

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1208234**

KIMBERLY ODOM,)
)
 Employee/Claimant,)
)
 vs.)
)
CAROLINAS HOSPITAL SYSTEM,)
)
 Employer,)
)
 and)
)
INDEMNITY INSURANCE COMPANY)
OF NA,)
)
 Carrier/Defendants.)

**DECISION AND ORDER
OF THE APPELLATE PANEL OF THE
FULL COMMISSION**

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SC Court of Appeals

DATE OF ORAL ARGUMENT: September 20, 2016.

APPEARANCES: Claimant, Kimberly Odom, was represented by Stephen J. Wukela, Esquire.

Defendants, Carolinas Hospital System and Indemnity Insurance Co. of NA, were represented by Ashley R. Kirkham, Esquire.

PURPOSE OF HEARING: Appeal from the Single Commissioner.

COMMISSIONERS: Susan Barden, Chairperson
Melody James
Avery Wilkerson

FILED: December 30, 2016

Having reviewed the record and heard arguments from counsel, the Appellate Panel hereby **AFFIRMS** the decision of the Single Commissioner. Pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel hereby issues the following Order.

STATEMENT OF THE CASE

Appellant/Claimant, Kimberly Odom, suffered an admitted injury on June 20, 2012 to her back and left leg. The parties entered into a Consent Order settlement agreement based on impairment ratings to the back and left leg.

Claimant alleged she has suffered a change of condition for the worse. She alleged she is entitled to additional medical treatment and temporary total disability benefits until she is again at maximum medical improvement, and is possibly entitled to additional permanent indemnity benefits after once again reaching maximum medical improvement.

Respondents/Defendants argued Claimant did not suffered a change of condition for the worse and is not entitled to additional indemnity benefits. The consent order settlement agreement only pertains to injuries to the back and left leg, and a change of condition for the worse does not apply to a mental (rather than physical) condition.

A hearing was held before Gene McCaskill on November 20, 2015. The Jurisdictional Commissioner issued the following Findings of Fact, Conclusions of Law, and Award in an Order on June 28, 2016:

FINDINGS OF FACT

1. The parties in this case entered a Consent Order on 03/18/14. The Consent Order resolved the indemnity benefits of this claim and left the medicals open.
2. That Consent Order read in part, "All parties retain their respective rights and obligations pursuant to S.C. Code Ann. Sections 42-15-60 and 42-17-90. It is the parties' intention that this agreement have the same effect as resolution of the claim on a Form 16A."

3. The Consent Order and the Form 14B attached listed the body part injured as the back and the affected body parts were the back and left leg. The Form 14B also stated that the Claimant would need future medical care related to her work related injury in the form of pain management.
4. The Claimant has subsequently filed for this hearing asserting, "...Claimant has suffered a change of condition pursuant to S.C. Code §42-17-90 since the Consent Order resulting in worsening depression."
5. Claimant underwent Vocational Evaluations on 10/28/13 and 01/07/14. J. Adger Brown, Jr. and Joel D. Leonard both indicated that Claimant would not be able to return to her previous employment as a nurse providing direct care.
6. Despite her restrictions, Claimant made an attempt to return to work as a nurse in "home health" for Pruitt Healthcare in a job with no lifting obligations. Claimant testified that she only worked for Pruitt Healthcare for one week until worsening pain in her back and lower extremity caused her to leave that job. Claimant testified that she has been unable to work since.
7. Claimant continued to treat with Dr. Richard Kline, the authorized treating physician, for her back pain and lower extremity symptoms.
8. As to her physical condition, Dr. Kline says in response to the question, "With regard to her back injury and the leg, radiating symptoms to her leg that the Defendants have admitted, has Ms. Odom had a change of condition at all before versus after March of 2014?" His answer, "I don't think so."
9. Dr. Kline does opine that during his visit with her on 12/17/14, Claimant was "tearful and frustrated because this pain has completely changed her life." During his deposition on 03/04/15, he opined that Claimant should see a psychologist regarding her depression.

10. The Defendants approved the Claimant to see the authorized treating psychologist, Dr. Dora Windsorova on 04/22/15. Dr. Windsorova opined in her deposition on 07/24/15 that the Claimant's depression has worsened and diagnosed her with recurrent major depressive disorder and moderate depression.
11. A change of condition is predicated on an underlying award of the Commission. The underlying document in this case is the Consent Order entered into by the parties which is the only Order of the Commission in this case.
12. The Consent Order is the law of the case in which the back and lower extremity are adjudicated. Based on the testimony of Dr. Windsorova and the supporting medical records, there is a causal relationship between the psychological condition and the original physical injury.
13. The Consent Order did not resolve the claim for the psychological injury because the casually related symptoms did not have an impact on Claimant's condition at the time the Consent Order was entered into.
14. The Court of Appeals has stated that "[a] symptom which his present and causally connected, but found not to impact upon the claimant's condition at the time of the original award, may later manifest itself in full bloom and thereby worsen his or her condition. Such an occurrence is within the reasons for the code section involving a change of condition. (*See Cromer v. Newberry Cotton Mills*, 201 S.C. 349, 23 S.E. 2d 19(1942). *Estridge v. Joslyn Clark Controls, Inc.*, 325 S.C. 532, 540, 482 S.E. 2d 577, 581 (Ct. App. 1997)
15. Dr. Windsorva opined in her deposition of 07/24/15 that Claimant's psychological state had worsened significantly and that she has not reached MMI for a psychological

standpoint. Following the deposition, Claimant continued to treat with Dr. Windsorova for her psychological symptoms.

16. Given the issue of psychological injury has not been adjudicated, Claimant is not “barred by the doctrine of *res judicata* from asserting a change of condition merely because it was not discussed in the initial award.” *Estridge*, 325 S.C. at 540, 482 S.E. 2d at 581.
17. The parties agreed that the Consent Order would have the same effect as resolution of the claim on a Form 16A. A Form 16A retains the Claimant’s right to request a hearing according Regulation 67-207 for additional benefits not later than one year from the date of last payment. Claimant’s request for hearing based on Change of Condition for the worse was timely submitted on 12/07/14.
18. When viewing the evidence and applicable case law, I find that there is a causal relationship between the psychological condition and the original physical injury.
19. As such, I find that Claimant is entitled to ongoing psychological treatment which tends to lessen her period of disability.
20. Defendants are to provide continued treatment with the authorized treating psychologist, Dr. Windsorova, until such time as she determines Claimant has reached MMI.
21. Defendants are to provide reimbursement for any out of pocket expenses related to Claimant’s psychological condition that were incurred for medications or treatment with her primary care physician, Dr. Reynolds.
22. Defendants are to provide reimbursement for any out of pocket expenses related to Claimant’s psychological condition that were incurred for medications or treatment with her primary care physician, Dr. Reynolds and any other causally related expenses.
23. Given that no physician has removed the Claimant from work with regard to the worsening of her psychological condition, the issue as to Claimant’s entitlement to

temporary total disability benefits due to and caused by the Claimant's change of condition is premature at this time and reserved for further determination.

CONCLUSIONS OF LAW

1. Under Section 42-1-130, the Claimant was a covered Employee at the time in question; and under Section 42-1-140, the Defendant-Employer was a covered Employer under the Act.
2. Under Section 42-1-160, the Claimant did sustain an injury by accident to her back, with radiculopathy affecting her lower extremity, and psyche arising out of and in the course of employment.
3. Under Section 42-1-90, the Claimant has suffered a change of condition.
4. Under Section 42-15-60, the Employer is required to furnish adequate and proper medical care, and the Claimant has not reached maximum medical improvement.
5. Under Section 42-9-10, the Claimant is not, at this time, entitled to temporary total benefits.

AWARD

IT IS, THEREFORE, Ordered that the Form 50 under the Workers' Compensation File No. 1208234 is found to be a compensable accident. It is,

FURTHER ORDERED that the Employer, and the Carrier, shall pay all medical treatment rendered to Claimant, including medical treatment rendered by Dr. Dora Windsorova, from the date of the injury to the date of this Order, and continuing for such additional time as will tend to lessen the period of disability. Defendants are to provide reimbursement for any out of pocket expenses related to Claimant's psychological condition that were incurred for medications or treatment with her primary care physician, Dr. Reynolds, and any other causally related expenses. It is,

FURTHER ORDERED that given that no physician has removed the Claimant from work with regard to the worsening of her psychological condition, the issue as to Claimant's entitlement to temporary total disability benefits due to and caused by the Claimant's change of condition is premature at this time and reserved for further determination.

No hearing costs are assessed in this instance.

Within the applicable statutory time period, Claimant filed a Form 30 Request for Commission Review regarding the following issues:

- 1. THE SINGLE COMMISSIONER ERRED IN FAILING TO FIND THAT THE CLAIMANT WAS ENTITLED TO TEMPORARY TOTAL COMPENSATION GIVEN THAT THE CLAIMANT HAD NOT REACHED MAXIMUM MEDICAL IMPROVEMENT AND SUFFERED WORK-RELATED RESTRICTIONS THAT PREVENTED HER FROM PERFORMING HER JOB WITH THE EMPLOYER.**

After reviewing the record in total and hearing arguments from counsel, the Appellate Panel hereby **AFFIRMS** the Decision and Order of the Single Commissioner pursuant to S.C. Code Ann. § 42-17-50 **IN ITS ENTIRETY**. The Appellate Panel issues the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

- 1. The parties in this case entered a Consent Order on 03/18/14. The Consent Order resolved the indemnity benefits of this claim and left the medicals open.**
- 2. That Consent Order read in part, "All parties retain their respective rights and obligations pursuant to S.C. Code Ann. Sections 42-15-60 and 42-17-90. It is the parties' intention that this agreement have the same effect as resolution of the claim on a Form 16A."**

3. The Consent Order and the Form 14B attached listed the body part injured as the back and the affected body parts were the back and left leg. The Form 14B also stated that the Claimant would need future medical care related to her work related injury in the form of pain management.
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11. A change of condition is predicated on an underlying award of the Commission. The underlying document in this case is the Consent Order entered into by the parties which is the only Order of the Commission in this case.
12. The Consent Order is the law of the case in which the back and lower extremity are adjudicated. Based on the testimony of Dr. Windsorova and the supporting medical records, there is a causal relationship between the psychological condition and the original physical injury.
13. The Consent Order did not resolve the claim for the psychological injury because the casually related symptoms did not have an impact on Claimant's condition at the time the Consent Order was entered into.
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 18. When viewing the evidence and applicable case law, we find that there is a causal relationship between the psychological condition and the original physical injury.
 19. As such, we find that Claimant is entitled to ongoing psychological treatment which tends to lessen her period of disability.
 20. Defendants are to provide continued treatment with the authorized treating psychologist, Dr. Windsorova, until such time as she determines Claimant has reached MMI.
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CONCLUSIONS OF LAW

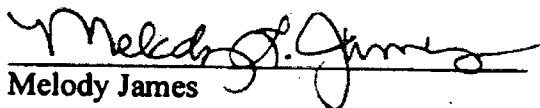
1. Under Section 42-1-130, the Claimant was a covered Employee at the time in question; and under Section 42-1-140, the Defendant-Employer was a covered Employer under the Act.
2. Under Section 42-1-160, the Claimant did sustain an injury by accident to her back, with radiculopathy affecting her lower extremity, and psyche arising out of and in the course of employment.
3. Under Section 42-1-90, the Claimant has suffered a change of condition.
4. Under Section 42-15-60, the Employer is required to furnish adequate and proper medical care, and the Claimant has not reached maximum medical improvement.
5. Under Section 42-9-10, the Claimant is not, at this time, entitled to temporary total benefits.

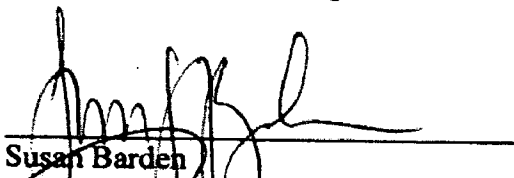
ORDER

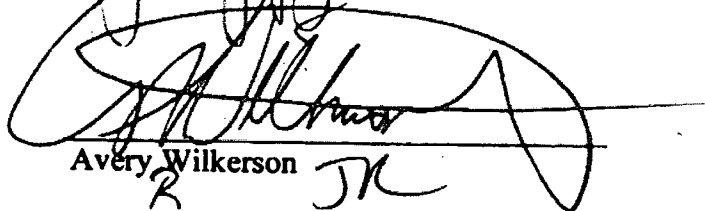
1. The Single Commissioner's Order is hereby **AFFIRMED** in its entirety.
2. The file shall be returned to General Files until either party request a hearing in the future pursuant to the Act.

AND IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Melody James


Susan Barden


Avery Wilkerson JK

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). , 2016.

By Eugenia Hollmon on December 30, 2016