

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
WCC FILE No. 1505905

**RECEIVED**  
DEC 13 2016  
SC Court of Appeals

JEFFREY MILLER )  
Employee/Claimant )  
)  
)  
vs. )  
)  
)  
ALICE MANUFACTURING CO. )  
)  
and )  
)  
GREAT AMERICAN ALLIANCE )  
INSURANCE COMPANY, )  
)  
)  
Defendants )  
)

**APPELLATE PANEL  
DECISION AND ORDER**

Appellate Panel Review held in Columbia, South Carolina, on September 19., 2016, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed:

November 15th, 2016

APPEARANCES:

Claimant represented by Mitchell K. Byrd, Jr.,  
Esquire of Greenville, South Carolina.

Defendants represented by E. Ros Huff, Jr., Esquire  
of Greenville, South Carolina.

## STATEMENT OF THE CASE

This claim came before the Honorable Gene McCaskill on January 26, 2016 by way of Claimant's Form 50 hearing request. At the original hearing, Claimant alleged injury to his right upper extremity, right shoulder, right hand and neck as a result of an accident arising out of and in the course of his employment with Defendants on 02/25/2015. He contended that he is entitled to past due TTD benefits from 4/20/2015 to the present, and continuing forward until such time as benefits can be properly terminated. He contended that he is in need of further medical treatment for his injuries and that he is not at maximum medical improvement. Defendants contended that Claimant suffered no injury by accident while working for the employer. Defendants contended Claimant lacked credibility. They objected to certain evidence in the APA's and continued to deny the claim. On June 1, 2016, the Hearing Commissioner issued a Decision and Order, which is hereby incorporated as if reproduced verbatim herein. The Hearing Commissioner's Decision and Order contained the following Finding of Facts:

1. The Claimant alleges injuries to his right upper extremity, right shoulder, right hand and neck arising out of and in the course and scope of his employment on or about 3/17/2015 when he pulled "something" in his arm. He so testified.
2. The Defendants deny the claim.
3. The Defendants have not provided any medical care or treatment.
4. The Claimant was terminated by the Employer. This is based on the testimony of the witnesses and the evidence in the record as a whole.
5. I found the Claimant to be very credible. It was clear that the Claimant has a limited communication skill set. He testified that while he can read and write, he

has trouble spelling and reads slowly. His speech was stilted and he spoke in a staccato pattern. He was clearly nervous and had some difficulty verbalizing his responses to questions. That being said, I found him to be candid and truthful. I did not find any intent on behalf of Claimant to be deceptive. This finding of fact is based on the testimony of the Claimant and the observations of the Undersigned.

6. The Claimant has treated on his own with Dr. Dwight Jacobus. This finding of fact is based on the medical records and the testimony of the Claimant.
7. Dr. Jacobus completed a questionnaire which is part of the record. In that questionnaire, Dr. Jacobus agrees with the statement that the Claimant sustained a work-related injury on 03/17/15. He also agrees that the Claimant's injuries to his right arm, right shoulder, and neck are causally related to his work accident of 03/17/15. This finding of fact is based on the medical records, specifically APA #1.
8. Dr. Jacobus also opines that the Claimant has been unable to work since his work-related accident on 03/17/15 and is not at MMI. Both of these statements are written answers provided by Dr. Jacobus. He also indicates that he was given the opportunity to add or redact anything he wished from the questionnaire. This finding of fact is based on the medical records, specifically APA #1.
9. There are some inconsistencies in the record as to the timeline. I do not find those inconsistencies are significant enough to void the claim. This finding of fact is based on the medical records, the testimony of the witnesses, and the evidence in the record as a whole.

10. Kimberly LeCroy, the Claimant's supervisor, testified that she did not have an immediate conversation with the Claimant about his alleged 03/17/15 accident. She testified that Claimant told her he wasn't sure if it happened at work or at home. This finding of fact is based on the testimony of Ms. LeCroy.
11. Ms. LeCroy did not bring any documents to the hearing. The Claimant's employment file was not entered into evidence. This finding of fact is based on the testimony of Ms. LeCroy and the record as a whole.
12. The Claimant suffered a work-related accident, resulting in injury, on or about 03/17/15. We must be mindful that workers do not live in our world of workers' compensation parlance nor do they grasp that specific descriptions and chronology have the importance that attaches in workers' compensation. That being said, just because a worker does not have the vocabulary or specificity of recall we seek does not void their case if they can present a prima facie case which can be proved compensable by a preponderance of the evidence. That is the case here. This finding of fact is based on the testimony of the witnesses, including the Claimant, the medical records, and the evidence in the record as a whole.
13. When the evidence is viewed as a whole, I find that the Claimant suffered an injury by accident to his neck and right upper extremity, to include his right shoulder, right arm, and right hand, on or about 3/17/15 while working for Defendants. There is no medical evidence in the record to contradict this. This finding of fact is based on the testimony of the Claimant and the medical record.

14. The Claimant is not at MMI. This finding of fact is based on the testimony of the Claimant and the medical records.
15. Claimant is entitled to payment for past causally related medical bills incurred as well as additional, continued medical care and treatment for his injuries. This finding of fact is based on the testimony of the Claimant and the medical records.
16. Dr. Jacobus is to be the Claimant's authorized treating physician. The Claimant is entitled to medical care and treatment – including imaging – as directed by Dr. Jacobus.
17. As to TTD, the Claimant was given a light duty note. There is no evidence or testimony that light duty was offered. The Claimant was terminated. He was also written out of work by Dr. Jacobus. This finding of fact is based on the medical records, the testimony of the witnesses, and the evidence in the record as a whole.
18. The Claimant is entitled to TTD from 04/20/15 to the present and continuing. This finding of fact is based on the medical records, the testimony of the witnesses, and the evidence in the record as a whole.
19. The Claimant's testimony is substantially consistent with the medical evidence in this case. The Claimant has no recall as to some dates and has some difficulty verbalizing the specifics of the mechanism of injury. This finding of fact is based on the testimony of the Claimant, the medical records, and the observations of the Undersigned.
20. All other issues are held in abeyance.

The Hearing Commissioner's Decision and Order further contained the following 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 § 42-1-160, Claimant sustained an injury by accident, arising out of and in the course of his employment, to his neck, right shoulder, right arm, and right hand on or about March 17, 2015.

3. Under § 42-15-60, Martin v. Rapid Plumbing, 369 SC 278 (Ct App 2006), and Hall v. United Rentals, Inc., 371 SC 369 (Ct App 2006), Claimant is entitled to causally related medical treatment for his injuries at the direction of Dr. Dwight Jacobus.

4. Under § 42-9-10, Claimant is entitled to temporary total disability payments at his compensation rate, beginning April 20, 2015 through the present and continuing until such time as those benefits can be properly and lawfully terminated or suspended.

Defendants timely filed a Form 30, Request for Full Commission Review, and a Review Hearing with oral argument took place before the Undersigned Appellate Panel Commissioners on September 19, 2016, in Columbia, South Carolina. The Appellate Panel hereby affirms the Decision and Order of the Single Commissioner, in its entirety, with amendments, and makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. The Claimant alleges injuries to his right upper extremity, right shoulder, right hand and neck arising out of and in the course and scope of his employment on or about 3/17/2015 when he pulled "something" in his arm. He so testified.
2. The Defendants deny the claim.
3. The Defendants have not provided any medical care or treatment.
4. The Claimant was terminated by the Employer. This is based on the testimony of the witnesses and the evidence in the record as a whole.
5. The Commission finds the Claimant to be very credible. It was clear that the Claimant has a limited communication skill set. He testified that while he can read and write, he has trouble spelling and reads slowly. His speech was stilted and he spoke in a staccato pattern. He was clearly nervous and had some difficulty verbalizing his responses to questions. That being said, Claimant was candid and truthful. There was no intent on behalf of Claimant to be deceptive. This finding of fact is based on the testimony of the Claimant and the observations of the Hearing Commissioner.
6. The Claimant has treated on his own with Dr. Dwight Jacobus. This finding of fact is based on the medical records and the testimony of the Claimant.
7. Dr. Jacobus completed a questionnaire which is part of the record. In that questionnaire, Dr. Jacobus agrees with the statement that the Claimant sustained a work-related injury on 03/17/15. He also agrees that the Claimant's injuries to his right arm, right shoulder, and neck are causally related to his work accident of 03/17/15. This finding of fact is based on the medical records, specifically APA #1.

8. Dr. Jacobus also opines that the Claimant has been unable to work since his work-related accident on 03/17/15 and is not at MMI. Both of these statements are written answers provided by Dr. Jacobus. He also indicates that he was given the opportunity to add or redact anything he wished from the questionnaire. This finding of fact is based on the medical records, specifically APA #1.
9. There are some inconsistencies in the record as to the timeline. Those inconsistencies are not significant enough to void the claim. This finding of fact is based on the medical records, the testimony of the witnesses, and the evidence in the record as a whole.
10. Kimberly LeCroy, the Claimant's supervisor, testified that she did not have an immediate conversation with the Claimant about his alleged 03/17/15 accident. She testified that Claimant told her he wasn't sure if it happened at work or at home. This finding of fact is based on the testimony of Ms. LeCroy.
11. Ms. LeCroy did not bring any documents to the hearing. The Claimant's employment file was not entered into evidence. This finding of fact is based on the testimony of Ms. LeCroy and the record as a whole.
12. The Claimant suffered a work-related accident, resulting in injury, on or about 03/17/15. We must be mindful that workers do not live in our world of workers' compensation parlance nor do they grasp that specific descriptions and chronology have the importance that attaches in workers' compensation. That being said, just because a worker does not have the vocabulary or specificity of recall we seek does not void their case if they can present a prima facie case which can be proved compensable by a preponderance of the evidence. That is

the case here. This finding of fact is based on the testimony of the witnesses, including the Claimant, the medical records, and the evidence in the record as a whole.

13. When the evidence is viewed as a whole, it is found that the Claimant suffered an injury by accident to his neck and right upper extremity, to include his right shoulder, right arm, and right hand, on or about 3/17/15 while working for Defendants. There is no medical evidence in the record to contradict this. This finding of fact is based on the testimony of the Claimant and the medical record.
14. The Claimant is not at MMI. This finding of fact is based on the testimony of the Claimant and the medical records.
15. Claimant is entitled to payment for past causally related medical bills incurred as well as additional, continued medical care and treatment for his injuries. This finding of fact is based on the testimony of the Claimant and the medical records.
16. Dr. Jacobus is to be the Claimant's authorized treating physician. The Claimant is entitled to medical care and treatment – including imaging – as directed by Dr. Jacobus.
17. As to TTD, the Claimant was given a light duty note. There is no evidence or testimony that light duty was offered. The Claimant was terminated. He was also written out of work by Dr. Jacobus. This finding of fact is based on the medical records, the testimony of the witnesses, and the evidence in the record as a whole.
18. The Claimant is entitled to TTD from 04/20/15 to the present and continuing. This finding of fact is based on the medical records, the testimony of the witnesses, and the evidence in the record as a whole.

19. The Claimant's testimony is substantially consistent with the medical evidence in this case. The Claimant has no recall as to some dates and has some difficulty verbalizing the specifics of the mechanism of injury. This finding of fact is based on the testimony of the Claimant, the medical records, and the observations of the Hearing Commissioner.

20. All other issues are held in abeyance.

### CONCLUSIONS OF LAW

IN VIEW of the above Findings of Fact by the Appellate Panel, accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

5. 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.

6. Under § 42-1-160, Claimant sustained an injury by accident, arising out of and in the course of his employment, to his neck, right shoulder, right arm, and right hand on or about March 17, 2015.

7. Under § 42-15-60, Martin v. Rapid Plumbing, 369 SC 278 (Ct App 2006), and Hall v. United Rentals, Inc., 371 SC 369 (Ct App 2006), Claimant is entitled to causally related medical treatment for his injuries at the direction of Dr. Dwight Jacobus.

8. Under § 42-9-10, Claimant is entitled to temporary total disability payments at his compensation rate, beginning April 20, 2015 through the present and continuing until such time as those benefits can be properly and lawfully terminated or suspended.

**ORDER/AWARD**

Based upon the above Findings of Fact and Conclusions of Law, as well as the evidence in the record as a whole:

**IT IS HEREBY ORDERED** that Defendants shall pay Claimant temporary total disability benefits from April 20, 2015, through the present and continuing.

**IT IS ALSO ORDERED** that Defendants shall provide Claimant causally related medical treatment for his work related injuries at the direction of Dr. Dwight Jacobus.

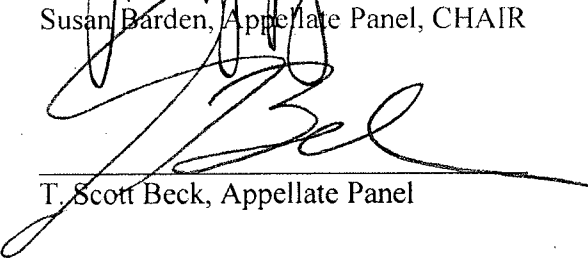
No hearing costs are assessed in this instance.

**IT IS SO ORDERED.**

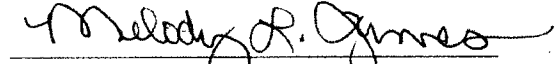
SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION



Susan Barden, Appellate Panel, CHAIR



T. Scott Beck, Appellate Panel



Melody James, Appellate Panel

**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 November 15, 2016***