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SC Court of Appeals

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO. 1019167

Appellate Case # 2017-001027
Seeahray Brailsford, Employee,

Claimant/Appellant,

v.

Piggly Wiggly Carolina Company, Inc., Employer,

and

Constitution State Service Company
as TPA for Greenbax Enterprise Inc., Carrier

Defendants/Respondents.

Appellate Panel Review held in Columbia,
South Carolina on January 23, 2017 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed
March 29, 2017

ARGUMENTS BRIEFED BY:

Seeahray Brailsford representing herself *pro se*
for Claimant/Appellant

Michael E. Chase, Esquire, of Columbia, South Carolina
for Defendants/Respondents

STATEMENT OF THE CASE

The parties were heard by Commissioner T. Scott Beck, Hearing Commissioner, in Columbia, South Carolina on August 1, 2016. On October 11, 2016, Commissioner Beck issued the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The Claimant sustained an accidental injury to her left shoulder only on November 23, 2010, which arose out of and in the course of employment with Piggly Wiggly. This finding is based upon the pleadings, the testimony rendered, and the medical evidence submitted.
2. The Claimant treated with Dr. Wendell Holmes, and he performed shoulder surgery on March 9, 2011 (Def. APA 56-57). The Claimant continued to have shoulder issues and received a second opinion, paid for by the Defendants, with Dr. David Lee, who performed a second shoulder surgery on February 15, 2012 (Def. APA 181-184). The Claimant continued to have ongoing shoulder issues and eventually had a reverse total shoulder arthroplasty (Def. APA 188-190). As a result of this last procedure, the Claimant has prosthetics in her shoulder. This finding is based upon the testimony rendered and the medical evidence submitted.
3. The Claimant did not sustain any other injuries by accident arising out of and in the course of employment on the date in question, including but not limited to, her left arm, left elbow, and depression. In addition, the Claimant failed to show a causal connection between her left shoulder injury and subsequent treatment for her liver issue and other claimed infections she contends that she suffered from while in the hospital. This finding is based upon the testimony rendered and the medical evidence submitted.
4. Per stipulations made by the parties, the Claimant earned an average weekly wage of \$537.18, and, therefore, the applicable compensation rate is \$358.14.

5. The Claimant reached maximum medical improvement for her single scheduled member shoulder injury on July 29, 2014 (DEF APA 229). She was assigned a converted impairment rating of 46.7% to the left shoulder (DEF APA 229). She did not receive any other impairment ratings as a result of this accident.

6. Defendants are entitled to stop payment of temporary total disability benefits and are entitled to a credit for temporary total disability benefits paid beyond July 25, 2016, the date which the Defendants filed their Form 21.

7. The Claimant is entitled to 70% permanent partial disability to the left shoulder, less credit for TTD overpayment, and subject to the maximum total benefits of 500 weeks compensation under the Act, which may limit her net recovery.

8. The Claimant is awarded future lifetime medical care limited to the repair, maintenance, or replacement of causally related medical hardware for the left shoulder only pursuant to S.C. Code Ann. Section 42-15-60.

CONCLUSIONS OF LAW

1. The Claimant suffered an admitted compensable injury to the left shoulder only on November 23, 2010. This conclusion is based upon findings of fact 1-5, and South Carolina Code Ann. Section 42-1-160.

2. The Claimant reached maximum medical improvement for the left shoulder on July 29, 2014. This conclusion is based upon findings of fact 1-5.

3. The Defendants are entitled to stop payment of temporary total disability benefits and are entitled to a credit for overpayment of temporary total disability benefits back to the date of filing the Form 21 on July 25, 2016 pursuant to South Carolina Code Ann. Section 42-9-10 and the regulations.

4. The Claimant is entitled to an award of 70% to the left shoulder. This conclusion is based upon finding of facts 1-7, and South Carolina Code Ann. Section 42-9-30 for a single scheduled member injury.

5. The award of 70% to the shoulder in this case for permanent partial disability is subject to, and may be limited by, the maximum period of compensation of 500 weeks allowable under the Act pursuant to section 42-9-10 and other sections of the Act. Therefore, claimant's net award may be less than 70% of the shoulder depending on the number of weeks of temporary total disability benefits paid.

6. The Claimant is entitled to lifetime causally related medical expenses limited to repair, maintenance or replacement of the hardware in the Claimant's left shoulder only. This conclusion is based upon South Carolina Code Ann. Section 42-15-60.

AWARD

IT IS HEREBY ORDERED AND ADJUDGED that the Claimant sustained a compensable injury to the left shoulder only on November 23, 2010 and reached maximum medical improvement on July 29, 2014;

IT IS FURTHER ORDERED AND ADJUDGED that Defendants are entitled to stop payment of temporary total disability benefits and that Defendants are entitled to a credit for temporary total disability benefits paid beyond July 25, 2016, the date of filing the Form 21.

IT IS FURTHER ORDERED AND ADJUDGED that the Claimant is awarded 70% permanent partial disability benefits to the left shoulder, less credit for overpayment of TTD, and subject to the 500 week limitation of maximum compensation benefits.

IT IS FURTHER ORDERED AND ADJUDGED that the Claimant is awarded future medical care limited to repair, maintenance, or replacement of causally related medical hardware in the left shoulder.

IT IS SO ORDERED.

Within the statutory period, the Claimant filed an Application for Review in this case, setting forth the reasons for an appeal. A copy of this Application was furnished to all interested parties prior to Appellate Review.

All proper testimony has been taken. Together with all documentary evidence and a transcript of the hearing, appellate briefs were delivered to the individual members of the South Carolina Workers' Compensation Appellate Panel. Oral Argument has been provided to the individual members of the Full Commission and the case has since been under study and consideration.

By appeal, Claimant/Appellant submits the following:

1. The Single Commissioner erred as a matter of fact and law in finding that the claim was limited to a single schedule member injury.
2. The Single Commissioner erred as a matter of fact and law in determining that the Claimant did not suffer from depression resulting from this claim.
3. The Single Commissioner erred as a matter of fact and law in determining that the Claimant did not suffer from a compensable liver disease.

On the other hand, Defendants/Respondents contend that the Appellant only sustained a left shoulder injury on the date in question. Respondents deny that the Appellant sustained compensable injuries to her liver or psyche. Respondents relied on the medical evidence which released the Appellant with a converted 46.7 percent impairment rating to the left shoulder on

July 29, 2014 by Dr. Lee. (Hearing Tr. p. 15). Respondents further contended that the Appellant was sent to two additional doctors for additional opinions. (Hearing Tr. p. 16).

In addition, Respondents contended that the depression claim was not raised and that the Appellant specifically denied claiming depression as part of her claim to the Single Commissioner. (Hearing Tr. p. 16). Lastly, Respondents contended that the Appellant did not produce any evidence regarding her liver to the Single Commissioner. (Hearing Tr. p. 17). Therefore, the Respondents requested that the Full Commission affirm the decision below and find that there has been no error of law and that the findings of fact were supported by the preponderance of the evidence.

Based upon a review of the Record and Briefs, the Panel, by a **UNANIMOUS** vote, **AFFIRMS** the Decision and Order of the Hearing Commissioner dated October 11, 2016. Accordingly, the Findings of Fact and Conclusions of Law set forth below shall become and hereby are the law of the case:

FINDINGS OF FACT

1. The Claimant sustained an accidental injury to her left shoulder only on November 23, 2010, which arose out of and in the course of employment with Piggly Wiggly. This finding is based upon the pleadings, the testimony rendered, and the medical evidence submitted.
2. The Claimant treated with Dr. Wendell Holmes, and he performed shoulder surgery on March 9, 2011 (Def. APA 56-57). The Claimant continued to have shoulder issues and received a second opinion, paid for by the Defendants, with Dr. David Lee, who performed a second shoulder surgery on February 15, 2012 (Def. APA 181-184). The Claimant continued to have ongoing shoulder issues and eventually had a reverse total shoulder arthroplasty (Def. APA 188-

190). As a result of this last procedure, the Claimant has prosthetics in her shoulder. This finding is based upon the testimony rendered and the medical evidence submitted.

3. The Claimant did not sustain any other injuries by accident arising out of and in the course of employment on the date in question, including but not limited to, her left arm, left elbow, and depression. In addition, the Claimant failed to show a causal connection between her left shoulder injury and subsequent treatment for her liver issue and other claimed infections she contends that she suffered from while in the hospital. This finding is based upon the testimony rendered and the medical evidence submitted.

4. Per stipulations made by the parties, the Claimant earned an average weekly wage of \$537.18, and, therefore, the applicable compensation rate is \$358.14.

5. The Claimant reached maximum medical improvement for her single scheduled member shoulder injury on July 29, 2014 (DEF APA 229). She was assigned a converted impairment rating of 46.7% to the left shoulder (DEF APA 229). She did not receive any other impairment ratings as a result of this accident.

6. Defendants are entitled to stop payment of temporary total disability benefits and are entitled to a credit for temporary total disability benefits paid beyond July 25, 2016, the date which the Defendants filed their Form 21.

7. The Claimant is entitled to 70% permanent partial disability to the left shoulder, less credit for TTD overpayment, and subject to the maximum total benefits of 500 weeks compensation under the Act, which may limit her net recovery.

8. The Claimant is awarded future lifetime medical care limited to the repair, maintenance, or replacement of causally related medical hardware for the left shoulder only pursuant to S.C. Code Ann. Section 42-15-60.

CONCLUSIONS OF LAW

1. The Claimant suffered an admitted compensable injury to the left shoulder only on November 23, 2010. This conclusion is based upon findings of fact 1-5, and South Carolina Code Ann. Section 42-1-160.
2. The Claimant reached maximum medical improvement for the left shoulder on July 29, 2014. This conclusion is based upon findings of fact 1-5.
3. The Defendants are entitled to stop payment of temporary total disability benefits and are entitled to a credit for overpayment of temporary total disability benefits back to the date of filing the Form 21 on July 25, 2016 pursuant to South Carolina Code Ann. Section 42-9-10 and the regulations.
4. The Claimant is entitled to an award of 70% to the left shoulder. This conclusion is based upon finding of facts 1-7, and South Carolina Code Ann. Section 42-9-30 for a single scheduled member injury.
5. The award of 70% to the shoulder in this case for permanent partial disability is subject to, and may be limited by, the maximum period of compensation of 500 weeks allowable under the Act pursuant to section 42-9-10 and other sections of the Act. Therefore, claimant's net award may be less than 70% of the shoulder depending on the number of weeks of temporary total disability benefits paid.
6. The Claimant is entitled to lifetime causally related medical expenses limited to repair, maintenance or replacement of the hardware in the Claimant's left shoulder only. This conclusion is based upon South Carolina Code Ann. Section 42-15-60.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED that the Order of the Hearing Commissioner filed in the above-captioned matter on October 11, 2016, is hereby affirmed by the Full Commission Appellate Panel. The claim for a compensable psychological issue and liver disease is denied in its entirety.

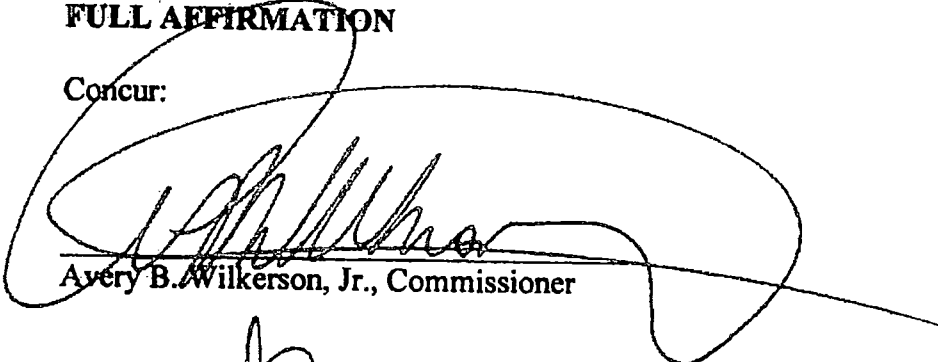
AND IT IS SO ORDERED.

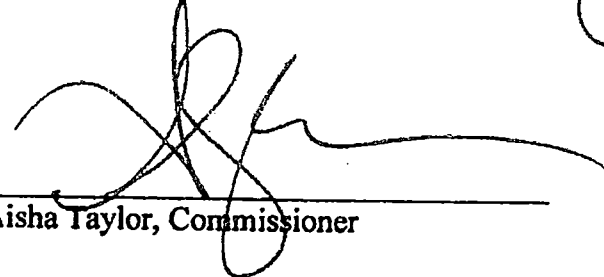
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**


Melody L. James, Commissioner
On Behalf of the Appellate Panel

FULL AFFIRMATION

Concur:


Avery B. Wilkerson, Jr., Commissioner


Aisha Taylor, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on March 29, 2017