

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO.: 1302654**

Wanda Joe,
Employee/Claimant,
Appellant

vs.

SC Department of Disabilities and Special Needs,
Employer,

and

State Accident Fund,
Carrier,
Defendants,
Respondents.

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SC Court of Appeals

Appellate Panel Review in Columbia, South Carolina set for August 15, 2016 per notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed October 25th, 2016.

Appearances:

Claimant/Appellant represented by Sydney J. Lynn, Esquire, of Myrtle Beach, South Carolina.

Defendants/Respondents represented by Sarah S. Alphin, Esquire, of Willson Jones Carter & Baxley of Columbia, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha G. Taylor on June 17, 2015 in Florence, South Carolina. As a result of said hearing, Commissioner Taylor issued an Order dated March 15, 2016 from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following **Findings of Fact**:

1. Dr. Johnson's IME report is excluded as it was not timely submitted. Although the report was dated June 10, 2015, the report was not filed with the Commission or served on opposing counsel until June 17, 2015, the date of the hearing.
2. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Wanda Joe as Employee-Claimant and SC Department of Disabilities and Special Needs as Employer and State Accident Fund as Carrier, Defendants.
3. That Claimant was an employee of the above-named Employer on and prior to March 7, 2013, on which date she did sustain an injury to the back arising out of and in the course of her employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.
4. That the average weekly wage of Claimant at the time of the above-described accident was \$802.65, making a compensation rate of \$535.13 applicable in this matter.
5. That Claimant reached maximum medical improvement on April 1, 2015 for the injuries resulting from the March 7, 2013 accident, and there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's

disability.

6. This finding is based upon the evidence as a whole including the medical opinion of Dr. Gunter.

7. Although, Dr. Chokshi recommended a spinal cord stimulator, I find Claimant's subsequent evaluation by Dr. Gunter, to be more persuasive and deserving of greater weight. Claimant's "submaximal effort" and "poor effort" on her FCE strengthened this finding.

8. That Defendants were entitled to stop payment of temporary total compensation effective on the filing date of this order and are entitled to a credit for the overpayment of temporary total compensation since April 1, 2015, against the award for permanent partial disability ordered herein.

9. That Claimant has sustained 14% permanent partial disability to her back as a result of the accidental injury on March 7, 2013.

10. Although Dr. Gunter only issued Claimant a 4% permanent impairment rating, the Commission finds Claimant's disability is significantly greater based on her medical and surgical history. This finding is based on the evidence as a whole including the preponderance of the medical evidence.

11. Claimant is entitled to a lump sum payment of her award with James v. Anne's SSA apportionment language.

12. That Claimant has failed to prove that she is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

13. No hearing costs are assessed.

The Hearing Commissioner's Decision and Order also set forth the following

Conclusions of Law:

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.
2. Under Reg. 67-612 and other applicable law, Dr. Johnson's IME report is excluded as it was not timely submitted. Although the report is dated June 10, 2015, the report was not filed with the Commission or served on opposing counsel until June 17, 2015, the date of the hearing.
3. Under § 42-1-160, Claimant sustained an injury to her back by accident arising out of and in the course and scope of her employment on March 7, 2013.
4. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from March 8, 2013 until April 1, 2015, the date on which Claimant reached maximum medical improvement. Defendants are entitled to suspend Claimant's TTD benefits.
5. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until April 1, 2015, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of her disability.
6. Under § 42-9-30, Claimant has sustained 14% permanent partial disability to the back. Claimant is entitled to a lump sum payment of her award with James v. Anne's SSA apportionment language. From such award, Defendants are entitled to a credit for the

overpayment of temporary total compensation since April 1, 2015.

Within the statutory period, Counsel for the Claimant filed an Application for Review in the case setting forth the following assignments of error:

1. That the Claimant would request a review pursuant to S.C. Code §42-17-50 by the Full Commission of the Findings of Fact, Conclusions of Law and Decision rendered in this matter based upon a review of the evidence, the position and the legal precedents cited to the Commission and the entire Record before the Hearing Commissioner for decision.
2. That the Hearing Commissioner erred as a matter of law by giving the greatest weight to Dr. Turner and therefore finding Claimant reached Maximum Medical Improvement April 1, 2015.
3. That the Hearing Commissioner erred as a matter of law by giving the greatest weight to Dr. Gunter, and therefore finding that Claimant sustained a 14% Permanent Partial Disability to her back as a result of the work injury on March 7, 2013.
4. That the Hearing Commissioner erred as a matter of law by giving the greatest weight to Dr. Gunter, and therefore finding that there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.
5. That the Hearing Commissioner erred as a matter of law by giving the greatest weight to Dr. Gunter, and therefore finding that defendants are entitled to stop payment of Temporary Total compensation effective March 15, 2016, and are entitled to a credit for the overpayment of Temporary Total compensation since

April 1, 2015.

6. That the Hearing Commissioner erred as a matter of law by giving the greatest way to Dr. Gunter, and therefore finding that Claimant is not entitled to any further medical benefits or treatment as a result of her work injury.

Copies of the above assignments of error were furnished to all interested parties prior to oral argument scheduled before the Appellate Panel on August 15, 2016.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the brief of the Appellant and Respondents.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Hearing Commissioner is hereby AFFIRMED IN FULL. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, and as specified above, are hereby AFFIRMED IN FULL.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Dr. Johnson's IME report is excluded as it was not timely submitted. Although the report was dated June 10, 2015, the report was not filed with the Commission or served on opposing counsel until June 17, 2015, the date of the hearing.
2. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Wanda Joe as Employee-Claimant and SC Department of Disabilities and Special Needs as Employer and State Accident Fund as Carrier, Defendants.

3. That Claimant was an employee of the above-named Employer on and prior to March 7, 2013, on which date she did sustain an injury to the back arising out of and in the course of her employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.

4. That the average weekly wage of Claimant at the time of the above-described accident was \$802.65, making a compensation rate of \$535.13 applicable in this matter.

5. That Claimant reached maximum medical improvement on April 1, 2015 for the injuries resulting from the March 7, 2013 accident, and there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.

6. This finding is based upon the evidence as a whole including the medical opinion of Dr. Gunter.

7. Although, Dr. Chokshi recommended a spinal cord stimulator, I find Claimant's subsequent evaluation by Dr. Gunter, to be more persuasive and deserving of greater weight. Claimant's "submaximal effort" and "poor effort" on her FCE strengthened this finding.

8. That Defendants were entitled to stop payment of temporary total compensation effective on the filing date of this order and are entitled to a credit for the overpayment of temporary total compensation since April 1, 2015, against the award for permanent partial disability ordered herein.

9. That Claimant has sustained 14% permanent partial disability to her back as a result of the accidental injury on March 7, 2013.

10. Although Dr. Gunter only issued Claimant a 4% permanent impairment rating, the Commission finds Claimant's disability is significantly greater based on her medical and surgical history. This finding is based on the evidence as a whole including the preponderance of the medical evidence.

11. Claimant is entitled to a lump sum payment of her award with James v. Anne's SSA apportionment language.

12. That Claimant has failed to prove that she is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

13. No hearing costs are assessed.

CONCLUSIONS OF LAW

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under Reg. 67-612 and other applicable law, Dr. Johnson's IME report is excluded as it was not timely submitted. Although the report is dated June 10, 2015, the report was not filed with the Commission or served on opposing counsel until June 17, 2015, the date of the hearing.

3. Under § 42-1-160, Claimant sustained an injury to her back by accident arising out of and in the course and scope of her employment on March 7, 2013.

4. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from March 8, 2013 until April 1, 2015, the date on which Claimant reached maximum medical improvement. Defendants are entitled to

suspend Claimant's TTD benefits.

5. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until April 1, 2015, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of her disability.

6. Under § 42-9-30, Claimant has sustained 14% permanent partial disability to the back. Claimant is entitled to a lump sum payment of her award with James v. Anne's SSA apportionment language. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since April 1, 2015.

ORDER

The Order of the Single Commissioner from which this appeal has been taken is hereby
AFFIRMED IN FULL

IT IS HEREBY ORDERED that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective April 1, 2015 the date on which Claimant reached maximum medical improvement.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on March 7, 2013, she has sustained 14% permanent partial disability to the back, for which she is entitled to 42 weeks of compensation, at the compensation rate of \$535.13 per week. Claimant is entitled to a lump sum payment of her award with James v. Anne's SSA apportionment language. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation paid after April 1, 2015. This credit shall be taken from the Claimant's Award.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on

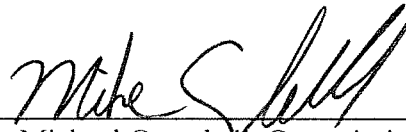
April 1, 2015, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date.

IT IS FURTHER ORDERED that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

No hearing costs are assessed in this instance.

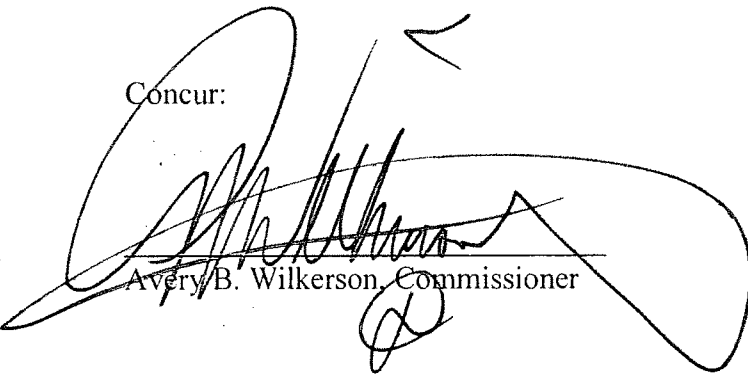
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



R. Michael Campbell, Commissioner
For the Appellate Panel

Concur:



Avery B. Wilkerson, Commissioner



Melody L. James, 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 October 25, 2016