

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
Workers' Compensation Commission

RECEIVED

Appellate Case No. 2016-002266

MAY 01 2017

SC Court of Appeals

Renee Robles, Employee, Claimant, Appellant,

v.

Party Reflections, Inc., Employer, and
Employers Assurance Company, Carrier, Respondents,

RESPONDENTS' MOTION TO DISMISS APPEAL

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT
OF APPEALS:

Respondents Party Reflections, Inc. ("Employer") and Employers Assurance Company respectfully move this Court for an Order dismissing the appeal pursuant to Rules 201 and 240, of the South Carolina Appellate Court Rules. In November 2016, Appellant Renee Robles appealed a decision from the South Carolina Workers' Compensation Commission, arguing the Commission erred in (1) calculating the average weekly wage for benefits; (2) failing to award temporary total disability ("TTD") benefits from April 7, 2014, until he reached maximum medical improvement (MMI); or (3) in the alternative, failing to award TTD benefits from June 2, 2014, until he reached MMI. (App. Br. 1). Since Appellant filed his notice of appeal, the Commission has issued three additional orders that address the issue of whether Appellant reached MMI. Because the Commission had further obligations with determining MMI, which

in turn determines Appellant's temporary and permanent benefits, the order on appeal is not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment" under Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013). Accordingly, Respondents move to dismiss this interlocutory appeal.

FACTUAL/PROCEDURAL BACKGROUND

Appellant sustained an injury to his back arising out of his employment with Employer on March 16, 2014. Appellant sought treatment at Doctors Care on March 17 and March 24, 2014. Both of these appointments were paid for by the Employer. Appellant was placed on work restrictions.

Appellant received treatment with Doctors Care on April 7, 2014. He was told to return to Doctors Care on April 14, 2014, if he did not feel better. His physician gave him a return to work form, which stated he was to remain on work restrictions from April 7 to April 14, at which time he could return to full duty unless he did not feel better. The single commissioner found Appellant could not read English and was unaware that the return to work form stated he could return to Doctors Care on April 14 if he had not improved. Appellant presented the return to work form to the Employer on April 7, 2014; however, Employer did not allow Appellant to return to work. Appellant was released to full duty on April 14, 2014.

On June 2, 2014, Dr. Daniel Westerkam performed an IME and stated to a reasonable degree of medical certainty that Appellant suffered a back injury on March 16, 2014. Dr. Westerkam further opined Appellant had a lumbar injury and left leg radiculopathy with numbness and tingling. He ordered muscle relaxer and anti-inflammatory medications of Flexeril and Lidoderm, along with physical therapy.

The single commissioner held the following conclusions of law: (1) Appellant sustained a compensable injury to his back with radiculopathy on March 16, 2014; (2) Appellant's average weekly wage was \$1,059.61, resulting in an applicable weekly compensation rate of \$706.33; (3) Appellant was entitled to receive medical care for his back until he reached MMI; and (4) Appellant was entitled to receive compensation for the unpaid TTD due to him beginning April 7, 2014, until he reached MMI. (Decision and Order of the Appellate Panel, p. 5, attached as **Exhibit A**).

The Employer appealed to the appellate panel of the Commission. The appellate panel found Appellant did suffer a back injury of March 16, 2014. However, contrary to the single commissioner, the appellate panel found Appellant never asked his Employer to return to Doctors Care after April 7, 2014. The appellate panel further found Appellant's claim that he did not understand he could return to Doctors Care was not credible because Appellant answered all questions in his deposition without the aid of an interpreter and understood Doctors Cares' explanation of medical bills and temporary work restrictions. The appellate panel noted Appellant signed the return to work form, acknowledging he understood the form, which provided he was to return for a re-evaluation on April 14, 2014, if he was not better.

The appellate panel found the single commissioner erred in calculating the average weekly wage. The appellate panel determined Appellant's average weekly wage was \$786.03, resulting in a compensation rate of \$524.05 based on his actual earnings with the Employer.¹ Appellant was entitled to reimbursement of the April 7, 2014 Doctors Care visit. The appellate panel concluded Appellant had not yet reached MMI and ordered Respondents to provide for an

¹ The Respondents argued the single commissioner erred in calculating the average weekly wage because the single commissioner used pay records from almost two years prior to the date of the injury. The single commissioner had used pay records from a prior workers' compensation claim Appellant had made against the Respondents.

evaluation by an orthopedic physician. Finally, the appellate panel reversed the single commissioner and found Appellant was not entitled to TTD benefits under section 42-9-10 of the South Carolina Code because Appellant missed less than eight days of work from the March 16, 2014 injury.

The appellate panel issued its order on September 2, 2016, and denied Appellant's Motion to Alter Judgment in October 2016. Appellant then filed his notice of appeal on November 9, 2016.

Appellant fails to mention in his Initial Brief that after the appellate panel issued its September 2, 2016 order, Appellant requested another hearing before the single commissioner. The single commissioner held a hearing on September 6, 2016. Since Appellant filed the notice of appeal, the single commissioner has issued three orders. Significantly, in a February 23, 2017 order, the parties stipulated to and the single commissioner found Appellant reached MMI on April 14, 2014. (Single Commissioner February 23, 2017 Order, attached as **Exhibit B**). On March 8, the single commissioner issued an amended order because the February 23 order mistakenly stated the appellate panel had concluded in 2016 that Appellant had reached MMI.² (Single Commissioner March 8, 2017 Order, attached as **Exhibit C**). The next day, the single commissioner vacated both the February 23 and March 8 orders, and indicated a new order would be forthcoming. (Single Commissioner March 9, 2017 Order, attached as **Exhibit D**). The parties have not yet received that order as of the filing date of this motion.

ARGUMENT

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); Bone v. U.S. Food Serv., 404 S.C. 67,

² The 2016 appellate panel order stated Appellant had not yet reached MMI. (Ex. A).

73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a final decision of the commission. See S.C. Code Ann. § 1-23-380. A commission's order is not a final decision unless it resolves the entire action. See Price v. Peachtree Elect. Servs., Inc., 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) (“An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review.”); Bone, 404 S.C. at 73, 744 S.E.2d at 556 (same); see also id. at 75, 744 S.E.2d at 557 (“A final judgment disposes of the whole subject matter of the action and terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” (quoting Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health and Env't'l Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010))).

In Bone, the issue before the Supreme Court was whether an order was a final judgment under the APA when the Circuit Court reversed the Commission's finding that a claimant did not suffer a compensable injury and remanded for further proceedings. 404 S.C. at 72, 744 S.E.2d at 555. The order in Bone was not a final judgment because the Commission was tasked with further obligations of determining the extent of the claimant's compensation and providing a final award that constituted an executable judgment. Id. at 79, 744 S.E.2d at 559. Any order addressing compensability without determining the claimant's current medical status and the specific benefits to be awarded was not a “final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment.” Id.

Recently, the Court of Appeals found an order from the Commission was not immediately appealable because the Commission had not yet ruled on the merits of the claimant's entire claim for benefits. Rose v. JJS Trucking, LLC, 411 S.C. 366, 768 S.E.2d 412 (Ct. App. 2015). There, the Court found there were several issues left for the Commission to

determine, including leaving the claim for permanent disability unresolved because the claimant had not yet reached MMI. Id. at 368-69, 768 S.E.2d at 412.

Two of Appellant's issues on appeal are whether the appellate panel erred in determining when Appellant was entitled to TTD benefits. (App. Br. at p. 1). Appellant argues the appellate panel erred in denying TTD benefits because he established a right to receive temporary compensation prior to April 14, 2014, and continuing until he reached MMI. (Id.). Alternatively, Appellants argues that even if he was able to work full duty in April 2014, the appellate panel should have found he was entitled to TTD benefits from June 2, 2014, until he reached MMI. (Id.). At the same time that these issues are on appeal, the single commissioner has issued two orders with a third order anticipated that directly addresses the issue of when Appellant reached MMI. (Ex. B-D). In the February and March 2017 orders, the single commissioner found Appellant reached MMI. These orders directly impact the outcome of the appeal.

Appellant's concurrent appeal and request for a hearing before the single commissioner has forced Respondents to simultaneously defend this matter in two different courts. Under Bone, the order on appeal is not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment." See id. at 79, 744 S.E.2d at 559 (noting any order addressing compensability without determining the claimant's current medical status and the specific benefits awarded was not a "final judgment disposing of the entirety of the action and leaving nothing further to be done but execution of the judgment"). It is clear the Commission has further issues to resolve with this matter. First, the Commission has not fully resolved the issue of Appellant's entitlement to TTD benefits. (Ex. B-D). Appellant is only entitled to TTD benefits prior to the date of MMI. See Smith v. S.C. Dep't of Mental

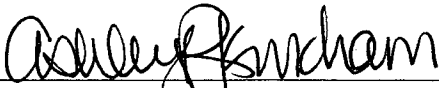
Health, 335 S.C. 396, 517 S.E.2d 695 (1999) (providing temporary benefits should cease upon a finding of MMI to permit entry of a permanent order). Thus, the single commissioner's recent 2017 orders addressing the issue of MMI in turn determines the extent of Appellant's TTD benefits should he prevail. Second, the single commissioner's 2017 orders allows the Commission to enter a permanent award, which would constitute a final decision that is appealable. See Rose, 411 S.C. at 368-69, 768 S.E.2d at 413 (holding a commission's order leaving the merits of a claim for permanent disability unresolved was not a final decision and not immediately appealable). When Appellant reaches MMI, the Commission may then determine permanent benefits. See Smith, 335 S.C. at 399, 517 S.E.2d at 696 ("This is precisely the reason to terminate temporary benefits in favor of permanent benefits upon a finding of MMI."). Because the subsequent 2017 Commission orders determine the extent of TTD benefits and a permanent award of benefits, the order on appeal is not immediately appealable.

CONCLUSION

For the reasons stated above, the Respondents respectfully move this Court to dismiss the appeal as not immediately appealable.

[Signature Page to Follow]

Respectfully submitted,
COLLINS & LACY, P.C.

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ATTORNEYS FOR RESPONDENTS

**RESPONDENTS' MOTION TO DISMISS
APPEAL**

Columbia, South Carolina
May 1, 2017

EXHIBIT A

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1403985

RENEE ROBLES,)
)
 Employee/Claimant,)
)
 vs.)
)
 PARTY REFLECTIONS, INC.,)
)
 Employer,)
)
 and)
)
 EMPLOYERS ASSURANCE)
 COMPANY,)
)
 Carrier/Defendants.)

DECISION AND ORDER
OF THE APPELLATE PANEL

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SC Court of Appeals

HEARING:

Held in Columbia, South Carolina on June 21, 2016

APPEARANCES:

Mark R. Calhoun, Esquire represented Claimant.

Collins & Lacy, PC represented Party Reflections, Inc. and Employers Assurance Company with Ashley R. Kirkham, Esquire, appearing at the Appellate arguments.

PURPOSE OF HEARING:

To determine issues as set forth in the Form 30 of the Employer/Carrier.

DECISION & ORDER:

The Honorable Scott Beck, The Honorable Gene McCaskill, and the Honorable Melody James

FILED:

September 2, 2016

STATEMENT OF THE CASE

This matter was heard by the single commissioner in Columbia, South Carolina on September 25, 2014. By Order dated March 8, 2016, the single commissioner found an average weekly wage of \$1,059.61 with a resulting compensation rate of \$706.33. The single commissioner further awarded temporary total disability benefits from April 7, 2014 and continuing until Robles was placed at maximum medical improvement.

Single Commissioner Findings of Fact

Based upon the evidence received are the following findings of fact:

1. That all parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers Compensation Act, as amended, with Renée Robles, as employee, Party Reflections Inc., as employer, and Employers Assurance Company, as carrier.
2. The South Carolina Worker's Compensation Commission has jurisdiction in this case and that venue was proper in Richland County.
3. The Claimant's average weekly wage at the time of his injury by accident on March 16, 2014 was \$1059.61, resulting in an applicable weekly compensation rate of \$706.33.
4. On March 17 and March 24, 2014 the Claimant treated with Doctors Care for his work related lumbar injury. Both of these visits were paid for by the employer supervisor Adam Vance. Adam Vance sent the Claimant to Doctors Care on Garners Ferry Road and paid for each of these visits with the Employers company credit card. The employer complied with the work restrictions issued to the Claimant after these visits.
5. On April 7, 2014 the Claimant received treatment with Doctors Care and was continued

on restrictions until April 14, 2014 at which time he could return to full duty "if not better." The Claimant was to return to Doctors Care on April 14, 2014 if he did not feel better. The Claimant cannot read english, there was no interpreter at Doctors Care, and Adam Vance testified he did not inform Robles he could return to Doctors Care on April 14, 2014. The record is clear that the Claimant was not aware that he was allowed to return to Doctors Care on April 14, 2014 if he was unimproved. The Claimant was also required to pay for the April 7, 2014 doctors appointment out of his own pocket and was not reimbursed by the Employer. The Claimant was placed on full duty on April 14, 2014 because he was not aware that he was allowed to return to Doctors Care and medical treatment was terminated by the Employer.

6. On June 2, 2014 an IME was performed by Dr. Daniel Westerkam of Rehabilitation and Geriatrics Services who stated to a reasonable degree of medical certainty the Claimant suffered a back injury on March 16, 2014. Dr. Westerkam opines he has a lumbar injury and left leg radiculopathy with numbness and tingling. He ordered muscle relaxer and anti-inflammatory medications of Flexeril and Lidoderm, along with physical therapy.
7. The Claimant and his supervisor Adam Vance each testified that the Claimant's last day of working for the Employer was April 7, 2014. The Claimant was not allowed to return to work for the Employer after that day. Both Robles and Vance testified the Claimant had been an employee of the Employer for at least 12 years and was sent home on April 7, 2014 after presenting a return to work form to Adam Vance. Mr. Robles has not been asked to return to work since that date. Adam Vance also testified he forwarded the Doctors Care receipt for April 7, 2014 to HR and was unaware the Claimant had not been reimbursed for it yet did not know why the Claimant paid for the appointment out of

pocket. Vance also testified he would have paid for the Claimant's April 14, 2014 doctor's appointment had the Claimant asked him to do so. However, the record is clear that Vance testified he did not read the April 7, 2014 return to work form to the Claimant, the Claimant could not read this form/medical report, and there was no interpreter at Doctors Care for the Claimant's appointment. The Claimant was not aware he could return to Doctors Care on April 14, 2014 if he was unimproved.

8. The Claimant sustained a compensable injury to his back with radiculopathy arising out of and in the course and scope of his employment on March 16, 2014.
9. The Claimant was 39 years old at the time of accident with limited grade school education in the country of Mexico.
10. His job duties for the 12 years he worked for the Employer before being fired included the loading, unloading and set up of tents, tables, umbrellas, chairs, silverware, etc., for large commercial parties and social events.
11. Mr. Robles had no prior problems with his lumbar spine or radiculopathy.
12. Under *Dodge v. Brucolli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E. 2nd 593 (S.C. App. 1999), Defendants shall provide and be financially responsible for all reasonable and necessary causally related medical evaluation and treatment that tends to lessen the period of disability of the Claimant. The Claimant is entitled to an evaluation and treatment by an orthopedic physician, with a specialty to the back, of the Defendants choosing.
13. The Claimant is not at MMI.
14. The Claimant is entitled to reimbursement for his out-of-pocket expenses and mileage for his April 7, 2014 doctor's appointment.

15. The Claimant shall be paid for TTD starting from April 7, 2014 and forward, until he is placed at MMI.

Single Commissioner Conclusions of Law

Upon the foregoing Findings of Fact and under the Code of Law of South Carolina, as amended, it is concluded that:

1. Under §42-1-160, Claimant sustained an injury by accident arising out of and in the course of his employment, said injuries being to the Claimant's back with radiculopathy on March 16, 2014.
2. Under §42-15-20 proper notice of the injury was given to the Employer.
3. Under §42-15-40, the claim was properly filed.
4. I find and conclude that under §42-1-10, the appropriate average weekly wage is \$1059.61 resulting in an applicable weekly compensation rate of \$706.33.
5. Under §42-15-60, Claimant is entitled to received causally related medical care for his back, left lower extremity as recommended by physician Daniel Westerkam, by a physician of the Defendants choosing until at maximum medical improvement.
6. Under §42-9-10 and §42-1-120, Claimant is entitled to receive compensation for the unpaid temporary total disability due to the Claimant beginning April 7, 2014 until terminated in accordance with the South Carolina Workers' Compensation Act.

The Employer and Carrier timely filed a Form 30 Request for Commission Review seeking a review of the hearing commissioner's determination of the average weekly wage and compensation rate and the hearing commissioner's award of temporary total disability benefits from April 7, 2014 and continuing. The parties submitted their briefs and the case was set for argument

before the Appellate Panel on June 21, 2016. After review of the record and hearing arguments of counsel, the Appellate Panel affirms in part and reverses in part the Order of the single commissioner. The Appellate Panel makes the following:

APPELLATE PANEL FINDINGS OF FACT

Based upon the evidence submitted and the arguments presented, the Appellate Panel finds the following facts based upon the preponderance of the evidence:

1. Renee Robles suffered a minor back injury on March 16, 2014 while employed by Party Reflections. (Hearing Transcript p. 42: 2-5).
2. Following his injury, Robles was provided treatment with Doctor's Care.
3. On April 7, 2014, Robles was given a Return to Work Form stating: "Work Status: May return to full duty activity as of 4-14-14 without accommodations. May work with the following accommodations as of 4-7-14: No lifting more than 45 lbs., ground level work only, no ladders or heights, no repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing when he feels discomfort. Return for re-evaluation at this office on 4-14-14 if not better." (Clmt. APA p. 48).
4. Robles never asked his employer to return to the doctor after the April 7, 2014 visit. (Hearing Tr. 22: 1-4).
5. Robles had two prior workers' compensation injuries with Palmetto Party Rental, which was purchased by Party Reflections, the employer in this case. (Hearing Tr. 42: 2-5).
6. Robles maintains that he did not understand that he could return to Doctor's Care and did not understand the medical treatment plan. However, Robles answered all

questions asked in a deposition without the help of an interpreter, understood Doctor's Care's explanation of medical bills and temporary work restrictions, and signed the same Return to Work form agreeing he understood the form. (Clmt. APA p.; Deposition of the Claimant taken September 2, 2014).

7. Robles was released to full duty on April 14, 2014. (Clmt. APA)
8. There is no evidence in the record that Robles missed any time from work with Party Reflections as a result of his two prior workers' compensation injuries.
9. The average weekly wage is \$786.03 resulting in a compensation rate of \$524.05. This is based on his actual earnings with Party Reflections. This average weekly wage is a fair reflection of Claimant's earnings and there are no exceptional circumstances upon which to deviate from the calculation methods provided in the statute.
10. The Claimant is entitled to reimbursement for his out of pocket expenses and mileage for April 7, 2014 doctors appointment.
11. The Claimant is not at maximum medical improvement. The Defendants shall provide and be financially responsible for an evaluation by an orthopedic physician with a specialty to the back of the Defendant's choosing.

APPELLATE PANEL CONCLUSIONS OF LAW

1. Calculation of the average weekly wage is governed by S.C. Code Ann. Section 42-1-40. The hearing commissioner erred as a matter of law by using an average weekly wage and compensation based on Claimant's earnings from a prior workers' compensation claim while working for this employer's predecessor company. This is not a method allowed under the statute.

2. Claimant's actual earnings while working for Party Reflections is an accurate reflection of his earnings and fair to all parties. Pursuant to S.C. Code Ann. Section 42-1-40, the average weekly wage is \$786.03 with a compensation rate of \$524.05.
3. Claimant missed less than eight days of work as a result of his March 16, 2014 work-related injury and is not entitled to temporary total disability compensation pursuant to §42-9-10.

AWARD

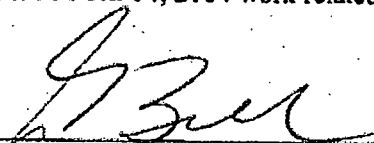
BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Appellate Panel orders as follows:

IT IS ORDERED the average weekly wage is \$786.03 with a compensation rate of \$524.05.

IT IS FURTHER ORDERED Claimant's request for temporary total disability benefits from April 7, 2014 and continuing is denied.

IT IS FURTHER ORDERED the Defendants shall provide the Claimant with evaluation and treatment with an orthopedist of their choice to determine if Claimant is in need of any additional medical treatment as a result of his March 14, 2104 work related accident.

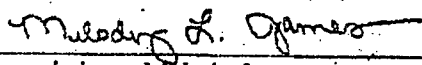
AND IT IS SO ORDERED.



Commissioner Scott Beck



Commissioner Gene McCaskill



Commissioner Melody 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).

By *abracy* on September 2, 2016

EXHIBIT B

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1403985

RENE RIVERA ROBLES , CLAIMANT

VS.

PARTY REFELCTIONS INC., EMPLOYER

AND

EMPLOYERS ASSURANCE COMANY, CARRIER

HEARING: Held in Columbia, South Carolina on September 6, 2016.

APPEARANCES: Claimant was represented by Mark R. Calhoun, Esquire, Lexington, South Carolina. Defendant was represented at hearing by Ellen Adams, Esquire, Columbia, South Carolina.

PURPOSE OF HEARING: To determine issues as set forth on Claimant's Form 50 and Defendant's Form 51.

DECISION AND ORDER: By Commissioner Aisha Taylor.

MEDICAL EVIDENCE- APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code §1-23-320 et. seq. and Regulation 67-612, the parties submitted the following items without objection as evidence in support of their cases;

CLAIMANT'S APA SUBMISSIONS

- APA #1 Report of Dr. Thomas Armsey, dated July 2, 2013 to October 15, 2015 consisting of eighteen (18) pages.
- APA #2 Report of Dr. Chun Kim, dated April 15, 2013 to April 7, 2014 consisting of thirty-two (32) pages.
- APA #3 Report of David Fulton, dated August 21, 2013 consisting of four (4) pages.
- APA #4 Report of Dr. Daniel Westerkam, dated June 2, 2014 consisting of two (2) pages.
- APA #5 Report of Dr. Scott Boyd, dated December 18, 2014, consisting of ten (10) pages.
- APA #6 Report of Dr. David Lee, dated January 12, 2015 to November 3, 2015 consisting of three (3) pages.
- APA #7 Report of Dr. Blake Moore, dated November 1, 2015 consisting of five (5) pages.
- APA #8 Report of Dr. Joel Leonard, dated November 13, 2015 to November 16, 2015 consisting of ten (10) pages.
- APA #9 Report of P.T. Tracy Hill, dated December 15, 2015, consisting of twenty-one (21) pages.

DEFENDANTS APA SUBMISSIONS

- APA #10 Letter advising claimant's attorney of IME, dated April 19, 2016 consisting of one (1) page.
- APA #11 Letter to Ellen Adams from claimant's attorney, dated April 27, 2016 consisting of one (1) page.
- APA #12 Report of The Directions Group, dated August 25, 2016, 2016 consisting of twelve (12) pages.

STIPULATIONS

At the call of the case, the parties stipulated that the South Carolina Workers

Compensation Commission had jurisdiction in this case and that venue was proper in Richland County. The purpose of the hearing is to decide issues pled on Claimant's Form 50 and Defendant's Form 51. Notice was timely and properly served upon all parties of interest. The Claimant seeks benefits under the South Carolina Workers Compensation Act based upon an accidental injury that occurred on or about March 16, 2014, while in the employment of the Defendant employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case. Without objection and with the exceptions of any self-serving statements or unstipulated medical reports the Commissions file was made a part of the record.

STATEMENT OF THE CASE

This matter is properly before me to resolve issues pled in Claimant's Form 50 and Defendant's Form 51. This case was heard by the Undersigned Commissioner on September 6, 2016, at which time the parties and/or their representatives appeared and evidence was received.

By prior order of the Workers Compensation Commissions appellant panel, the claimant has an MMI date of April 14, 2014 and an average weekly wage of \$786.03 which yields a compensation rate of \$524.05. This prior order is currently under appeal with the South Carolina Court of Appeals and is subject to change should the appellant panel be reversed. After a pretrial conference the claimant alleges he injured his back on March 16, 2014 which was the third and final injury he incurred while working for the employer. Shortly after this back injury the claimant was fired by the employer. The employer has contended that the Claimant was placed at MMI for this back injury on April 14, 2014, which is also the date of his termination. (By prior Order of the Full Commission) The claimant received medical treatment before he was terminated, and was placed at maximum medical improvement by Dr. Kim Chun on April 14, 2014. The claimant submits he is permanently and totally disabled due to his lumbar injury with

radiculopathy. He has been issued permanent work restrictions by Dr. Scott Boyd of no bending or twisting his back and no lifting more than 17 pounds with both hands. Dr. Joel Leonard has evaluated the claimant and states he is permanently and totally disabled. The employer alleges the claimant only suffered a muscular injury to his back. They agree the claimant is at maximum medical improvement and he suffered 8% impairment to his back. They claim this is a single scheduled member claim under §42-9-30. The employer did submit a report of Jan Westmoreland who says the claimant has wage loss. Jan Westmoreland did not perform an evaluation on the claimant.

EVIDENCE

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury occurring on or about March 16, 2014, while in the employment of the Defendant. The Claimant alleges he suffered an injury by accident while working for the Employer when he was injured while performing his job duties.

Medical records were submitted under Administrative Procedures Act as evidence and made part of the Commission record.

Hearing Testimony of Rene Rivera Robles :

The claimant testified he is 41 years of age. He has no education in the United States. He is not capable of reading or writing in English, and has a limited ability to speak and understand English. He is married. (H.R. p.11) Mr. Robles worked for the employer for 12 years before he was injured on March 16, 2014. His only prior work experience consisted of working manual labor jobs. (H.R. p.12) Rene explained that his employer changed names close to the end of the year in 2013. When the name change occurred, Rene received a salary increase

of \$1.00 per hour. He was paid for the number of hours he worked each week. Some weeks he worked as much as 50 hours. (H.R. p.13)

Renee suffered from no prior back or radicular problems with his legs before he was injured on March 16, 2014. He had received no prior medical treatment to his back before the date of injury. On this day he was putting up a tent and injured his back while lifting. He immediately informed his supervisor Adam. His supervisor sent him to Doctors Care for treatment. (H.R. p.14) There was no interpreter provided for this appointment. (H.R. p.15) Doctors Care issued work restrictions and gave him a return appointment on March 24, 2014. There was also no interpreter for this appointment at Doctors Care. Doctors Care ordered physical therapy for the claimant and continued his work restrictions. The employer refused to pay for the claimant's physical therapy. (H.R. p.15)

On April 7, 2014 Renee returned for another appointment at Doctors Care but his employer required him to pay for that appointment. Again there was no interpreter provided for medical treatment. When Rene left Doctors Care he was still under work restrictions. He was fired by the employer shortly thereafter. (H.R. p.16)

Rene stated Dr. Scott Boyd placed him at maximum medical improvement on January 14, 2016 after performing an evaluation on Rene's back. Rene takes pain medication of Advil and Tylenol three times a day. The pain is concentrated in his lower back and he rates the pain at a five at the time of hearing. The pain level is about three when he wakes up in the morning. He describes physical activity as increasing his pain up to a level of seven. (H.R. p.17) Mr. Robles has radicular pain that extends down his left leg to his left foot. He describes sitting and taking pain medication as a alleviating his pain. He has a brother who is a doctor in Mexico who mails Rene prescription pain medication and anti-inflammatory medicine for his back. (H.R. p.32)

Rene agrees with Dr. Boyd that his lower back injury affects his left leg. He had never received any prior medical treatment for his back and radicular pain in the left leg. (H.R. p.18)

Rene described his permanent work restrictions issued by Dr. Boyd as no lifting more than 17 pounds, no bending or turning his back. He has looked for employment since he was fired through the Internet and the newspaper but cannot obtain employment when the employers are informed about his back problems and work restrictions. Rene has not worked since the date of injury. He also has been paid no TTD since the date of injury. He spends his day at home sitting and walking briefly in his backyard. Sometimes he visits relatives. He is not able to do chores around the house. He does not feel he is able to return to work. (H.R. p.19) He explained there's no type a work that he has performed in the past that he would be able to accomplish with his permanent work restrictions. Rene believes he is permanently and totally disabled. (H.R. p.20)

On cross examination, Rene agreed that he had a prior left knee injury while working for this employer (before the employer changed names). He also agreed he had previously injured his right arm while working for this employer. He was issued lifting restrictions for the right arm. (H.R. p.23) He described the left knee pain as alleviating overtime. He had no pain in his left knee before the March 16, 2014 injury. (H.R. p.23-24) He further explained that the radicular pain is mainly in his left leg but "sometimes I have mild pain on my right leg." (H.R. p.24) Rene's brother helped him apply for jobs over the Internet because Rene cannot operate a computer. (H.R. p.28) He has applied at supermarkets and stores but when he informs of his back problem he gets no response. (H.R. p.29)

Rene stated when he began working for the employer he was making \$9.00 an hour. Over the course of 12 years he received several raises. (H.R. p.30) He was making \$18.00 per

hour when he was injured on March 16 of 2014. He also explained that he has never met or been evaluated by Jan Westmoreland. (H.R. p.33)

Medical Evidence

Mr. Robles was first evaluated by Doctors Care on March 17, 2014 for his back injury. It was noted the claimant had no prior history of back problems. Flexiril and naproxen were ordered for the claimant who was also placed on light duty work restrictions. (APA p. 40) The claimant returned on March 24, 2014 when physical therapy was ordered. Medications of Flexiril, naproxen, Allopurinol, indomethacin, and prednisone were also prescribed. (APA p. 41) Work restrictions were giving of; limited use of lumbar spine, no repetitive bending, stooping, squatting, pushing, jerking, twisting or bouncing. No lifting more than 5 pounds. (APA p. 45) On April 7, 2014 the claimant returned to Doctors Care, where it was noted the employer refused to pay for physical therapy. (APA p. 48) Work restrictions were changed to no lifting more than 45 pounds, ground-level work only, no repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing. The employer also refused to pay for this appointment and Dr. Kim Chun placed Claimant at MMI on April 14, 2017.

On June 2, 2014 Rene was evaluated by Dr. Daniel Westerkam. Dr. Westerkam notes the back pain radiates into the left leg with numbness and tingling. He ordered Flexiril and a Lidoderm patch in addition to physical therapy. He placed the claimant under work restrictions of lifting no more than 40 pounds and a frequent lift of no more than 20 pounds. No repetitive bending, stooping, squatting, or crawling. The claimant did not receive this treatment.

Dr. Scott Boyd evaluated Rene on December 18, 2014. He notes that Rene has left leg radiculopathy that extends down into his left foot. He diagnosed an annular tear laterally on the left at L4-5. He finds this injury related to his March 16, 2014 work injury. He orders physical

therapy and epidural steroid injections. Dr. Boyd also continues Rene on light duty. (APA p. 61-62) The employer did not provide Mr. Robles with this treatment. Dr. Boyd believes Mr. Robles is at MMI. Dr. Boyd states Rene's industrial injury to the lumbar spine affects his left lower extremity. (APA p. 65-66.2) Finally, Dr. Boyd reviews the functional capacity report dated December 15, 2015 and agrees with this report in its entirety. He issues work restrictions of limited light work. This encompasses occasional walking, stair climbing, kneeling, and reaching. The claimant cannot squat, bend, or twist. He can carry up to 17 pounds. (APA p. 65,86)

On November 1, 2015 Mr. Robles was evaluated by Dr. Blake Moore. Dr. Moore notes that Rene's symptoms have been present for more than one year. He also placed Rene at maximum medical improvement. Dr. Moore notes that Rene will likely require some "chronic pain management". (APA p.72-73) He diagnosed Rene with disc bulges at three levels with an annular tear. He also assigned Rene a 5% rating to the left leg for his radiculopathy. (APA p. 73)

On November 13, 2015 Dr. Joel Leonard performed a vocational evaluation on the claimant. Mr. Leonard provided two different scenarios. One scenario was appropriate if Mr. Robles was placed at maximum medical improvement for his back. Dr. Leonard found that the claimant would not be able to return to work with the employer but would not be considered totally disabled from any and all work. He found Mr. Rivera would be expected to earn around \$416.80 per week in other forms of employment.

On August 25, 2016 Jan Westmoreland of the Directions Group Inc. performed an "employability analysis and labor market survey". She opined that Mr. Robles remains employable and can anticipate making from \$8320.00 per year for part-time employment to \$23,920.00 per year for full time employment. (Def. APA p. 1

Findings of Fact

1. That all parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Worker's Compensation Act, as amended, with Rene Rivera Robles, as employee, Party Reflections Inc., as employer, and Owners Insurance Company, as carrier.
2. That the South Carolina Worker's Compensation Commission has jurisdiction in this case and that venue was proper in Richland County with the case being heard in Richland County.
3. The Claimant is 41 years old, has no education in the United States and cannot read, write speak or understand English fluently.
4. His job duties for the twelve (12) years he worked for the employer before being fired included only manual labor work. He had had no prior problems with his back or left leg radiculopathy before he was injured on March 16, 2014.
5. Based on the greater weight of the evidence, Claimant suffered a compensable injury to his back, and left leg.
6. As per the order of the appellate panel of the South Carolina Worker's Compensation Commission dated September 2, 2016, the claimant has an average weekly wage of \$786.03, which yields a compensation rate of \$524.05. This order is currently under appeal with the South Carolina Court of Appeals and is subject to change, should the appellate panel be reversed.
7. Claimant was first treated on March 17, 2014 for his industrial injury by Doctors Care. He was provided prescription medication for pain and inflammation and issued work

restrictions. Claimant returned to Doctors Care on March 24, 2014 when physical therapy was ordered but not provided by the employer. Work restrictions were continued for the claimant as were prescription medications for pain and inflammation. The claimant returned to Doctors Care on April 7, 2014 and was placed at MMI on April 14, 2014 by Dr. Kim Chun. On June 2, 2014 the claimant was evaluated by Dr. Daniel Westerkam who noted the claimant had left leg radiculopathy with numbness and tingling. He placed the claimant on work restrictions and ordered medications for pain and inflammation. He also ordered physical therapy. On December 18, 2014 authorized treating physician Scott Boyd evaluates the claimant. He notes Rene has left leg radiculopathy into his foot. He finds his lumbar injury causally related to the March 16, 2014 injury. He also finds the lumbar injury affects the claimant's left leg. He orders physical therapy, epidural steroid injections, and medications. He orders permanent work restrictions in accordance with the functional capacity exam report issued on December 15, 2015. He diagnoses an annular tear at L4 – 5. Mr. Robles received no treatment ordered by any of the physicians who evaluated him. On November 1, 2015 Rene was evaluated by Dr. Blake Moore who also placed him at maximum medical improvement. Dr. Moore assigned René a 5% rating to the left leg for his radiculopathy and ordered chronic pain management. He also found the lumbar injury causally related to the March 16, 2014 accident.

8. On November 13, 2015 Dr. Joel Leonard performed a functional capacity evaluation. Under one scenario he found the claimant suffered wage loss. He stated the claimant would earn \$416.80 per week in alternative employment. Jan Westmoreland of the Directions Group issued a labor market survey on August 25, 2016 which found the

claimant would experience wage loss. The claimant would earn \$160 per week in part time employment or \$460 per week in full-time employment.

9. I find the claimant sustained a compensable injury to his back on March 16, 2014 within the course and scope of his employment. This finding is based on the evidence as a whole including the medical opinions of Dr. Kim Chun, Dr. Scott Boyd and Dr. Daniel Westerkam.
10. I find the claimant's compensable back injury affects the use of his left leg. This finding is based on the preponderance of the evidence as a whole, including Dr. Boyd's medical opinion that claimant's back condition affects his left leg, although Dr. Boyd did not give a separate rating for the claimant's radiculopathy in his left leg. Dr. Blake Moore assigned claimant a 5% impairment rating for his left leg radiculopathy.
11. I find claimant's left leg radiculopathy to be separate and distinct from a prior work related left knee injury.
12. As by prior Order of this Commission, and stipulation of the parties, the claimant is at maximum medical improvement on April 14, 2014 from his March 16, 2014 work injury to his lower back and resulting radiculopathy into his left leg. The parties have stipulated that Claimant is at maximum medical improvement on April 14, 2014. The prior order is currently under appeal with the South Carolina Court of Appeals and is subject to change, should the appellate panel be reversed.
13. I find claimant has sustained permanent wage loss as a result of this work injury and thus is entitled to an award pursuant to S.C. Code §42-9-20. This wage loss was incurred as of the date of injury and accrues from the MMI date of April 14, 2014. This finding is based on the preponderance of the evidence as a whole including claimant's permanent work

restrictions, the stipulation of the parties and the opinions of the defendants vocational expert.

14. The claimant's pre-injury average weekly wage is \$786.03 and claimant's post injury average weekly wage is \$460. This finding is based on the preponderance of the evidence including claimant's testimony regarding his work history and the vocational opinion of Jan Westmorland, who considered and cited claimant's vocational experts opinion (Joel Leonard) in her assessment.
15. The claimant is entitled to a lump sum payment of two thirds the difference between his pre-injury and post injury average weekly wage for a total of 340 weeks, \$73,902.40.
16. Claimant is entitled to James v. Anne's SSA apportionment language.
17. The claimant is not entitled to additional future medical treatment as none is currently recommended by the treating physician and stated to a reasonable degree of medical certainty as tending to lessen any period of disability.
18. I find that these findings are based on the medical evidence, the record as a whole, the testimony of Claimant with regard to his symptoms, limitations and loss of use, and my observation of the Claimant.
19. No hearing costs are assessed.

Conclusions of Law

1. Under §42-1-160, Claimant sustained a compensable injury by accident arising out of and in the course of his employment, said injuries being to the Claimant's right back and left leg radiculopathy on March 16, 2014. The evidence in this case is clear that Claimant has suffered an on the job injury which affects his back and left leg. Where an injury is confined to a scheduled member of the body, the employee is limited to the scheduled compensation fixed in the statute.

Moss v. Davey Tree Expert Company, 245 S.C. 127, 139 S.E.2d 532 (1964). However, if the effects or the loss of the member extend to other parts of the body and interfere with their efficiency, the Claimant... [has] the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section. Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (Ct. App. 1996), see also, Brown v. Owen Steel Company, 316 S.C. 278, 450 S.E.2d 57 (Ct. App. 1994).

While the law of this case establishes Claimant sustained compensable injuries to his back and left leg on the date in question, “there is no requirement that loss of use, or partial loss of use of a member of the body requires evidence of direct injury to the member itself.” Mixon v. Westinghouse Electric Corp, 304 S.C. 31, 402 S.E.2d 893 (Ct. App. 1991), see also, Roper v. Kimbrell’s of Greenville, 213 S.C. 453, 99 S.E.2d 52 (1957). Rather, it is sufficient to merely establish a second body part is affected by the consequences of the compensable accident. Morgan, supra. Similarly, this Commission is empowered to “find disability when the medical evidence denies its existence...” Cropf. v. Pantry Inc., 289 S.C. 106, 344 S.E.2d 879, 881 (Ct. App. 1986).

Generally, injured Claimants may proceed under either Workers’ Compensation Act’s general disability sections or under scheduled member section in order to maximize recovery; only where scheduled loss is not accompanied by additional complications affecting another part of the body is scheduled recovery exclusive. Lee v. Harborside Café, 350 S.C. 74, 564 S.E.2d 354 (S.C. App. 2002), rehearing denied.

2. Under §42-15-20 proper notice of the injuries was given to the Employer.
3. I find and conclude that this matter is governed by the South Carolina Worker’s Compensation Act, §42-1-10 *et seq.* of the South Carolina Code 1976 (as amended).

4. Under §42-15-40, the claim was properly filed.
5. Pursuant to the prior order of the appellate panel and §42-1-10, the appropriate average weekly wage is \$786.03, resulting in an applicable weekly compensation rate of \$524.05. This order is currently under appeal and subject to change should the appellate panel decision be reversed.
6. I find and conclude that the Claimant has reached maximum medical improvement on April 14, 2014 per the prior order of the commission and stipulation of the parties.
7. I find and conclude that under §42-9-20 Claimant has sustained permanent wage loss from his causally related work injuries. The permanent work restrictions issued by authorized treating physician Scott Boyd and the opinion of the defendants' vocational expert Jan Westmorland support this finding by a preponderance of the evidence, that the claimant's incapacity for work resulting from his injuries is partial. The wage loss was incurred on March 16, 2014 and accrues from the MMI date of April 14, 2014.
8. I find and conclude that under §42-9-20, the claimant's incapacity for work resulting from his injuries is partial and he has sustained permanent wage loss due to his back and left leg which combine to reduce his earning capacity under 42-9-20, and he is entitled to 340 weeks compensation. Claimant is clearly entitled to wage loss under §42-9-20 as the combination of two or more affected body parts, which diminish Claimant's earning capacity. Claimant has suffered injuries to his right back and left leg. He has permanent wage loss pursuant to the first paragraph of section 42-9-20 since his incapacity for performing work is partial. Due to the Claimant's permanent work restrictions, he has been unable to resume work since on or before March 16, 2014, and has been found to have suffered permanent wage loss by Dr. Joel Leonard and Jan Westmorland.

In Simmons v. City of Charleston 349 S.C. 64, 562 S.E. 2d 476 (S.C. App. 2002), Simmons suffered an amputation of his left leg which led to an assignment of 100 percent impairment of that leg. No other impairment ratings were assigned. The South Carolina Court of Appeals held that all that is required is that the injury to a scheduled member also affects another body part. Simmons presented evidence that he had a swollen right leg with pain and swelling at the time of the hearing before the single commissioner. The S.C. Court of Appeals found that Simmons suffered complications to another part of the body other than the amputated left leg and was thus entitled to proceed under the general disability statute. Simmons at 481 and 482. Additionally in Roper v. Kimbrell's of Greenville, 231 S.C. 453, 99 S.E.2d 52 (1957) a furniture store employee sustained fractures of the right 7th, 8th, 9th and 10th rib and a separation of the joint between the left collar and shoulder blades. The employer/carrier contended there was no direct injury to the arms and therefore no compensation should be awarded for those body parts. The S.C. Supreme Court rejected that argument and upheld the findings of 40% loss of use to the right arm and 15% loss of use to the left arm. They specifically found nothing in Section 72-153 or elsewhere in the statute relating to workman's compensation suggesting restrictions of their meaning to such total or partial loss of use has resulted from a direct injury to the member itself. (Roper at 54).

As previously noted, total disability does not require complete helplessness. The generally accepted test of total disability is the inability to perform services other than those that are so limited in quality, dependability and quantity that a reasonable, stable market does not exist. Wagner v. People's National, 118 S.E.2d 812 (1961); Coleman v. Quality Concrete, 142 S.E.2d (1965); Coleman v. E.I. Dupont, 88 S.E.2d 581 (1955); Stevenson v. Rice Services, 473 S.E.2d 699 (1999). Evidence that the Claimant has been able to earn occasional wages or

perform certain kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial. Thus, the fact that a Claimant was able to drive a car for an hour, walk for ten minutes and go shopping did not preclude a finding of total and permanent disability. McCollum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (S.C. App.1989). For the aforementioned reasons, Claimant has suffered back and left leg radiculopathy injuries, and is has permanent wage loss under §42-9-20 since his incapacity for work resulting from his injuries is partial.

9. I find and conclude that Claimant's work-related injury affects other body parts. He therefore is not limited to partial disability under §42-9-30.

10. Under §42-9-10 and §42-1-120, Claimant has reached maximum medical improvement on April 14, 2014.

11. The Defendants are financially responsible for all medical treatment, medication, surgical or elective procedures, etc., which Claimant has previously received and/or undergone as a result of his compensable injury pursuant to the S.C. Code Ann. 42-15-60 (1976), as amended, as this treatment was reasonable, necessary, and tended to lessen her period of disability.

12. I find and conclude that Claimant has proven to the satisfaction of this Commissioner that a lump sum award is "not contrary to the best interests of the employee". 42-9-301 and S.C. Reg. 67-1204, 67-1205, 67-1206 and 67-1207.

13. *Utica Mohawk/James v. Anne*'s language is ordered. The Claimant shall be paid 66.6% or 2/3 of the 340 weeks of temporary total disability at the compensation rate of \$326.03. The attorney's fee shall be calculated based on 1/3 of the remaining weeks of the award to the Claimant past the date of MMI. Expenses will be reduced and Claimant will be entitled to the remainder of 340 weeks, as interpreted by the South Carolina Supreme Court in the decisions

of *Utica Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955), *James v. Anne Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010), and the case of *Sciarotta v. Bowen*, 837 F.2d 135 (3rd Cir. 1989). A final determination of the actual amount to be paid to Claimant, as well as the actual attorneys fees and costs will be determined upon approval of the Form 61 and accompanying order.

ORDER

Based on the foregoing findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED, the Claimant sustained a compensable injury by accident to the back and left leg, arising out of in the course of his employment; and it is further;

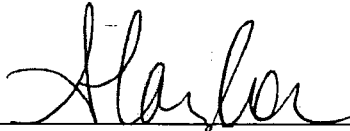
ORDERED, ADJUDGED, AND DECREED the Claimant has received necessary and proper medical care, treatment, diagnostic studies from Dr. Scott Boyd and other authorized medical personnel related to Claimant's injuries, and therefore, all of his care, treatment, diagnostic studies, and attendant care shall be the responsibility of Defendants, including reimbursement to Claimant for mileage and medications and it is further;

ORDERED, ADJUDGED, AND DECREED that the Defendants are to pay the Claimant, for permanent wage loss at the compensation rate of \$326.03 for a period of 340 weeks pursuant to 42-9-20. The average weekly wage and compensation rate are currently under appeal and are subject to change should the appellate panel be reversed. Wage loss accrues from April 14, 2014.

ORDERED, ADJUDGED, AND DECREED the Claimant will receive the above mentioned compensation in a lump sum representing the commuted value of 340 weeks of compensation, allocated pursuant to *Utica Mohawk Mills v. Orr* and *James v. Anne*'s cases, as described herein.

AND IT IS SO ORDERED.

February 17, 2017



Commissioner Aisha Taylor

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).

February 23, 2017

By: Renee Smith, Administrative Assistant to Commissioner Taylor

EXHIBIT C

AMENDED
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1403985

RENE RIVERA ROBLES , CLAIMANT

VS.

PARTY REFELCTIONS INC., EMPLOYER

AND

EMPLOYERS ASSURANCE COMANY, CARRIER

HEARING: Held in Columbia, South Carolina on September 6, 2016.

APPEARANCES: Claimant was represented by Mark R. Calhoun, Esquire, Lexington, South Carolina. Defendant was represented at hearing by Ellen Adams, Esquire, Columbia, South Carolina.

PURPOSE OF HEARING: To determine issues as set forth on Claimant's Form 50 and Defendant's Form 51.

DECISION AND ORDER: By Commissioner Aisha Taylor.

MEDICAL EVIDENCE- APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act, South Carolina Code §1-23-320 et. seq. and Regulation 67-612, the parties submitted the following items without objection as evidence in support of their cases;

CLAIMANT'S APA SUBMISSIONS

- APA #1 Report of Dr. Thomas Armsey, dated July 2, 2013 to October 15, 2015 consisting of eighteen (18) pages.
- APA #2 Report of Dr. Chun Kim, dated April 15, 2013 to April 7, 2014 consisting of thirty-two (32) pages.
- APA #3 Report of David Fulton, dated August 21, 2013 consisting of four (4) pages.
- APA #4 Report of Dr. Daniel Westerkam, dated June 2, 2014 consisting of two (2) pages.
- APA #5 Report of Dr. Scott Boyd, dated December 18, 2014, consisting of ten (10) pages.
- APA #6 Report of Dr. David Lee, dated January 12, 2015 to November 3, 2015 consisting of three (3) pages.
- APA #7 Report of Dr. Blake Moore, dated November 1, 2015 consisting of five (5) pages.
- APA #8 Report of Dr. Joel Leonard, dated November 13, 2015 to November 16, 2015 consisting of ten (10) pages.
- APA #9 Report of P.T. Tracy Hill, dated December 15, 2015, consisting of twenty-one (21) pages.

DEFENDANTS APA SUBMISSIONS

- APA #10 Letter advising claimant's attorney of IME, dated April 19, 2016 consisting of one (1) page.
- APA #11 Letter to Ellen Adams from claimant's attorney, dated April 27, 2016 consisting of one (1) page.
- APA #12 Report of The Directions Group, dated August 25, 2016, 2016 consisting of twelve (12) pages.

STIPULATIONS

At the call of the case, the parties stipulated that the South Carolina Workers

Compensation Commission had jurisdiction in this case and that venue was proper in Richland County. The purpose of the hearing is to decide issues raised on Claimant's Form 50 and Defendant's Form 51. Notice was timely and properly served upon all parties of interest. The Claimant seeks benefits under the South Carolina Workers Compensation Act based upon an accidental injury that occurred on or about March 16, 2014, while in the employment of the Defendant employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case. Without objection and with the exceptions of any self serving statements or unstipulated medical reports the Commissions file was made a part of the record.

STATEMENT OF THE CASE

This matter is properly before me to resolve issues raised in Claimant's Form 50 and Defendant's Form 51. This case was heard by the Undersigned Commissioner on September 6, 2016, at which time the parties and/or their representatives appeared and evidence was received.

By prior order of the Workers Compensation Commissions appellant panel, the claimant has an average weekly wage of \$786.03 which yields a compensation rate of \$524.05. This prior order is currently under appeal with the South Carolina Court of Appeals and is subject to change should the appellant panel be reversed. After a pretrial conference the claimant alleges he injured his back on March 16, 2014 which was the third and final injury he incurred while working for the employer. Shortly after this back injury the claimant was fired by the employer. The claimant received a small amount of medical treatment before he was terminated, and was placed at maximum medical improvement by Dr. Scott Boyd on January 14, 2016. The claimant submits he is permanently and totally disabled due to his lumbar injury with radiculopathy. He has been issued permanent work restrictions of no bending or twisting his back and no lifting more than 17 pounds with both hands. Dr. Joel Leonard has evaluated the claimant and states he

is permanently and totally disabled. The employer alleges the claimant only suffered a muscular injury to his back. They agree the claimant is at maximum medical improvement and he suffered 8% impairment to his back. They claim this is a single scheduled member claim under §42-9-30. The employer did submit a report of Jan Westmoreland who says the claimant has wage loss. Jan Westmoreland did not perform an evaluation on the claimant.

EVIDENCE

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury occurring on or about March 16, 2014, while in the employment of the Defendant. The Claimant alleges he suffered an injury by accident while working for the Employer when he was injured while performing his job duties.

Medical records were submitted under Administrative Procedures Act as evidence and made part of the Commission record.

Hearing Testimony of Rene Rivera Robles :

The claimant testified he is 41 years of age. He has no education in the United States. He is not capable of reading or writing in English, and has a limited ability to speak and understand English. He is married. (H.R. p.11) Mr. Robles worked for the employer for 12 years before he was injured on March 16, 2014. His only prior work experience consisted of working manual labor jobs. (H.R. p.12) Rene explained that his employer changed names close to the end of the year in 2013. When the name change occurred, Rene received a salary increase of \$1.00 per hour. He was paid for the number of hours he worked each week. Some weeks he worked as much as 50 hours. (H.R. p.13)

Renee suffered from no prior back or radicular problems with his legs before he was injured on March 16, 2014. He had received no prior medical treatment to his back before the date of injury. On this day he was putting up a tent and injured his back while lifting. He immediately informed his supervisor Adam. His supervisor sent him to Doctors Care for treatment. (H.R. p.14) There was no interpreter provided for this appointment. (H.R. p.15) Doctors Care issued work restrictions and gave him a return appointment on March 24, 2014. There was also no interpreter for this appointment at Doctors Care. Doctors care ordered physical therapy for the claimant and continued his work restrictions. The employer refused to pay for the claimants physical therapy. (H.R. p.15)

On April 7, 2014 Renee returned for another appointment at Doctors Care but his employer required him to pay for that appointment. Again there was no interpreter provided for medical treatment. When Rene left Doctors Care he was still under work restrictions. He was fired by the employer shortly thereafter. (H.R. p.16)

Rene stated Dr. Scott Boyd placed him at maximum medical improvement on January 14, 2016 after performing an evaluation on Rene's back. Rene takes pain medication of Advil and Tylenol three times a day. The pain is concentrated in his lower back and he rates the pain at a five at the time of hearing. The pain level is about three when he wakes up in the morning. He describes physical activity as increasing his pain up to a level of seven. (H.R. p.17) Mr. Robles has radicular pain that extends down his left leg to his left foot. He describes sitting and taking pain medication as a alleviating his pain. He has a brother who is a doctor in Mexico who mails Rene prescription pain medication and anti-inflammatory medicine for his back. (H.R. p.32) Rene agrees with Dr. Boyd that his lower back injury affects his left leg. He had never received any prior medical treatment for his back and radicular pain in the left leg. (H.R. p.18)

Rene described his permanent work restrictions issued by Dr. Boyd as no lifting more than 17 pounds, no bending or turning his back. He has looked for employment since he was fired through the Internet and the newspaper but cannot obtain employment when the employers are informed about his back problems and work restrictions. Rene has not worked since the date of injury. He also has been paid no TTD since the date of injury. He spends his day at home sitting and walking briefly in his backyard. Sometimes he visits relatives. He is not able to do chores around the house. He does not feel he is able to return to work. (H.R. p.19) He explained there's no type a work that he has performed in the past that he would be able to accomplish with his permanent work restrictions. Rene believes he is permanently and totally disabled. (H.R. p.20)

On cross examination, Rene agreed that he had a prior left knee injury while working for this employer (before the employer changed names). He also agreed he had previously injured his right arm while working for this employer. He was issued lifting restrictions for the right arm. (H.R. p.23) He described the left knee pain as alleviating overtime. He had no pain in his left knee before the March 16, 2014 injury. (H.R. p.23-24) He further explained that the radicular pain is mainly in his left leg but "sometimes I have mild pain on my right leg." (H.R. p.24) Rene's brother helped him apply for jobs over the Internet because Rene cannot operate a computer. (H.R. p.28) He has applied at supermarkets and stores but when he informs of his back problem he gets no response. (H.R. p.29)

Rene stated when he began working for the employer he was making \$9.00 an hour. Over the course of 12 years he received several raises. (H.R. p.30) He was making \$18.00 per hour when he was injured on March 16 of 2014. He also explained that he has never met or been evaluated by Jan Westmoreland. (H.R. p.33)

Medical Evidence

Mr. Robles was first evaluated by Doctors Care on March 17, 2014 for his back injury. It was noted the claimant had no prior history of back problems. Flexeril and naproxen were ordered for the claimant who was also placed on light duty work restrictions. (APA p. 40) The claimant returned on March 24, 2014 when physical therapy was ordered. Medications of Flexeril, naproxen, Allopurinol, indomethacin, and prednisone were also prescribed. (APA p. 41) Work restrictions were giving of, limited use of lumbar spine, no repetitive bending, stooping, squatting, pushing, jerking, twisting or bouncing. No lifting more than 5 pounds. (APA p. 45) On April 7, 2014 the claimant returned to Doctors Care, where it was noted the employer refused to pay for physical therapy. (APA p. 48) Work restrictions were changed to no lifting more than 45 pounds, ground-level work only, no repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing. The employer also refused to pay for this appointment and treatment was ended.

On June 2, 2014 Rene was evaluated by Dr. Daniel Westerkam. Dr. Westerkam notes the back pain radiates into the left leg with numbness and tingling. He ordered Flexeril and a lidoderm patch in addition to physical therapy. He placed the claimant under work restrictions of lifting no more than 40 pounds and a frequent lift of no more than 20 pounds. No repetitive bending, stooping, squatting, or crawling. The claimant did not receive this treatment.

Dr. Scott Boyd evaluated Rene on December 18, 2014. He notes that Rene has left leg radiculopathy that extends down into his left foot. He diagnosed an annular tear laterally on the left at L4-5. He finds this injury related to his March 16, 2014 work injury. He orders physical therapy and epidural steroid injections. Dr. Boyd also continues Rene on light duty. (APA p. 61-62) Mr. Robles does not receive this treatment. Dr. Boyd places the claimant at maximum

medical improvement on January 14, 2016. Dr. Boyd states Rene's industrial injury to the lumbar spine affects his left lower extremity. (APA p. 65-66.2) Finally, Dr. Boyd reviews the functional capacity report dated December 15, 2015 and agrees with this report in its entirety. He issues work restrictions of limited light work. This encompasses occasional walking, stair climbing, kneeling, and reaching. The claimant cannot squat, bend, or twist. He can carry up to 17 pounds. (APA p. 65,86)

On November 1, 2015 Mr. Robles was evaluated by Dr. Blake Moore. Dr. Moore notes that Rene's symptoms have been present for more than one year. He also placed Rene at maximum medical improvement. Dr. Moore notes that Rene will likely require some "chronic pain management". (APA p.72-73) He diagnosed Rene with disc bulges at three levels with an annular tear. He also assigned Rene a 5% rating to the left leg for his radiculopathy. (APA p. 73)

On November 13, 2015 Dr. Joel Leonard performed a vocational evaluation on the claimant. Mr. Leonard provided two different scenarios. One scenario was appropriate if Mr. Robles was placed at maximum medical improvement for his back. Dr. Leonard found that the claimant would not be able to return to work with the employer but would not be considered totally disabled from any and all work. He found Mr. Rivera would be expected to earn around \$416.80 per week in other forms of employment.

On August 25, 2016 Jan Westmoreland of the Directions Group Inc. performed an "employability analysis and labor market survey". She opined that Mr. Robles remains employable and can anticipate making from \$8320.00 per year for part-time employment to \$23,920.00 per year for full time employment. (Def. APA p. 1

Findings of Fact

1. That all parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Worker's Compensation Act, as amended, with Rene Rivera Robles, as employee, Party Reflections Inc., as employer, and Owners Insurance Company, as carrier.
2. That the South Carolina Worker's Compensation Commission has jurisdiction in this case and that venue was proper in Richland County with the case being heard in Richland county.
3. The Claimant is 41 years old, has no education in the United States and cannot read, write speak or understand English fluently.
4. His job duties for the twelve (12) years he worked for the employer before being fired included only manual labor work. He had had no prior problems with his back or left leg radiculopathy before he was injured on March 16, 2014.
5. Based on the greater weight of the evidence, Claimant suffered a compensable injury to his back, and left leg.
6. As per the order of the appellate panel of the South Carolina Worker's Compensation Commission dated September 2, 2016, the claimant has an average weekly wage of \$786.03, which yields a compensation rate of \$524.05. This order is currently under appeal with the South Carolina Court of Appeals and is subject to change, should the appellate panel be reversed.
7. Claimant was first treated on March 17, 2014 for his industrial injury by Doctors Care. He was provided prescription medication for pain and inflammation and issued work restrictions. Claimant returned to Doctors Care on March 24, 2014 when physical therapy

was ordered but not provided by the employer. Work restrictions were continued for the claimant as were prescription medications for pain and inflammation. The claimant returned to Doctors Care on April 7, 2014 when the employer ended medical treatment even though the claimant was not at maximum medical improvement. On June 2, 2014 the claimant was evaluated by Dr. Daniel Westerkam who noted the claimant had left leg radiculopathy with numbness and tingling. He placed the claimant on work restrictions and ordered medications for pain and inflammation. He also ordered physical therapy. On December 18, 2014 authorized treating physician Scott Boyd evaluates the claimant. He notes Rene has left leg radiculopathy into his foot. He finds his lumbar injury causally related to the March 16, 2014 injury. He also finds the lumbar injury affects the claimant's left leg. He orders physical therapy, epidural steroid injections, and medications. He orders permanent work restrictions in accordance with the functional capacity exam report issued on December 15, 2015. He diagnoses an annular tear at L4 – 5. Boyd places the claimant at maximum medical improvement on January 14, 2016. Mr. Robles received no treatment ordered by the physicians who evaluated him. On November 1, 2015 Rene was evaluated by Dr. Blake Moore who also placed him at maximum medical improvement. Dr. Moore assigned René a 5% rating to the left leg for his radiculopathy and ordered chronic pain management. He also found the lumbar injury causally related to the March 16, 2014 accident.

8. On November 13, 2015 Dr. Joel Leonard performed a functional capacity evaluation. Under one scenario he found the claimant suffered wage loss. He stated the claimant would earn \$416.80 per week in alternative employment. Jan Westmoreland of the Directions Group issued a labor market survey on August 25, 2016 which found the

claimant would experience wage loss. The claimant would earn \$160 per week in part time employment or \$460 per week in full-time employment.

9. I find the claimant sustained a compensable injury to his back on March 16, 2014 within the course and scope of his employment. This finding is based on the evidence as a whole including the medical opinions of Dr. Scott Boyd and Dr. Daniel Westerkam.
10. I find the claimants compensable back injury affects the use of his left leg. This finding is based on the preponderance of the evidence as a whole, including Dr. Boyd's medical opinion that claimant's back condition affects his left leg, although Dr. Boyd did not give a separate rating for the claimants radiculopathy in his left leg. Dr. Blake Moore assigned claimant a 5% impairment rating for his left leg radiculopathy.
11. I find claimant's left leg radiculopathy to be separate and distinct from a prior work related left knee injury.
12. The claimant is at maximum medical improvement from his March 16, 2014 work injury to his lower back and resulting radiculopathy into his left leg.
13. I find claimant has sustained permanent wage loss as a result of this work injury and thus is entitled to an award pursuant to S.C. Code §42-9-20. This finding is based on the preponderance of the evidence as a whole including claimant's permanent work restrictions and the opinions of the defendants vocational expert.
14. The claimant's pre-injury average weekly wage is \$786.03 and claimant's post injury average weekly wage is \$460. This finding is based on the preponderance of the evidence including claimant's testimony regarding his work history and the vocational opinion of Jan Westmorland, who considered and cited claimant's vocational experts opinion (Joel Leonard) in her assessment.

15. The claimant is entitled to a lump sum payment of two thirds the difference between his pre-injury and post injury average weekly wage for a total of 340 weeks, \$73,902.40.
16. Claimant is entitled to James v. Anne's SSA apportionment language.
17. The claimant is not entitled to additional future medical treatment as none is currently recommended by the treating physician and stated to a reasonable degree of medical certainty as tending to lessen any period of disability.
18. I find that these findings are based on the medical evidence, the record as a whole, the testimony of Claimant with regard to his symptoms, limitations and loss of use, and my observation of the Claimant.
19. No hearing costs are assessed.

Conclusions of Law

1. Under §42-1-160, Claimant sustained a compensable injury by accident arising out of and in the course of his employment, said injuries being to the Claimant's right back and left leg radiculopathy on March 16, 2014. The evidence in this case is clear that Claimant has suffered an on the job injury which affects his back and left leg. Where an injury is confined to a scheduled member of the body, the employee is limited to the scheduled compensation fixed in the statute. Moss v. Davey Tree Expert Company, 245 S.C. 127, 139 S.E.2d 532 (1964). However, if the effects or the loss of the member extend to other parts of the body and interfere with their efficiency, the Claimant...[has] the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section. Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (Ct. App. 1996), see also, Brown v. Owen Steel Company, 316 S.C. 278, 450 S.E.2d 57 (Ct. App. 1994).

While the law of this case establishes Claimant sustained compensable injuries to his back and left leg on the date in question, “there is no requirement that loss of use, or partial loss of use of a member of the body requires evidence of direct injury to the member itself.” Mixon v. Westinghouse Electric Corp., 304 S.C. 31, 402 S.E.2d 893 (Ct. App. 1991), see also, Roper v. Kimbrell’s of Greenville, 213 S.C. 453, 99 S.E.2d 52 (1957). Rather, it is sufficient to merely establish a second body part is affected by the consequences of the compensable accident. Morgan, supra. Similarly, this Commission is empowered to “find disability when the medical evidence denies its existence...” Cropf. v. Pantry Inc., 289 S.C. 106, 344 S.E.2d 879, 881 (Ct. App. 1986).

Generally, injured Claimants may proceed under either Workers’ Compensation Act’s general disability sections or under scheduled member section in order to maximize recovery; only where scheduled loss is not accompanied by additional complications affecting another part of the body is scheduled recovery exclusive. Lee v. Harborside Café, 350 S.C. 74, 564 S.E.2d 354 (S.C. App. 2002), rehearing denied.

2. Under §42-15-20 proper notice of the injuries was given to the Employer.
3. I find and conclude that this matter is governed by the South Carolina Worker’s Compensation Act, §42-1-10 *et seq.* of the South Carolina Code 1976 (as amended).
4. Under §42-15-40, the claim was properly filed.
5. Pursuant to the prior order of the appellate panel and §42-1-10, the appropriate average weekly wage is \$786.03, resulting in an applicable weekly compensation rate of \$524.05.

This order is currently under appeal and subject to change should the appellate panel decision be reversed.
6. I find and conclude that the Claimant has reached maximum medical improvement.

7. I find and conclude that under §42-9-20 Claimant has sustained permanent wage loss from his causally related work injuries. The permanent work restrictions issued by authorized treating physician Scott Boyd and the opinion of the defendants vocational expert Jan Westmorland support this finding by a preponderance of the evidence, that the claimant's incapacity for work resulting from his injuries is partial.
8. I find and conclude that under §42-9-20, Claimant the claimants incapacity for work resulting from his injuries is partial and has sustained permanent wage loss due to his back and left leg which combine to reduce his earning capacity under 42-9-20, and he is entitled to 340 weeks compensation. Claimant is clearly entitled to wage loss under §42-9-20 as the combination of two or more affected body parts, which diminish Claimant's earning capacity. Claimant has suffered injuries to his right back and left leg. He has permanent wage loss pursuant to the first paragraph of section 42-9-20 since his incapacity for performing work is partial. Due to the Claimant's permanent work restrictions, he has been unable to resume work since on or before March 16, 2014, and has been found to have suffered permanent wage loss by Dr. Joel Leonard and Jan Westmorland.

In Simmons v. City of Charleston 349 S.C. 64, 562 S.E. 2d 476 (S.C. App. 2002), Simmons suffered an amputation of his left leg which led to an assignment of 100 percent impairment of that leg. No other impairment ratings were assigned. The South Carolina Court of Appeals held that all that is required is that the injury to a scheduled member also affects another body part. Simmons presented evidence that he had a swollen right leg with pain and swelling at the time of the hearing before the single commissioner. The S.C. Court of Appeals found that Simmons suffered complications to another part of the body other than the amputated left leg and was thus entitled to proceed under the general disability statute.

Simmons at 481 and 482. Additionally in Roper v. Kimbrell's of Greenville, 231 S.C. 453, 99 S.E.2d 52 (1957) a furniture store employee sustained fractures of the right 7th, 8th, 9th and 10th rib and a separation of the joint between the left collar and shoulder blades. The employer/carrier contended there was no direct injury to the arms and therefore no compensation should be awarded for those body parts. The S.C. Supreme Court rejected that argument and upheld the findings of 40% loss of use to the right arm and 15% loss of use to the left arm. They specifically found nothing in Section 72-153 or elsewhere in the statute relating to workman's compensation suggesting restrictions of their meaning to such total or partial loss of use has resulted from a direct injury to the member itself. (Roper at 54).

As previously noted, total disability does not require complete helplessness. The generally accepted test of total disability is the inability to perform services other than those that are so limited in quality, dependability and quantity that a reasonable, stable market does not exist. Wagner v. People's National, 118 S.E.2d 812 (1961); Coleman v. Quality Concrete, 142 S.E.2d (1965); Coleman v. E.I. Dupont, 88 S.E.2d 581 (1955); Stevenson v. Rice Services, 473 S.E.2d 699 (1999). Evidence that the Claimant has been able to earn occasional wages or perform certain kinds of gainful work does not necessarily rule out a finding of total disability or require that it be reduced to partial. Thus, the fact that a Claimant was able to drive a car for an hour, walk for ten minutes and go shopping did not preclude a finding of total and permanent disability. McCollum v. Singer Co., 300 S.C. 103, 386 S.E.2d 471 (S.C. App.1989). For the aforementioned reasons, Claimant has suffered back and left leg radiculopathy injuries, and is has permanent wage loss under §42-9-20 since his incapacity for work resulting from his injuries is partial.

9. I find and conclude that Claimant's work-related injury affects other body parts. He therefore is not limited to partial disability under §42-9-30.

10. Under §42-9-10 and §42-1-120, Claimant has reached maximum medical improvement.

11. The Defendants are financially responsible for all medical treatment, medication, surgical or elective procedures, etc., which Claimant has previously received and/or undergone as a result of his compensable injury pursuant to the S.C. Code Ann. 42-15-60 (1976), as amended, as this treatment was reasonable, necessary, and tended to lessen her period of disability.

12. I find and conclude that Claimant has proven to the satisfaction of this Commissioner that a lump sum award is "not contrary to the best interests of the employee". 42-9-301 and S.C. Reg. 67-1204, 67-1205, 67-1206 and 67-1207.

13. *Utica Mohawk/James v. Anne*'s language is ordered. The Claimant shall be paid 66.6% or 2/3 of the 340 weeks of temporary total disability at the compensation rate of \$326.03. The attorney's fee shall be calculated based on 1/3 of the remaining weeks of the award to the Claimant past the date of MMI. Expenses will be reduced and Claimant will be entitled to the remainder of 340 weeks, as interpreted by the South Carolina Supreme Court in the decisions of *Utica Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955), *James v. Anne Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010), and the case of *Sciarotta v. Bowen*, 837 F.2d 135 (3rd Cir. 1989). A final determination of the actual amount to be paid to Claimant, as well as the actual attorneys fees and costs will be determined upon approval of the Form 61 and accompanying order.

ORDER

Based on the foregoing findings of Fact and Conclusions of Law, it is hereby

ORDERED, ADJUDGED AND DECREED, the Claimant sustained a compensable injury by accident to the back and left leg, arising out of in the course of his employment; and it is further;

ORDERED, ADJUDGED, AND DECREED the Claimant has received necessary and proper medical care, treatment, diagnostic studies from Dr. Scott Boyd and other authorized medical personnel related to Claimant's injuries, and therefore, all of his care, treatment, diagnostic studies, and attendant care shall be the responsibility of Defendants, including reimbursement to Claimant for mileage and medications and it is further;

ORDERED, ADJUDGED, AND DECREED that the Defendants are to pay the Claimant, for permanent wage loss at the compensation rate of \$326.03 for a period of 340 weeks pursuant to 42-9-20. The average weekly wage and compensation rate are currently under appeal and are subject to change should the appellate panel be reversed.

ORDERED, ADJUDGED, AND DECREED the Claimant will receive the above mentioned compensation in a lump sum representing the commuted value of 340 weeks of compensation, allocated pursuant to *Utica Mohawk Mills v. Orr* and *James v. Anne's* cases, as described herein.

AND IT IS SO ORDERED.

March 8, 2017

SC WORKERS' COMPENSATION COMMISSION



Commissioner Aisha Taylor

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).

March 8, 2017

By: Renee Smith, Administrative Assistant to Commissioner Taylor

EXHIBIT D

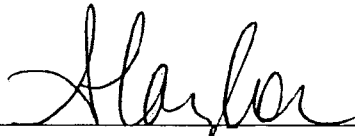
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. 1403985

RENE RIVERA ROBLES, EMPLOYEE,)	
)	
CLAIMANT,)	
VS.)	
)	
PARTY REFLECTION, INC.,)	
EMPLOYER,)	
)	ADMINISTRATIVE ORDER
AND)	
)	
EMPLOYERS ASSURANCE COMPANY,)	
CARRIER,)	
)	
DEFENDANTS,)	

A Decision and Order for the September 6, 2016 hearing was signed and served on February 23, 2017. An Amended Decision and Order on the same merits hearing was signed and served on March 8, 2017.

The following dispositions have been made:

The Decision and Order dated February 23, 2017 and the Amended Decision and Order dated March 8, 2017 are now vacated. A final Decision Order will be signed and served by the undersigned under separate cover.



Commissioner Aisha Taylor

March 9, 2017
Columbia, SC

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).

March 9, 2017

By: Renee Smith, Administrative Assistant to Commissioner Taylor

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 01 2017

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION **SC Court of Appeals**

Appellate Case No. 2016-002266

Renee Robles, Employee, Claimant, Appellant,

v.

Party Reflections, Inc., Employer, and
Employers Assurance Company, Carrier, Respondents,

PROOF OF SERVICE

I hereby certify that I served **RESPONDENTS' MOTION TO DISMISS APPEAL** upon all parties, by placing a copy in the United States mail, postage prepaid, to all counsel of record on May 1, 2017, addressed to the following:

COUNSEL SERVED:


Stephen B. Samuels, Esquire
Samuels Law Firm, LLC
1320 Richland Street
Columbia, SC 29201
and

Mark R. Calhoun, Esquire
Calhoun Law Firm
714 East Main Street
Lexington, SC 29072

COUNSEL FOR APPELLANT

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,
COLLINS & LACY, P.C.

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ATTORNEYS FOR RESPONDENTS

**PROOF OF SERVICE – RESPONDENTS’
MOTION TO DISMISS APPEAL**

Columbia, South Carolina
May 1, 2017



Ashley R. Kirkham | D: 803.255.0415 | E: akirkham@collinsandlacy.com

May 1, 2017

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Robles v. Party Reflections, Inc.*
Appellate Case No. 2016-002266
C&L File No. 001655-00857

RECEIVED
MAY 01 2017
SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the unbound original and seven (7) copies of Respondents' Motion to Dismiss Appeal in connection with the above referenced matter. Also enclosed is our firm's check in the amount of \$25.00, representing the motion filing fee. Please file the original and return one copy to us via our courier.

By copy of this letter to counsel of record, we are serving same on them.

Sincerely,

A handwritten signature in black ink that reads "Ashley R. Kirkham".

Ashley R. Kirkham

ARK/mmm

Enclosures

cc: Stephen B. Samuels, Esquire
Mark R. Calhoun, Esquire