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DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1416152 & 1422948

Lucille Tate,)
)
Employee,)
Claimant,)
)
vs.)
)
Capsugel Holdings US, Inc.,)
)
Employer,)
and)
)
Travelers Indemnity Company,)
)
Carrier,)
Defendants.)

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SC Court of Appeals

HEARING: Held in Newberry, South Carolina on August 1, 2016.

APPEARANCES: Claimant represented by Leland M. Malchow, Esquire of Augusta, South Carolina.

Defendants represented by Franklin D. Guerrero, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

PURPOSE OF HEARING: To determine the issues as set forth on the Forms 50 and 51.

DECISION AND ORDER: By Melody L. James, Commissioner

FILED: November 8, 2016

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

By Claimant:

- APA #1: Records of Piedmont Health Group, LLC, dated July 15, 2011 through December 8, 2014, consisting of pages 1-29.
- APA #2: Records of Self Regional Healthcare/Self Medical Group, dated July 19, 2011 through October 10, 2011, consisting of pages 30-55.
- APA #3: Records of Greenwood Clinic of Chiropractic, dated January 9, 2012 through April 30, 2012, consisting of pages 56-73.
- APA #4: Records of Greenville Health System, dated June 4, 2012 through May 29, 2015, consisting of pages 74-122.
- APA #5: Records of Southeastern Neurological & Spine Institute, dated June 4, 2012, consisting of pages 123-127.
- APA #6: Records of Capsugel Clinical Visit Chart, dated November 24, 2014 through July 30, 2015, consisting of pages 128-145.
- APA #7: Records of Lakelands Orthopedic & Sports Medicine Clinic, P.A., dated December 23, 2014 through July 29, 2015, consisting of pages 146-157.
- APA #8: Records of Genesis Sports & Rehabilitation Services, dated February 2, 2015, consisting of page 158.
- APA #9: Records of Upstate Medical Rehabilitation, dated March 30, 2015 through April 30, 2015, consisting of pages 159-160.
- APA #10: Records of North Hills Medical Center, dated April 10, 2015, consisting of page 161.
- APA #11: Records of Select Physical Therapy, dated April 13, 2015 through May 28, 2015, consisting of pages 162-168.

- APA #12: Records of Anderson Radiology, dated June 8, 2015, consisting of pages 169-171.
- APA #13: Records of Dr. David Shallcross, dated June 15, 2015, consisting of pages 172-173.
- APA #14: Records of Dr. David Shallcross, dated August 24, 2015, consisting of page 174.
- APA #15: Records of Piedmont Orthopedic Associates, dated September 9, 2015, consisting of pages 175-176.
- APA #16: Records of OrthoCarolina, dated November 30, 2015 through December 31, 2015, consisting of pages 177-201.
- APA #17: Records of Dr. Kenneth D. Weeks, III, dated February 23, 2016, consisting of pages 202-204.

Exhibits by Claimant:

1. Capsugel Incident Report, consisting of pages 205-211.
2. Capsugel First Aid Investigation Report, consisting of page 212.
3. Capsugel Functional Job Description, consisting of pages 213-214.

By Defendants:

- APA #1: Records of Piedmont Orthopaedic Associates, dated September 9, 2015 through September 29, 2015, consisting of pages 1-6.
- APA #2: Records of Upstate Medical Rehabilitation, dated July 12, 2012 through August 24, 2015, consisting of pages 7-38.
- APA #3: Records of Lakelands Orthopaedic & Sports Medicine Clinic, PA, dated December 23, 2014 through June 22, 2015, consisting of pages 39-46.
- APA #4: Records of SE Neuro & Spine Institute, dated June 4, 2015 through May 29, 2015, consisting of pages 47-59.
- APA #5: Records of Piedmont Health Group, LLC, dated November 25, 2014 through December 8, 2014, consisting of pages 60-67.
- APA #6: Records of Self Medical Group, dated June 23, 2011 through October 10, 2011, consisting of pages 68-81.

- APA #7: Records of Self Memorial Hospital, dated October 29, 199 through September 8, 2011, consisting of pages 82-120.
- APA #8: Records of American Radiological Services, dated April 5, 2007 through April 30, 2012, consisting of pages 121-171.
- APA #9: Records of Dr. John Hicks, dated May 31, 2002, consisting of page 172.
- APA #10: Records of Ware Shoals Center for Family Medicine, dated April 19, 2001, consisting of pages 173-174.
- APA #11: Records of Milestone Family Medicine, dated September 13, 2002, consisting of page 175.
- APA #12: Records of Neurology Associates of Greenville, PA, dated July 15, 2002 through September 16, 2002, consisting of pages 176-186.
- APA #13: Records of DentNow, dated October 30, 2012, consisting of pages 187-188.
- APA #14: Records of MUSC Health, dated January 10, 2003 through July 31, 2003, consisting of pages 189-191.
- APA #15: Records of Carolina Rehabilitation Associates, dated November 19, 2004, consisting of pages 192-193.
- APA #16: Records of Optimum-Life Center of Self Regional Healthcare, dated February 17, 2005 through September 21, 2011, consisting of pages 194-209.

Exhibits by Defendants:

1. Deposition of Claimant, dated August 3, 2015, consisting of pages A1-A28.
2. Deposition of Dr. Kenneth D. Weeks, III.

By Pfizer, Inc. and Insurance Company State of Pennsylvania:

- APA #1: Records of Piedmont Health Group, dated July 15, 2011 through December 8, 2014, consisting of pages 1-35.
- APA #2: Records of Southeastern Neurosurgical, dated June 4, 2012, consisting of pages 36-38.
- APA #3: Records of Upstate Medical Rehabilitation, dated July 12, 2012 through June 15, 2015, consisting of pages 39-82.

- APA #4: Records of Lakelands Orthopaedic, dated December 23, 2014 through July 29, 2015, consisting of pages 83-99.
- APA #5: Records of OrthoCarolina, dated November 13, 2015 through May 2, 2016, consisting of pages 100-120.
- APA #6: Records of Capsugel Medical Clinic, dated November 24, 2014 through May 21, 2015, consisting of pages 121-160.
- APA #7: Records of Self Regional Healthcare, dated September 1, 2000 through October 1, 2013, consisting of pages 161-292.
- APA #8: Records of Greenwood Clinic of Chiropractic Care, dated April 5, 2007 through October 12, 2010, consisting of pages 293-302.
- APA #9: Records of MUSC, dated March 19, 2003, consisting of pages 303-304.
- APA #10: Records of Ware Shoals Family Practice, dated August 16, 2010 through February 10, 2015, consisting of pages 305-389.
- APA #11: Records of Piedmont Arthritis Clinic, dated January 2, 2006 through June 11, 2013, consisting of pages 390-398.
- APA #12: Records of Neurology Associates of Greenville, dated July 15, 2002 through September 16, 2002, consisting of pages 399-410.
- APA #13: Records of Cancer Centers of the Carolinas, dated November 10, 2001, consisting of pages 411-414.
- APA #14: Records of Milestone Medicine, dated October 18, 1999 through November 12, 2002, consisting of pages 415-446.

Exhibits by Pfizer:

1. Records from Workers' Compensation Commission files, consisting of pages 1-11.
2. Claimant's Deposition Transcript, dated November 19, 2014.

I. STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51 and any other issues which may timely come before the Commission;
2. The Claimant's average weekly wage was \$926.94 with a corresponding compensation rate of \$619.99;
3. Notices were timely and properly served upon all parties of interest;
4. Venue, set in Newberry, is proper as agreed by all parties;
5. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;
6. The issue for determination is whether Claimant sustained a compensable injury by accident, repetitive trauma injury, or aggravation of a preexisting condition on or about September 30, 2014, and/or November 23, 2014.

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

II. STATEMENT OF THE CASE

Claimant has three pending claims before the South Carolina Workers' Compensation Commission that were heard together before Commissioner Melody L. James on August 1, 2016. Claimant's first claim, WCC Number 1119362, took place in 2011. The defendants in that claim are Pfizer, Inc. and the Insurance Company of the State of Pennsylvania. Claimant's second and third claims, WCC Numbers 1416152 and 1422948, allegedly took place in 2014. The defendants in those claims are Capsugel Holdings US, Inc. and Travelers Indemnity Company. The Commission granted Claimant's Motion to Consolidate Claims based on judicial economy and fairness, despite the fact that the claims are based on three different accidents. The claims were consolidated for purposes of the hearing only. The only claims addressed in this Order are the

2014 claims, WCC Numbers 1416152 and 1422948. The parties agreed that Pfizer, Inc. and the Insurance Company of the State of Pennsylvania would be released and dismissed from these claims. Accordingly, in this Order, "Defendants" refers only to Capsugel Holdings US, Inc. and Travelers Indemnity Company.

Claimant alleges she injured her bilateral shoulders at work in 2014. Specifically, she alleges her shoulder problems were caused by repetitive stirring on her job, and she first noticed her right shoulder problems in September of 2014. She therefore alleges a repetitive trauma injury or injury by accident with a date of accident of September 30, 2014. Claimant further alleges that her bilateral shoulders were injured in a specific incident while stirring a tank on November 23, 2014. Claimant alleges she is not at maximum medical improvement (MMI) for her shoulder injuries, and she sought an order for payment of causally-related medical expenses and further treatment. Claimant also sought temporary total disability (TTD) benefits for one month in June of 2015, and TTD benefits from September 28, 2015, and ongoing.

Defendants deny that Claimant sustained any compensable injury by accident, repetitive trauma injury, or aggravation of a preexisting condition in September or November of 2014. Defendants further contend that Claimant suffered from preexisting shoulder problems, and to prove a compensable injury to her shoulders under S.C. Code Ann. Section 42-9-35 would require medical evidence stated to a reasonable degree of medical certainty. As there is no such medical opinion in the record, Defendants contend Claimant cannot carry her burden of proof under Section 42-9-35. Defendants sought an order denying both claims in their entirety.

III. EVIDENCE OF THE CASE

Pre-Accident Medical Records

On April 19, 2001, Claimant presented to Ware Shoals Center for Family medicine where she reported tenderness in the thoracic paraspinous muscles and shoulder after a motor vehicle accident (MVA) the day before. (Def's APA p. 173) On June 11, 2001, Claimant underwent cervical and dorsal spinal x-rays following the MVA. (Defs' APA p. 84)

On November 20, 2001, Claimant underwent a C-spine MRI for neck pain following a MVA. The impression revealed, "Mild reversal of normal cervical curvature which is nonspecific but may reflect muscle spasm. No significant spinal or foraminal stenosis." (Defs' APA p. 85)

On May 7, 2002, Claimant underwent x-rays of her C-spine, L-spine, hands, and knees. (Defs' APA p. 86) On May 31, 2002, Claimant presented to Greenwood Regional Rheumatology Center where the clinician opined, "...her history and examination were all consistent with degenerative disc disease of her cervical spine and osteoarthritis of her hands and knees and possible degenerative disc disease of her lumbar spine with sciatica." (Defs' APA p. 172)

Claimant presented to Dr. Kent Kistler with the Neurology Associates of Greenville on July 22, 2002, where she complained of chronic cervical and upper back pain after a MVA. Dr. Kistler noted, "She has continued to complain of a stiff neck, painful to move or touch, and extends down into the intrascapular area." Under Impression/Plan, Dr. Kistler noted, "Cervical strain. No evidence is seen of cord or root impingement with findings and history compatible with cervical strain. The duration and severity of her symptoms are atypical and she is scheduled for an EMG NCV study to evaluate this further." (Defs' APA pp. 180-182)

Claimant underwent an EMG study on August 5, 2002, which revealed, "This patient has a history of cervical pain extending into the neck and shoulders bilaterally of undetermined cause." The EMG was normal. (Defs' APA p. 183)

On September 13, 2002, Claimant presented to Milestone Family Medicine where she reported continued pain in her neck and mid back. The clinicians of Milestone scheduled Claimant for physical therapy. (Defs' APA p. 175)

Claimant returned to Dr. Kistler on September 16, 2002, where she reported total body pain. Dr. Kistler noted, "I am of the opinion that there may be a secondary gain issue." (Defs' APA p. 185)

On March 19, 2003, Claimant underwent MRIs of her C-spine and T-spine, which revealed degenerative changes at C5-6. (Defs' APA p. 191)

Claimant presented to Self Memorial Hospital for pain management on November 15, 2004. She reported chronic neck, shoulder, upper extremity, back and lower extremity complaints that began following a MVA 3 years prior. Claimant indicated she had 4-5 courses of physical therapy as well as chiropractic care. Claimant stated she was also seen by MUSC, and "She reports bilateral upper extremity numbness with certain neck positioning and movements..." (Defs' APA p. 88)

On November 19, 2004, Claimant reported to Carolina Rehabilitation Associates that she was "Having neck pain that radiates down both arms with numbness with turning head and lying right greater than left. Pain also goes from mid palm up her veins. Describes some weakness with picking things up." The clinician noted Claimant's EMG/NCV of her right upper extremity was normal. (Defs' APA p. 192-193)

Claimant presented to the Pain Clinic at Self Regional Healthcare on December 13, 2004. She reported ongoing complaints of chronic neck, shoulder, upper extremities, as well as back and lower extremity complaints. The clinician reviewed Claimant's C-spine MRI and noted, "The exact etiology of the patient's upper extremity symptoms is unclear." Claimant received a cervical epidural steroid injection. (Defs' APA p. 94)

On January 3, 2005, Claimant presented to the Pain Management Center complaining of pain localized between her shoulder blades and paresthesias of her right upper arm. She indicated the injection was helpful in relation to neck discomfort. Upon physical examination the clinician noted, "Passive range of motion of the shoulders produced discomfort in the posterior shoulders." (Defs' APA p. 95)

Claimant returned to the Pain Management Center on January 17, 2005, where she complained of continued chronic neck and shoulder pain as well as upper extremity pain. Claimant received a Neuraxial injection. (Defs' APA p. 97) Claimant returned on February 14, 2005, with continued complaints of neck and shoulder pain. She was referred for physical therapy. (Defs' APA p. 98)

Claimant presented to the physical therapy department of Optimum Life Center of Self Regional on February 17, 2005. Claimant reported neck and upper back pain since a MVA 4 years ago with frequent tingling down her right arm. She indicated the pain was located in her c-spine, bilateral upper trapezius, and the right side between her shoulder blades. She stated she had frequent cervical spasms, and she reported radicular pain down her right arm which "feels like it is in my veins." (Defs' APA p. 194)

Claimant returned to the Pain Management Center on March 28, 2005, with ongoing complaints of chronic neck, shoulder, and upper extremity pain. Claimant was advised to continue her home exercise program and return as needed. (Defs' APA p. 99) Claimant returned to the Pain Management Center on August 30, 2005, with complaints of pain in her neck, thoracic spine, and low back. Claimant was referred for physical therapy. (Defs' APA p. 100)

On September 21, 2005, Claimant returned to Optimum Life Center of Self Regional for physical therapy. She reported that her pain had increased over the past few months. The physical therapist noted, "The patient reports that she has had three EMG studies with no significant findings, secondary to constant numbness and tingling in her arms, especially the right." The therapist further noted, "The patient states that her pain is between bilateral shoulder blades in the thoracic spine." (Defs' APA p. 200)

Claimant returned to the Pain Management Center on November 28, 2005, where she reported starting Lyrica as prescribed by rheumatology, and the Lyrica prescription had resulted in significant improvement. (Defs' APA p. 101)

On June 23, 2011, Claimant presented to Family Healthcare Ware Shoals where she complained of left arm numbness. Claimant reported, "Twinges of sharp pain that run behind head to the base of the neck." The clinician noted Claimant's extension and flexion were restricted and painful. Claimant was diagnosed with "Impingement of the left shoulder," and she was prescribed to Prednisone. (Cl's APA pp. 68-70)

On June 30, 2011, Claimant returned to Family Healthcare Ware Shoals where the clinician noted, "Finished a dose of steroids for nerve impingement of the left shoulder. The left arm is still going numb." Claimant was again diagnosed with impingement of the left shoulder and joint pain localized to the left shoulder. An MRI of Claimant's neck was ordered. (Cl's APA pp. 71-73)

On July 13, 2011, Claimant returned to Self Regional Healthcare with complaints of neck pain and impingement of the shoulder. The clinician noted that Claimant's cervical spine MRI revealed disc bulges at C3-4 through C5-6 without spinal or neuroforaminal stenosis, and that there was no interval change compared to the MRI of November 23, 2004. (Defs' APA p. 103)

On July 15, 2011, the date of Claimant's first work accident, she presented to PHG Family Medicine where she complained of upper back pain following a work accident when she was lifting a bucket over her head. Claimant reported "Sudden pain near the left scapula tip," and she further reported "no prior difficulties with this sort though she does have a diagnosis of fibromyalgia with experience of pains in various places." (Cl's APA p. 1)

Claimant presented to Family Healthcare Ware Shoals on July 19, 2011 where she reported left arm still numb and tingling. She was diagnosed with a bulging cervical disc and referred to neurosurgery for further evaluation. (Cl's APA pp. 30-33)

Claimant returned for physical therapy on August 15, 2011, where the therapist noted, "The patient states that she awoke on June 23rd this year with complaints of central and left sided neck pain, left sided muscle spasms in upper trapezius and levator as well as left hand numbness in the median nerve distribution. She states that she originally thought she woke up with a crick in her neck, but the pain did not resolve." Claimant indicated her main difficulty was discomfort in the left upper trapezius. (Defs' APA pp. 204-205) Claimant continued to complete physical therapy with Self Regional Healthcare for her c-spine and upper extremities from August to September 2011. (Defs' APA pp. 110-120)

On October 10, 2011, Claimant returned to Family Healthcare Ware Shoals where she reported a “Knot under right arm that is painful since Friday.” Claimant indicated she had been in therapy for her c-spine, and she was much improved. Claimant was prescribed Prednisone for her left shoulder impingement. (Cl’s APA pp. 52-55)

From January 9, 2012 through April 2012, Claimant presented to Greenwood Clinic of Chiropractic for neck pain, mid back pain, and low back pain. (Cl’s APA pp. 56-73)

On June 4, 2012, Claimant presented to Dr. Charles C. Kanos with Southeastern Neurosurgical & Spine Institute where she complained of upper back pain and right shoulder pain. Dr. Kanos referred Claimant to pain management. (Defs’ APA pp. 47-49)

On July 12, 2012, Claimant began treating for mid-thoracic back pain with Dr. David Shallcross of Upstate Medical Rehabilitation. (Defs’ APA p. 7) Dr. Shallcross placed Claimant at MMI for her chest wall pain with costochondritis on February 5, 2013. (Defs’ APA pp. 25-26)

Post-Accident Medical Records

On December 3, 2014, Claimant presented to PHG Family Medicine reporting a bilateral shoulder injury at work with her left shoulder worse than her right. Claimant reported, “The injury resulted from repetitive activity and no acute trauma or injury. Onset of pain in 09/2014, but got much worse on 11/23/2014. She was stirring a tank when the pain became worse.” (Cl’s APA pp. 25-26) The clinicians with PHG noted Claimant’s symptoms began during the performance of normal job duties, but without any recognized trauma or injury, and they diagnosed her with possible impingement. Claimant was referred to an orthopedist. (*Id.*)

On December 8, 2014, Claimant returned to PHG Family Medicine, and the clinician noted, "At last visit I had some concern about possible impingement, but today she seems to have full passive movement with no evidence of impingement. Today I am more concerned about possible rotator cuff injury with very little strength in upper arm with arm suspended." Claimant was referred to Dr. Charles Gray, an orthopedist. (CI's APA pp. 27-29)

On December 23, 2014, Claimant presented to Dr. Gray with Lakelands Orthopaedic & Sports Medicine Clinic, and the note indicates, "She was lifting when she felt a severe pain shoot across her back into her shoulders and into her arms. It also moves into her chest. This is similar to the pain she had back when she had her last injections. The pain is constant and severe. She cannot rest because of it. She has numbness moving into her arms and hands. *She has had no prior problems with her shoulders.* She is complaining of weakness of her shoulders and arms." Claimant received subacromial injections in both shoulders. (Defs' APA p. 39, emphasis added)

Claimant returned to Dr. Shallcross on March 30, 2015. The report from that date states, "This patient's sensation of numbness, weakness in the upper extremities with pain with movement is very difficult to pin down. It is hard to see how she would have bilateral symptoms involving both shoulders at once from an injury to the shoulders. It is thus much more likely that there is a spinal problem although there are absolutely no long track signs and no clear cut radicular signs." The report further states, "There is some question as to whether this is an aggravation of her previous injury. Previous injury was very clearly involving the chest wall and not the upper extremities. This is not likely an aggravation of anything she has had in the past. She remains at maximum medical improvement from previous injury." (Pfizer APA pp. 68-70) Dr. Shallcross ordered an updated MRI of the C-spine, which was performed on April 10, 2015. (Pfizer APA pp. 73-75)

Claimant returned to Dr. Gray on April 13, 2015, where she reported, "The pain is in her shoulders and radiates towards her hands and also the medial scapular region." Dr. Gray suspected bilateral subacromial impingement and medial scapular bursitis. He ordered physical therapy and injections. (Defs' APA p. 42)

Claimant returned to Dr. Gray on May 27, 2015, where she complained of continued bilateral shoulder pain. Dr. Gray ordered Shoulder MRIs to "rule out rotator cuff tears." (Defs' APA p. 43)

Claimant returned to Dr. Shallcross on May 29, 2015, and the report states, "The patient was offered cervical epidural but she declined since she has not done well with other injections she has had. At this point, I am having trouble being objective about this case." Dr. Shallcross referred Claimant to Dr. Sumeer Lal to determine whether additional neck treatment would be appropriate and whether Claimant's neck complaints are related to alleged reported work injury. (Pfizer APA pp. 78-80)

On June 8, 2015, Claimant underwent bilateral shoulder MRIs. (Defs' APA pp. 44-45)
Claimant returned to Dr. Gray on June 22, 2015, where the doctor reviewed Claimant's bilateral shoulder MRIs and noted, "Bilateral subacromial impingement and mild AC arthritis without evidence for complete tearing of the rotator cuff. There is probably some tendinosis involving the supraspinatus tendons. At this time, I do not feel certain that surgery would be of great benefit. I would like to have a second opinion by Dr. Cathcart." (Defs' APA p. 46)

On August 24, 2015, Dr. Shallcross opined that Claimant remains at MMI for the July 15, 2011 work injury and did not suffer a permanent aggravation of her July 15, 2011 work injuries in the alleged accident of November 23, 2014. (Defs' APA p. 38)

Claimant presented to Dr. John Vann of Piedmont Orthopaedic Associates where she complained of both shoulders, neck, and back. Claimant's main complaints were of the left shoulder. Dr. Vann noted, "*She denies any prior history of these symptoms prior to her injury,*" and he opined, "I reviewed her reports and frankly I cannot explain the magnitude of this patient's symptoms based on injury and the information provided. ...Based on the information provided and the length of time her symptoms have persisted her subjective complaints are out of proportion to objective findings." (Defs' APA pp. 1-2, emphasis added)

On September 29, 2015, Dr. Vann completed a questionnaire in which he opined, "Based on my evaluation of Claimant and my review of her medical records, I cannot state to a reasonable degree of medical certainty (more likely than not) that Claimant's current alleged bilateral shoulder complaints are causally-related to repetitive stirring at work or to any alleged incident occurring on or about 11/23/14." Under "Explanation:" Dr. Vann wrote, "Subjective Complaints." (Defs' APA pp. 5-6)

Claimant presented for unauthorized treatment with Dr. Kenneth Weeks at OrthoCarolina on November 13, 2015, with complaints of bilateral shoulder pain. Dr. Weeks diagnosed left frozen shoulder and recommended a capsular release and manipulation under anesthesia. (Cl's APA pp. 177-179) Dr. Weeks performed the surgery on November 18, 2015. (Cl's APA, pp. 184-185) Claimant returned to Dr. Weeks on December 2, 2015, and the report states, "She had full range of motion in the operating room, and a picture was taken and showed to her today. I believe there is also a cognitive portion of her current lack of motion as she is had a stiff shoulder for 18 months. She was encouraged to see the picture and will continue to work on range of motion exercises." (Cl's APA pp. 187-188)

On February 23, 2016, Dr. Weeks completed a questionnaire sent to him by Claimant's attorney, opining that Claimant likely sustained an injury in 2014 which led to her frozen left shoulder and led to Claimant's need for surgery. Dr. Weeks also opined that Claimant had no work restrictions and no permanent impairment related to her left shoulder. (CI's APA pp. 202-204)

Deposition of Dr. Kenneth D. Weeks, III

The parties deposed Dr. Weeks on July 18, 2016. Dr. Weeks testified that he has at least some concern that there may be some secondary gain motives in this case. (Weeks Depo., p. 34) Dr. Weeks testified that, when he completed the questionnaire on February 23, 2016, he had not seen Claimant's pre-accident medical records, he had not seen Claimant's deposition transcripts, nor had he seen records from Dr. Shallcross or Dr. Vann. (Weeks Depo., pp. 34-36) After reviewing all of the records and transcripts, Dr. Weeks retracted the causation opinion from the February 23, 2016 questionnaire, and he stated that his opinion is that he cannot state with greater than 50% certainty that Claimant's left shoulder condition and need for surgery was related to an alleged work injury. (Weeks Depo., pp. 35-36)

Hearing Testimony

Claimant testified during the hearing, and her testimony allowed the undersigned Commissioner to observe Claimant and judge Claimant's credibility as a witness. Claimant testified that she is 55 years old and began working for Employer in 2006. (Hrg. Tr. p. 13, ll. 9-11; p. 28, l. 25; p. 29, ll. 1-2). She graduated high school and obtained an associate's degree in Business from Piedmont Technical College. (Hrg. Tr. p. 29, ll. 15-21). She has also trained with the Red Cross, is C.P.R. certified, and has fire academy and machine mechanic training. (Hrg. Tr. p. 29, ll. 22-25; p. 30, ll. 1-9). Since being hired by Employer, Claimant has worked as a machine

operator, including being a Borso operator, and most recently she was an O.S.A. Operator responsible for changing tanks. (Hrg. Tr. pp. 13-14).

Claimant testified that she was involved in a motor vehicle accident in 2001 and suffered whiplash, but she does not believe those problems are connected to her workers' compensation injuries. (Hrg. Tr. p. 26, ll. 19-25; p. 27, ll. 1-8). She also suffers from fibromyalgia, arthritis in her knee, bladder issues, cholesterol issues, hip problems, and a cyst that was removed. (Hrg. Tr. p. 30, ll. 17-25; p. 31, ll. 1-5).

Claimant testified that she did not injure herself at work on September 30, 2014. (Hrg. Tr. P. 19, ll. 4-6) Claimant testified that she injured herself in November of 2014 when she was stirring iron oxide tanks and her "left arm just dropped." (Hrg. Tr. P. 19, ll. 7-16)

On cross-examination by Defense counsel, Claimant testified that she is no longer claiming that any injury occurred in September of 2014. (Hrg. Tr. P. 54, ll. 7-14) Claimant testified that she injured both shoulders in the November 2014 accident. (Hrg. Tr. P. 54, ll. 15-24) Claimant initially testified that she had right shoulder pain for the first time when she woke up the morning after her November accident. Upon further questioning, she then testified that the right shoulder was actually hurting right after the accident, it was just not hurting as badly as the left shoulder. (Hrg. Tr. P. 54, l. 25 – p. 56, l. 4)

Claimant was deposed twice during the course of her three workers' compensation claims. On November 19, 2014, Claimant testified that she had never had any medical treatment for her shoulders before, and her first sign of a shoulder problem was in 2014. (11/19/14 Depo. Tr. P. 49, ll. 18-25) On August 3, 2015, Claimant testified that when she had fibromyalgia pains in the past, she never had any pain in her neck, shoulders, or arms. (8/3/15 Depo. Tr. P. 42, l. 16 – p. 43, l. 2)

Claimant also testified that she never had any right or left shoulder pain or problems before 2014. (8/3/15 Depo. Tr. p. 69, l. 9 – p. 70, l. 7)

Claimant was presented with her deposition transcript, dated August 3, 2015, and Claimant agreed that she denied ever having any pain or problems with her left or right shoulders before 2014 during the deposition. (Hrg. Tr. P. 59, ll. 4-21) Claimant agreed that her medical records prior to 2014 indicate she presented with complaints of shoulder pain, but she testified that she does not recall treating for shoulder pain prior to 2014. (Hrg. Tr. P. 59, l. 22 – p. 63, l. 18) Claimant testified that she was having pain in the shoulder joint, itself, after her 2014 accident, but any complaints she made of shoulder pain prior to 2014 were actually referencing her trapezius area, which is what she refers to as her shoulder. (*Id.*) Claimant also reviewed a report from Dr. Vann dated September 9, 2015, which states that Claimant denied any prior history of the same symptoms prior to her work injury, and Claimant agreed that the report is incorrect because she did have symptoms before 2014. (Hrg. Tr. P. 66, ll. 14-17) Claimant testified that, when she saw Dr. Vann on September 9, 2015, she did not know she had shoulder problems before 2014, and she testified that Dr. Vann did not ask her whether she had prior problems with her shoulders. (Hrg. Tr. P. 67, ll. 4-14)

Claimant testified that, during her 2014 and 2015 depositions, she recalled all of the treatment she underwent following her 2001 motor vehicle accident, but she was simply unaware of all of the shoulder problems she had before 2014. (Hrg. Tr. P. 68, ll. 1-17) After reviewing her medical records prior to 2014, Claimant disagreed that she had significant pain and problems with her shoulders prior to 2014, she testified she was never told that she was diagnosed with impingement syndrome prior to 2014, and she testified that she “maybe” went to the doctor prior to 2014 for right or left shoulder pain. (Hrg. Tr. P. 68, l. 21 – p. 70, l. 6)

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

IV. FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Lucille Tate as Employee-Claimant and Capsugel Holdings Us, Inc. as Employer and Travelers Indemnity Company as Carrier, Defendants.
2. The average weekly wage of Employee at the time of the above-described accident was \$926.94, with a corresponding compensation rate of \$619.99.
3. Claimant filed claims indicating that she sustained injuries to her shoulders on September 30, 2014, and November 20, 2014. Claimant indicated at the hearing that the appropriate date for the November 2014 claim should be the 23rd and not the 20th.
4. Claimant has failed to sustain her burden of proof that she sustained compensable injuries occurring on either of these dates.
5. As to the alleged claim of September 30, 2014, Claimant testified at the hearing that nothing occurred on this date. Claimant testified that she did not injure herself at work on September 30, 2014. (Hrg. Tr. P. 19, ll. 4-6) Claimant further testified that she is no longer claiming that any injury occurred in September of 2014. (Hrg. Tr. P. 54, ll. 7-14) Claimant had originally provided deposition testimony in a 2014 deposition that the left shoulder started hurting sometime in August or September 30, and that she felt the pain while stirring iron oxides at work. (11/19/14 Depo. Tr. at 51-52) This is also addressed in her 2015 deposition. In that deposition, she indicated that there was not a specific incident in September of 2014. (8/3/15 Depo. Tr. at 55)

6. As Claimant testified that she is no longer alleging that an injury occurred in September of 2014, she has failed to carry her burden of proving the same.

7. Claimant provided inconsistent testimony. In particular, this occurred when Claimant was asked about preexisting problems with her shoulders. Although she denied prior problems, the records are clear that she was diagnosed with previous left shoulder problems, including shoulder impingement in 2011.

- a. On April 19, 2001, Claimant presented to Ware Shoals Center for Family medicine where she reported tenderness in the thoracic paraspinal muscles and shoulder after a motor vehicle accident (MVA) the day before. (Def's APA p. 173)
- b. On June 11, 2001, Claimant underwent cervical and dorsal spinal x-rays following the MVA. (Def's APA p. 84)
- c. On November 20, 2001, Claimant underwent a C-spine MRI for neck pain following a MVA. The impression revealed, "Mild reversal of normal cervical curvature which is nonspecific but may reflect muscle spasm. No significant spinal or foraminal stenosis." (Def's APA p. 85)
- d. On May 7, 2002, Claimant underwent x-rays of her C-spine, L-spine, hands, and knees. (Def's APA p. 86)
- e. On May 31, 2002, Claimant presented to Greenwood Regional Rheumatology Center where the clinician opined, "...her history and examination were all consistent with degenerative disc disease of her cervical spine and osteoarthritis of her hands and knees and possible degenerative disc disease of her lumbar spine with sciatica." (Def's APA p. 172)

- f. Claimant presented to Dr. Kent Kistler with the Neurology Associates of Greenville on July 22, 2002, where she complained of chronic cervical and upper back pain after a MVA. Dr. Kistler noted, "She has continued to complain of a stiff neck, painful to move or touch, and extends down into the intrascapular area." Under Impression/Plan, Dr. Kistler noted, "Cervical strain. No evidence is seen of cord or root impingement with findings and history compatible with cervical strain. The duration and severity of her symptoms are atypical and she is scheduled for an EMG NCV study to evaluate this further." (Defs' APA pp. 180-182)
- g. Claimant underwent an EMG study on August 5, 2002, and the report notes, "This patient has a history of cervical pain extending into the neck and shoulders bilaterally of undetermined cause." The EMG was normal. (Defs' APA p. 183)
- h. On September 13, 2002, Claimant presented to Milestone Family Medicine where she reported continued pain in her neck and mid back. The clinicians of Milestone scheduled Claimant for physical therapy. (Defs' APA p. 175)
- i. Claimant returned to Dr. Kistler on September 16, 2002, where she reported total body pain. Dr. Kistler noted, "I am of the opinion that there may be a secondary gain issue." (Defs' APA p. 185)
- j. On March 19, 2003, Claimant underwent MRIs of her C-spine and T-spine, which revealed degenerative changes at C5-6. (Defs' APA p. 191)
- k. Claimant presented to Self Memorial Hospital for pain management on November 15, 2004. She reported chronic neck, shoulder, upper extremity, back and lower extremity complaints that began following a MVA 3 years prior. Claimant indicated she had 4-5 courses of physical therapy as well as chiropractic care.

Claimant stated she was also seen by MUSC, and “She reports bilateral upper extremity numbness with certain neck positioning and movements...” (Defs’ APA p. 88)

- l. On November 19, 2004, Claimant reported to Carolina Rehabilitation Associates that she was “Having neck pain that radiates down both arms with numbness with turning head and lying right greater than left. Pain also goes from mid palm up her veins. Describes some weakness with picking things up.” The clinician noted Claimant’s EMG/NCV of her right upper extremity was normal. (Defs’ APA p. 192-193)
- m. Claimant presented to the Pain Clinic at Self Regional Healthcare on December 13, 2004. She reported ongoing complaints of chronic neck, shoulder, upper extremities, as well as back and lower extremity complaints. The clinician reviewed Claimant’s C-spine MRI and noted, “The exact etiology of the patient’s upper extremity symptoms is unclear.” Claimant received a cervical epidural steroid injection. (Defs’ APA p. 94)
- n. On January 3, 2005, Claimant presented to the Pain Management Center complaining of pain localized between her shoulder blades and paresthesias of her right upper arm. She indicated the injection was helpful in relation to neck discomfort. Upon physical examination the clinician noted, “Passive range of motion of the shoulders produced discomfort in the posterior shoulders.” (Defs’ APA p. 95)

- o. Claimant returned to the Pain Management Center on January 17, 2005, where she complained of continued chronic neck and shoulder pain as well as upper extremity pain. Claimant received a Neuraxial injection. (Defs' APA p. 97)
- p. Claimant returned on February 14, 2005, with continued complaints of neck and shoulder pain. She was referred for physical therapy. (Defs' APA p. 98)
- q. Claimant presented to the physical therapy department of Optimum Life Center of Self Regional on February 17, 2005. Claimant reported neck and upper back pain since a MVA 4 years ago with frequent tingling down her right arm. She indicated the pain was located in her c-spine, bilateral upper trapezius, and the right side between her shoulder blades. She stated she had frequent cervical spasms, and she reported radicular pain down her right arm which "feels like it is in my veins." (Defs' APA p. 194)
- r. Claimant returned to the Pain Management Center on March 28, 2005, with ongoing complaints of chronic neck, shoulder, and upper extremity pain. Claimant was advised to continue her home exercise program and return as needed. (Defs' APA p. 99)
- s. Claimant returned to the Pain Management Center on August 30, 2005, with complaints of pain in her neck, thoracic spine, and low back. Claimant was referred for physical therapy. (Defs' APA p. 100)
- t. On September 21, 2005, Claimant returned to Optimum Life Center of Self Regional for physical therapy. She reported that her pain had increased over the past few months. The physical therapist noted, "The patient reports that she has had three EMG studies with no significant findings, secondary to constant

numbness and tingling in her arms, especially the right.” The therapist further noted, “The patient states that her pain is between bilateral shoulder blades in the thoracic spine.” (Defs’ APA p. 200)

- u. Claimant returned to the Pain Management Center on November 28, 2005, where she reported starting Lyrica as prescribed by rheumatology, and the Lyrica prescription had resulted in significant improvement. (Defs’ APA p. 101)
- v. On June 23, 2011, Claimant presented to Family Healthcare Ware Shoals where she complained of left arm numbness. Claimant reported, “Twinges of sharp pain that run behind head to the base of the neck.” The clinician noted Claimant’s extension and flexion were restricted and painful. Claimant was diagnosed with “**Impingement of the left shoulder,**” and she was prescribed to Prednisone. (Cl’s APA pp. 68-70, emphasis added)
- w. On June 30, 2011, Claimant returned to Family Healthcare Ware Shoals where the clinician noted, “Finished a dose of steroids for nerve impingement of the left shoulder. The left arm is still going numb.” Claimant was again diagnosed with impingement of the left shoulder and joint pain localized to the left shoulder. An MRI of Claimant’s neck was ordered. (Cl’s APA pp. 71-73)
- x. On July 13, 2011, Claimant returned to Self Regional Healthcare with complaints of neck pain and impingement of the shoulder. The clinician noted that Claimant’s cervical spine MRI revealed disc bulges at C3-4 through C5-6 without spinal or neuroforaminal stenosis, and that there was no interval change compared to the MRI of November 23, 2004. (Defs’ APA p. 103)

- y. On July 15, 2011, the date of Claimant's first work accident, she presented to PHG Family Medicine where she complained of upper back pain following a work accident when she was lifting a bucket over her head. Claimant reported "Sudden pain near the left scapula tip," and she further reported "no prior difficulties with this sort though she does have a diagnosis of fibromyalgia with experience of pains in various places." (CI's APA p. 1)
- z. Claimant presented to Family Healthcare Ware Shoals on July 19, 2011 where she reported left arm still numb and tingling. She was diagnosed with a bulging cervical disc and referred to neurosurgery for further evaluation. (CI's APA pp. 30-33)
- aa. Claimant returned for physical therapy on August 15, 2011, where the therapist noted, "The patient states that she awoke on June 23rd this year with complaints of central and left sided neck pain, left sided muscle spasms in upper trapezius and levator as well as left hand numbness in the median nerve distribution. She states that she originally thought she woke up with a crick in her neck, but the pain did not resolve." Claimant indicated her main difficulty was discomfort in the left upper trapezius. (Defs' APA pp. 204-205)
- bb. Claimant continued to complete physical therapy with Self Regional Healthcare for her c-spine and upper extremities from August to September 2011. (Defs' APA pp. 110-120)
- cc. On October 10, 2011, Claimant returned to Family Healthcare Ware Shoals where she reported a "Knot under right arm that is painful since Friday." Claimant indicated she had been in therapy for her c-spine, and she was much improved.

Claimant was prescribed Prednisone for her left shoulder impingement. (Cl's APA pp. 52-55)

dd. From January 9, 2012 through April 2012, Claimant presented to Greenwood Clinic of Chiropractic for neck pain, mid back pain, and low back pain. (Cl's APA pp. 56-73)

ee. On June 4, 2012, Claimant presented to Dr. Charles C. Kanos with Southeastern Neurosurgical & Spine Institute where she complained of upper back pain and right shoulder pain. Dr. Kanos referred Claimant to pain management. (Defs' APA pp. 47-49)

ff. On July 12, 2012, Claimant began treating for mid-thoracic back pain with Dr. David Shallcross of Upstate Medical Rehabilitation. (Defs' APA p. 7) Dr. Shallcross placed Claimant at MMI for her chest wall pain with costochondritis on February 5, 2013. (Defs' APA pp. 25-26)

8. Claimant's testimony during her depositions and the hearing is inconsistent with the pre-2014 medical records outlined above.

a. Claimant was deposed twice during the course of her three workers' compensation claims.

b. On November 19, 2014, Claimant testified that she had never had any medical treatment for her shoulders before, and her first sign of a shoulder problem was in 2014. (11/19/14 Depo. Tr. P. 49, ll. 18-25)

c. On August 3, 2015, Claimant testified that when she had fibromyalgia pains in the past, she never had any pain in her neck, shoulders, or arms. (8/3/15 Depo. Tr. P. 42, l. 16 – p. 43, l. 2)

- d. On August 3, 2015, Claimant testified that she never had any right or left shoulder pain or problems before 2014. (8/3/15 Depo. Tr. p. 69, l. 9 – p. 70, l. 7)
- e. At the hearing, Claimant was presented with her deposition transcript, dated August 3, 2015, and Claimant agreed that she denied ever having any pain or problems with her left or right shoulders before 2014 during the deposition. (Hrg. Tr. P. 59, ll. 4-21)
- f. Claimant agreed that her medical records prior to 2014 indicate she presented with complaints of shoulder pain, but she testified that she does not recall treating for shoulder pain prior to 2014. (Hrg. Tr. P. 59, l. 22 – p. 63, l. 18)
- g. After reviewing her medical records prior to 2014, Claimant disagreed that she had significant pain and problems with her shoulders prior to 2014, she testified she was never told that she was diagnosed with impingement syndrome prior to 2014, and she testified that she “maybe” went to the doctor prior to 2014 for right or left shoulder pain. (Hrg. Tr. P. 68, l. 21 – p. 70, l. 6)

9. The medical records following Claimant’s alleged accident of November 23, 2014, also do not support her allegations. The records initially indicate there was no acute trauma or injury, contrary to Claimant’s allegations. The records also indicate that Claimant denied prior shoulder problems to her providers, which is inconsistent with her pre-accident medical records. The records also document that at least three doctors questioned the validity of Claimant’s subjective complaints to some extent during her treatment.

- a. On December 3, 2014, Claimant presented to PHG Family Medicine reporting a bilateral shoulder injury at work with her left shoulder worse than her right. Claimant reported, “The injury resulted from repetitive activity and no acute trauma

or injury. Onset of pain in 09/2014, but got much worse on 11/23/2014. She was stirring a tank when the pain became worse.” The clinicians with PHG noted Claimant’s symptoms began during the performance of normal job duties, but without any recognized trauma or injury, and they diagnosed her with possible impingement. Claimant was referred to an orthopedist. (Cl’s APA pp. 25-26)

b. On December 8, 2014, Claimant returned to PHG Family Medicine, and the clinician noted, “At last visit I had some concern about possible impingement, but today she seems to have full passive movement with no evidence of impingement. Today I am more concerned about possible rotator cuff injury with very little strength in upper arm with arm suspended.” Claimant was referred to Dr. Charles Gray, an orthopedist. (Cl’s APA pp. 27-29)

c. On December 23, 2014, Claimant presented to Dr. Gray with Lakelands Orthopaedic & Sports Medicine Clinic, and the note indicates, “She was lifting when she felt a severe pain shoot across her back into her shoulders and into her arms. It also moves into her chest. This is similar to the pain she had back when she had her last injections. The pain is constant and severe. She cannot rest because of it. She has numbness moving into her arms and hands. *She has had no prior problems with her shoulders.* She is complaining of weakness of her shoulders and arms.” Claimant received subacromial injections in both shoulders. (Defs’ APA p. 39, emphasis added)

- d. Claimant returned to Dr. Shallcross on March 30, 2015. The report from that date states, “This patient’s sensation of numbness, weakness in the upper extremities with pain with movement is very difficult to pin down. *It is hard to see how she would have bilateral symptoms involving both shoulders at once from an injury to the shoulders.* It is thus much more likely that there is a spinal problem although there are absolutely no long track signs and no clear cut radicular signs.” The report further states, “There is some question as to whether this is an aggravation of her previous injury. Previous injury was very clearly involving the chest wall and not the upper extremities. This is not likely an aggravation of anything she has had in the past. She remains at maximum medical improvement from previous injury.” (Pfizer APA pp. 68-70, emphasis added) Dr. Shallcross ordered an updated MRI of the C-spine, which was performed on April 10, 2015. (Pfizer APA pp. 73-75)
- e. Claimant returned to Dr. Gray on April 13, 2015, and it was noted that, “The pain is in her shoulders and radiates towards her hands and also the medial scapular region.” Dr. Gray suspected bilateral subacromial impingement and medial scapular bursitis. He ordered physical therapy and injections. (Defs’ APA p. 42)
- f. Claimant returned to Dr. Gray on May 27, 2015, where she complained of continued bilateral shoulder pain. Dr. Gray ordered Shoulder MRIs to “rule out rotator cuff tears.” (Defs’ APA p. 43)
- g. Claimant returned to Dr. Shallcross on May 29, 2015, and the report states, “The patient was offered cervical epidural but she declined since she has not done well with other injections she has had. *At this point, I am having trouble being objective about this case.*” Dr. Shallcross referred Claimant to Dr. Sumeer Lal to

determine whether additional neck treatment would be appropriate and whether Claimant's neck complaints are related to alleged reported work injury. (Pfizer APA pp. 78-80, emphasis added)

- h. On June 8, 2015, Claimant underwent bilateral shoulder MRIs. (Defs' APA pp. 44-45)
- i. Claimant returned to Dr. Gray on June 22, 2015, where the doctor reviewed Claimant's bilateral shoulder MRIs and noted, "Bilateral subacromial impingement and mild AC arthritis without evidence for complete tearing of the rotator cuff. There is probably some tendinosis involving the supraspinatus tendons. At this time, I do not feel certain that surgery would be of great benefit. I would like to have a second opinion by Dr. Cathcart." (Defs' APA p. 46)
- j. On August 24, 2015, Dr. Shallcross opined that Claimant remains at MMI for the July 15, 2011 work injury and did not suffer a permanent aggravation of her July 15, 2011, work injuries in the alleged accident of November 23, 2014. (Defs' APA p. 38)
- k. Claimant presented to Dr. John Vann of Piedmont Orthopaedic Associates where she complained of both shoulders, neck, and back. Claimant's main complaints were of the left shoulder. Dr. Vann noted, "*She denies any prior history of these symptoms prior to her injury,*" and he opined, "*I reviewed her reports and frankly I cannot explain the magnitude of this patient's symptoms based on injury and the information provided. ...Based on the information provided and the length of time her symptoms have persisted her subjective complaints are out of proportion to objective findings.*" (Defs' APA pp. 1-2, all emphasis added)

- l. On September 29, 2015, Dr. Vann completed a questionnaire in which he opined, “Based on my evaluation of Claimant and my review of her medical records, I cannot state to a reasonable degree of medical certainty (more likely than not) that Claimant’s current alleged bilateral shoulder complaints are causally-related to repetitive stirring at work or to any alleged incident occurring on or about 11/23/14.” Under “Explanation:” Dr. Vann wrote, “Subjective Complaints.” (Defs’ APA pp. 5-6)
- m. Claimant presented on her own to Dr. Kenneth Weeks at OrthoCarolina on November 13, 2015, with complaints of bilateral shoulder pain. Dr. Weeks diagnosed left frozen shoulder and recommended a capsular release and manipulation under anesthesia. (CI’s APA pp. 177-179)
- n. Dr. Weeks performed the surgery on November 18, 2015. (CI’s APA, pp. 184-185)
- o. Claimant returned to Dr. Weeks on December 2, 2015, and the report states, “She had full range of motion in the operating room, and a picture was taken and showed to her today. *I believe there is also a cognitive portion of her current lack of motion* as she is had a stiff shoulder for 18 months. She was encouraged to see the picture and will continue to work on range of motion exercises.” (CI’s APA pp. 187-188, emphasis added)
- p. Dr. Weeks testified at his deposition that he has at least some concern that there may be some secondary gain motives in this case. (Weeks Depo., p. 34)

10. The only doctors who have addressed causation in the claim are Dr. Vann and Dr. Weeks, and both doctors have opined that they *cannot* state to a reasonable degree of medical certainty that Claimant's complaints are related to the alleged work accidents.

- a. Dr. Vann's initial opinion was based on the history of the Claimant that she did not have prior history of trouble with her shoulders. (Defs' APA pp. 1 and 5).
- b. Dr. Vann opined on September 29, 2015, that he was not previously informed of the prior medical records, and after review of the medical records, he could not state to a reasonable degree of medial certainty that Claimant's bilateral shoulder complaints are causally related to the alleged work accident. (Defs' APA 5)
- c. Similarly, Dr. Weeks initially related the left shoulder condition to an injury in a questionnaire dated February 23, 2016. (Cl's APA 204)
- d. Dr. Weeks testified that, when he completed the questionnaire on February 23, 2016, he had not seen Claimant's pre-accident medical records, he had not seen Claimant's deposition transcripts, nor had he seen records from Dr. Shallcross or Dr. Vann. (Weeks Depo., pp. 34-36)
- e. After reviewing all of the records and transcripts, Dr. Weeks retracted the causation opinion from the February 23, 2016 questionnaire, and he stated that his opinion is that he cannot state with greater than 50% certainty that Claimant's left shoulder condition and need for surgery were related to an alleged work injury. (Weeks Depo., pp. 35-36)
- f. As there was a preexisting condition, as opined by Dr. Weeks, the question was asked of him as to whether there was an aggravation of the condition from the November event, and whether the surgery was related (Weeks Depo., pp. 41-42).

Dr. Weeks indicated that it was a possibility, but he could not state to a reasonable degree of medical certainty that there was an aggravation or that the surgery was related to an aggravation. (*Id.*)

11. Claimant has not met her burden of proving that any condition of her shoulders would be proximately related to an event that occurred at work in September or November of 2014. As such, she has failed to carry her burden of proof under Section 42-1-160.

12. Claimant has not met her burden of proving by medical evidence that any preexisting condition of her shoulders was aggravated in September or November 2014, or that her need for medical treatment was related to any alleged aggravation of a preexisting condition to a reasonable degree of medical certainty. As such, she has failed to carry her burden of proof under Section 42-9-35.

13. Claimant has not met her burden of proving by medical evidence that she sustained a repetitive trauma injury to either of her shoulders occurring in September or November 2014. As such, she has failed to carry her burden of proof under Section 42-1-172.

14. The 2011 injury and the 2014 alleged injuries are not related. This is pursuant to the medial opinions in the record. On August 24, 2015, Dr. Shallcross opined that Claimant remains at MMI for the July 15, 2011 work injury and did not suffer a permanent aggravation of her July 15, 2011, work injuries in the alleged accident of November 23, 2014. (Defs' APA p. 38) The parties also agreed that Pfizer, Inc. and the Insurance Company of the State of Pennsylvania would be dismissed from the 2014 claims. Therefore, Pfizer, Inc. and the Insurance Company of the State of Pennsylvania are dismissed from the 2014 claims.

V. 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 § 42-1-160, Claimant has failed to prove a compensable injury by accident to either of her shoulders occurring on or about September 30, 2014, or November 23, 2014.
3. Under § 42-9-35, Claimant has failed to prove a compensable aggravation of a preexisting condition to either of her shoulders occurring on or about September 30, 2014, or November 23, 2014.
4. Under § 42-1-172, Claimant has failed to prove a compensable repetitive trauma injury to either of her shoulders occurring on or about September 30, 2014, or November 23, 2014.

VI. ORDER/AWARD

IT IS HEREBY ORDERED that Claimant's claim for benefits for an alleged accident or injury occurring on or about September 30, 2014, is hereby denied.

IT IS FURTHER ORDERED that Claimant's claim for benefits for an alleged accident or injury occurring on or about November 23, 2014, is hereby denied.

IT IS FURTHER ORDERED that Pfizer, Inc. and the Insurance Company of the State of Pennsylvania are dismissed from these claims.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.



Commissioner Melody L. James

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).

November 8, 2016

By: Tamara Morris, Administrative Assistant to Commissioner James