case Manager for Workers' Compensation, Debby Harden; and Nurse Manager, Brazand Robinson. (Tr. Pg. 31, ln. 10- pg. 32, ln. 9).

Jennifer Sorrenti

Jennifer Sorrenti, Claimant's coworker, testified she met Claimant in 2007 and they were friends. (Tr. Pg. 41, ll. 12-19). Ms. Sorrenti stated that the Claimant sent her cellular telephone messages, one with a photograph, regarding her fall from the missed step. (Tr. Pg. 42, ln. 17-pg.

43, ln. 2). Ms. Sorrenti discussed the accident details, including the missed step, again after 11:00pm on May 5, 2011. (Tr. Pg. 43, ll. 6 - 22).

On cross examination, Ms. Sorrenti admitted, again, her friendship with the Claimant and that she was on a leave of absence recently from Palmetto Richland, but took a new job in the interim. (Tr. Pg. 46, ln. 8 - pg. 47, ln. 2).

Judy Hardebeck

Judy Hardebeck, Palmetto Richland Emergency Room Educator, testified that Claimant contacted her about falling and wanted her to meet at the emergency room. (Tr. Pg. 49, ll. 7-18). Ms. Hardebeck stated "I don't recall anything about that." when asked if Claimant reported missing a step. (Tr. Pg. 49, ln. 19- pg. 50, ln. 1).

On cross examination, Ms. Hardebeck, the ER Educator, remembered giving Claimant a tour, but did not remember that Claimant was present for glucometer training or what scrubs Claimant wore on May 5, 2011. (Tr. Pg. 51, ll. 20-23). Ms. Hardebeck testified she worked for the Employer for thirteen (13) years and was familiar with the Employer's policies. (Tr. Pg. 52, ll. 2-23). However, she did not initiate an incident form when Claimant arrived at the emergency room. (Tr. Pg. 53, ll. 5-11). Ms. Hardebeck admitted that the Claimant called her right after she left orientation. (Tr. Pg. 53, ll. 1-4). However, Ms. Hardebeck did not recall any specifics about where or how Claimant fell. (Tr. Pg. 53, ln. 12 - pg. 54, ln. 13).

Debby Harden

Debby Harden, Palmetto Health Richland Nurse Case Manager for Workers' Compensation, testified that Claimant contacted her on May 5, 2011, for assistance in securing an orthopaedic appointment who needed workers' compensation verification. (Tr. Pg. 55, ll. 18-23). Ms. Harden discussed the accident details with the Claimant, but did not initiate an incident report. (Tr. Pg. 56, ln. 4 - 22). However, Ms. Harden stated she would have "initiated those questions just out of routine. I ask if there's uneven surface, stairs, substance on the ground, any obstacles. And she said [Claimant] she, not to her knowledge, that she just rolled her ankle." (Tr. Pg. 56, ll. 11-15.). Ms. Harden testified that "normally it's [first occurrence report] done either by the employee themselves or with the aid of their manager or someone else in the - -." (Tr. Pg. 55, ln. 24 - pg. 56, ln. 3). Further, Ms. Harden acknowledged that there was nothing on the first occurrence report about a step. (Tr. Pg. 57, ln. 25 - pg. 58, ln. 2).

On cross examination, Ms. Hárden admitted that she is the first in line for workers' compensation notification. (Tr. Pg. 61, ln. 18 - pg. 62, ln. 3). She testified repeatedly that Claimant reported her accident on the day of the accident. (Tr. Pg. 59, ln. 9 - pg. 61, ln. 6; Tr. Pg. 67, ll. 6-8).

Brazand Robinson Thomas

Brazand Robinson Thomas, Palmetto Health Richland Emergency Department Nurse Manager, testified that she assisted Claimant in filling out an incident report. (Tr. Pg. 70, ln. 16 - pg. 71, ln. 21). Ms. Thomas documented that "Per Pam, she walked out of the elevator, walking to the car and rolled her ankle and fell forward." (Tr. Pg. 71, ll. 8-10; Cl. Ex. G). Ms. Thomas responded when asked about a missed step "No, not that I recall." (Tr. Pg. 71, ll. 11-14).

On cross examination, Ms. Thomas testified specifically that she did not recall her conversation with the Claimant on May 5, 2011. (Tr. Pg. 73, ll. 17 - 23).

DISCUSSION OF ISSUES ON APPEAL

Claimant/Appellant argues her average weekly wage should be \$753.60 with a resulting compensation rate of \$502.42. In support of this position she argues, when the general method of determining average weekly wage is unfair to one of the parties Section 42-1-40 states, "such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Claimant/Appellant argued her situation is similar to that addressed in Elliott vs. South Carolina Department of Transportation, 362 S.C. 234, 236, 607 S.E.2d 90, 91, (Ct. App. 2004). After receiving a commercial driver's license, Elliott earned a five percent salary increase, but suffered a work related accident eleven days later. The Workers' Compensation Commission utilized the standard method and did not consider Elliott's salary increase. In reversing the Commission, the Court of Appeals found that Elliott's salary increase constituted an "exceptional reason" to recalculate her average weekly wage. The court went on to say that the "raise" was not speculative, but was an established, guaranteed amount already in place at the time of the accident", and should be included in her average weekly wage.

Similarly, in Booth vs. Midland Trane Heating and Air Conditioning, 298 S.C. 251, 254, 379 S.E.2d 730, 732 (Ct. App. 1999), the South Carolina Court of Appeals held a wage increase

was properly included when determining average weekly wages. The Claimant in that case earned several wage increases resulting in a sixty-three percent raise in less than twelve months.

The Claimant in the instant case argues her situation is similar to that in Elliott and Booth. Claimant was transferred from Palmetto Health Baptist to Palmetto Health Richland prior to the accident at issue. Claimant's exhibits show the affected date of the transfer was April 17, 2011, and that her salary increased from \$26.00 per hour to \$31.40 per hour as a result of the transfer. (Cl. Ex. C). Similar to the Claimants in Elliott and Booth, the Claimant in the instant case realized an increase in her salary prior to the accident.

Defendants/Respondents argued exceptional reasons presented in Sellers vs. Pinedale Residential Center, 350 S.C.183, 191, 564S.E.2d694, 698 (Ct.App. 2002), are not present in the instant case. First, unlike in Sellers, where the Claimant did not have a higher average weekly wage because he was currently in high school and could not work full time, in the instant case, Claimant worked full time for her employer for over a year. Second, unlike in Sellers, where the Claimant was rendered a paraplegic because of the work accident and was therefore unable to become an electrician with a higher average weekly wage, in the instant case, Claimant only sustained an injury to the left ankle and has worked as a full time nurse for over twenty years. Third, unlike in Sellers, where the difference in the average weekly wages was based on Claimant working on part time because of attending school, in the instant case, Claimant's correct average weekly wage already reflects the wage of a full time nurse. Finally, unlike in Sellers, where the Claimant's average weekly wage and compensation rate resulted in the minimum rate because Claimant was not able to work full time and was required to graduate high school before taking courses to become an electrician, Claimant's average weekly wage and compensation rate are already based on her full time employment as a registered nurse. Thus, they argue exceptional circumstances are not present in the instant case and the single Commissioner's holding that the Claimant's average weekly wage and compensation rate should be based on Claimant's actual earnings in the year prior to Claimant's alleged accident should be upheld.

In addition to the average weekly wage issue, Defendants/Appellants argue Claimant's injury did not arise out of her employment because she suffered an idiopathic fall. In support of their argument, they rely on Crosby v. WalMart Stores, Inc., 330S.C.489, 490S.E.2d253 (Ct. App. 1998). In Crosby, the Claimant was injured when she fell while walking through the store

on her way to a meeting. Crosby did not know of any causative factor. The Court held Crosby had suffered an unexplained, idiopathic level floor fall, and therefore, denied compensation. *Id.*, 330S.C.at 496, 499S.E.2d at 257.

Defendants/Appellants also rely on Bagwell v. Ernest Burwell, Inc., 227S.C.444, 88S.E.2d.611 (1955). In Bagwell, the Claimant suffered an unexplained fall while at work and hit his head on the concrete floor. The Court found the Claimant's fall was caused by an internal breakdown or weakness unrelated to the employment. *Id.*, 227S.C.at 450, 88S.E.2d.at 614.

Claimant/Respondent in the instant case argued her fall was not an unexplained, level floor, idiopathic fall. Claimant's fall occurred as she stepped off an elevated surface, not on a level surface. (H.T. page 12). This fact differentiates Claimant's case from Crosby and Bagwell. Instead of being caused by an internal breakdown or weakness, Claimant's fall was caused by an uneven surface located in the parking garage where she was instructed to park by hospital security. This difference shows that there is a causal link between the accident and the employment. Therefore, Claimant/Respondent argues her injury arose out of and was suffered during the course of her employment.

Defendants/Appellants argue the single Commissioner was incorrect in finding Claimant's immediate texting to her friend was important to her case. They argued the Claimant and Ms. Sorrenti had been friends for many years and Ms. Sorrenti is no longer employed by Palmetto Health. Claimant/Respondent argued it is within the single Commissioner's discretion to assess and determine the credibility of a witness. Ms. Sorrenti testified the first text message she received from Claimant stated she had fallen as a result of her foot getting caught coming off a step. (H.T. page 42). Ms. Sorrenti also testified she talked to Claimant on the phone around 11:00 p.m. on the night of the accident. (H.T. page 43). Claimant again told her that she had fallen forward after coming off of a step outside of the elevator.

Defendants/Appellants also argue it was error to find Claimant had no idea she had a Workers' Compensation claim. In support of this position, they argue Claimant has had two prior Workers' Compensation claims and is aware of how to report an accident.

Notwithstanding this argument, Claimants'/Respondents testimony at the hearing clearly shows she was unaware she had a Workers' Compensation claim. The emergency room physicians recommended that Claimant schedule a follow-up appointment with an orthopaedic physician. (Claimant's APA #2, page 2). Following her treatment in the emergency room,

Claimant attempted to set up an appointment with Dr. Lee, an orthopaedist. Dr. Lee's office however, informed Claimant that she needed to know if she had a Workers' Compensation claim prior to scheduling an appointment. (H.T. page 20). Therefore, Claimant/Respondent argues it is clear she was not aware of her claim while she was waiting to be treated in the emergency room.

Defendants/Appellants argue it was error for the single Commissioner to find a witness does not remember what Claimant said, because all of the defendant's witnesses recall Claimant stating that she only twisted her ankle while in the parking garage. Claimant/Respondent argues this position is misplaced. Brazand Robinson Thomas testified she did not remember the exact conversation she had with the Claimant concerning the accident. (H.T. page 73). Therefore, the Commissioner was correct in finding she could not remember Claimant's exact statement regarding the accident because she acknowledged this fact in her testimony.

Further, Defendants/Appellants also argue the Commissioner erred in finding Judy Hardebeck did not remember her conversation with Claimant concerning the accident. Claimant testified under oath at the hearing she did inform Ms. Hardebeck that she "missed a step". (H.T. page 14). Ms. Hardebeck admitted she did not remember a lot about the date of accident. (H.T. page 49). She testified "she did not recall" Claimant saying anything about missing a step. She also testified she did not recall if Claimant was at the hospital for glucometer training, if Claimant was wearing her scrubs, or if they went over Claimant's orientation packet on the day of the accident. (H.T. pages 51-53). Therefore, Claimant/Respondent argues it was not error for the Commissioner to find Ms. Hardebeck could not recall the exact conversation she had with the Claimant regarding the accident.

FINDINGS OF FACT BY THE APPELLATE PANEL

After carefully considering the evidence in the record, as well as the briefs and the arguments presented by the parties, the appellate panel confirms in full the findings of fact of the hearing Commissioner and declares that Claimant/Respondent has met her burden of establishing she suffered an injury by accident arising out of and in the course of her employment to her left leg (ankle) from a May 5, 2011, accident. Accordingly, Defendants/Appellants are to pay all causally related medical treatment, mileage, and prescription reimbursements. Additionally, Defendants/Appellants are ordered to pay temporary total benefits from May 6, 2011, and

continuing until Claimant reaches maximum medical improvement or is otherwise allowed to suspend or terminate pursuant to the act or regulations. Furthermore, Claimant/Appellant has not met her burden of showing an "exceptional reason" to recalculate her average weekly wage. Therefore, Claimant's average weekly wage remains at \$585.04 with a resulting compensation rate of \$390.05.


CONCLUSIONS OF LAW BY THE APPELLATE PANEL

Upon the foregoing findings of fact and under the Code of Laws of South Carolina, as amended and the case law interpreting such code of laws, the conclusions of law of the hearing Commissioner are also hereby affirmed in full.

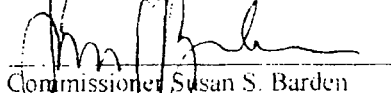
ORDER

It is hereby ordered, adjudged, and decreed based upon a review of the record as a whole, the applicable case, statutory and regulatory law, and the oral arguments of the parties, that the appellate panel affirms the hearing Commissioner in full. Claimant suffered a compensable left leg (ankle) injury from a May 5, 2011, accident arising out of and in the course of her employment. Defendants will pay causally related medical treatment, mileage, and prescription reimbursements. Claimant's average weekly wage is \$585.04 with a resulting compensation rate of \$390.05. Defendants are ordered to pay temporary total benefits from May 6, 2011, and continuing. It is so ordered:

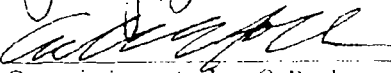
South Carolina Workers' Compensation Appellate Panel.



Commissioner Derrick L. Williams



Commissioner Susan S. Barden



Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to the cause by delivering a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 13th day of July 2012
By Valerie O'Beirne

Administrative Assistant to the Commissioner

Michael E. Chase
Thomas P. Bellinger