



The South Carolina Court of Appeals

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May 24, 2017

The Honorable Amy Bracy
Worker's Compensation Commission
Post Office Box 1715
Columbia SC 29202

REMITTITUR

Re: Kelly McPherson v. Charleston County
Lower Court Case No. 1104105
Appellate Case No. 2016-000597

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Frederick W. Riesen, III, Esquire
Frederick W. Riesen, Jr., Esquire
Matthew Oliver Riddle, Esquire

Catherine Holland Chase, Esquire
Stephen Lynwood Brown, Esquire

(S)

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1104105

RECEIVED
MAY 18 2017
SC Court of Appeals

Kelly McPherson,
Employee,
Claimant

RECEIVED
SETTLEMENT

APR 25 2017

SETTLEMENT
AGREEMENT AND RELEASE

-versus-

Division of Claims
SC Workers Comp. Comm.

CHARLESTON COUNTY SCHOOL DISTRICT,

Employer/Self-Insured

Kelly McPherson (hereinafter "Claimant") sustained an injury by accident to her cervical spine and lumbar spine arising out of and in the course of her employment with the employer on or about 2/3/2011, the said accident occurring in Charleston County, South Carolina. Pursuant to a hearing on April 9, 2015 and subsequent appeal hearing, the Claimant received a 45% permanent partial disability award and future medical treatment relative to her back injury. On December 7, 2016, the Claimant filed a Form 50 hearing request, seeking review of the prior award and requesting additional benefits under the Act based upon an alleged change of condition. The employer/self-insured filed a timely reply to the Claimant's hearing request, denying the alleged change of condition and denying the Claimant is entitled to further benefits beyond those set forth in the prior Order. An actual bona fide disagreement exists between the Claimant on the one hand and the employer/self-insured (hereinafter "Defendants") on the other as to the extent of residual disability, if any, and the amount of compensation for disability, temporary and permanent, partial and total, and compensation for any disfigurement to which the Claimant might be due and for which the Defendants may be liable under the South Carolina Workers' Compensation Act based upon the aforesaid accident and injury.

The parties have negotiated the resolution of any and all outstanding issues and have now reached a final compromise settlement agreement and release under the terms of which the Defendants will pay, and the Claimant will accept the sum of **One Hundred and Fifty Five Thousand**

Dollars (\$155,000.00) in full payment and compromise settlement of all rights and claims of the Claimant under the South Carolina Workers' Compensation Act based upon and by reason of the aforesaid accident and injuries, including, without limiting the generality of said agreement, all claims of the said Claimant for compensation of any and every kind under the South Carolina Workers' Compensation Act for disability, temporary and permanent, total and partial, present and future, and all claims for compensation under the South Carolina Workers' Compensation Act for disfigurement and for any change of condition, and all claims under the South Carolina Workers' Compensation Act for any medical, hospital, surgical, and nursing and any other expenses to which the Claimant may have incurred or may incur in the past, present or future (the sole exception being such medical, hospital, surgical and nursing expenses as have previously been incurred by the Claimant at the request of the Defendants) so that the Claimant shall have no further right or claim and the Defendants shall have no further liability under the said Workers' Compensation Law based upon said accident and injuries after the payment and receipt of said sum of **One Hundred and Fifty Five Thousand Dollars (\$155,000.00)**.

The parties specifically agree that this matter is settled on a doubtful and disputed basis with regard to the alleged change of condition, with the Defendants maintaining their denial of any liability for benefits other than as set forth in the prior Order. The parties agree that the settlement described herein represents the full extent of any past, present, or future benefits potentially owed by the Defendant in this matter.

The settlement proceeds of **One Hundred Fifty-Five Thousand and 00/100 (\$155,000.00) Dollars**, shall be allocated as follows:

The sum of **Fifty-One Thousand Six Hundred Sixty-Six and 67/100 (\$51,666.67)** as attorney' fees pursuant to a written contract between the Claimant/Employee and her attorney;

The sum of **Four Thousand One Hundred Ninety-Six and 08/100 (\$4,196.08) Dollars** as costs pursuant to the same written contract;

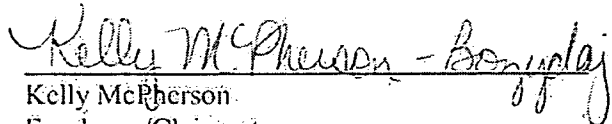
The sum of **Ninety-Nine Thousand One Hundred Thirty-Seven and 25/100 (\$99,137.25)** in compromise settlement of disputed future lost earnings at the rate of **\$51.13** per week for 1939.08 weeks, (Claimant/Employee's remaining life expectancy per South Carolina Code Ann. Section 19-1-150). See *Utica-Mohawk v. Orr*, 227 S.C. 226, 87 S.E.2d 589 (1955); *Sciarotta v. Bowen*, 837 F.2d 135 (3d Cir. 1988); 42 U.S.C. §424a (Social Security Act).

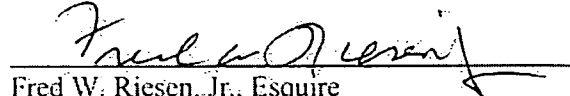
The Claimant hereby represents that she has been fully advised of her rights under the South Carolina Workers' Compensation Act and that she is of the opinion that the proposed settlement is reasonable and fair. Claimant's counsel represents that he has reviewed the settlement and has explained the terms to the Claimant and Claimant voluntarily and without coercion agreed to the terms. Claimant's counsel concurs in the opinion that the settlement is reasonable and fair. The parties acknowledge that the Commission relies upon the representation of counsel for the Claimant that the Claimant has been fully apprised of her rights under the laws of the South Carolina Workers' Compensation Act. Both Claimant and Claimant's counsel request the South Carolina Workers' Compensation Commission approve this SETTLEMENT AGREEMENT AND RELEASE in compliance with S.C. Code Ann. §42-9-390 (amended July 1, 2007), whereunder this SETTLEMENT AGREEMENT AND RELEASE, when stamped "received settlement" by the South Carolina Workers' Compensation Commission, shall be deemed approved by the South Carolina Workers' Compensation Commission and shall be binding on the parties as an unappealed Order, Decision and Award of the Commission and shall not be reviewable or modifiable by the Workers' Compensation Commission or any court or tribunal consistent with Spivey vs. Carolina Crawler, 624 S.E.2d 435 (Ct. App. 2005).

NOW, THEREFORE, based upon the premises herein and the payment of the sum as aforesaid, the Claimant does hereby release, acquit and forever discharge the Defendants of and from any and all known and unknown claims under the South Carolina Workers' Compensation Act for disability, temporary and permanent, total and partial, present and future, and all claims for compensation under the South Carolina Workers' Compensation Act for disfigurement and for any

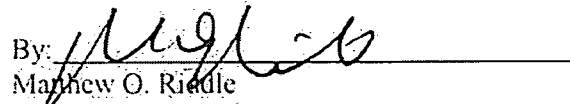
change of condition, and all claims under the South Carolina Workers' Compensation Act for any medical, hospital, surgical, and nursing and any other expenses which the Claimant may have incurred in the past or may incur in the present or future (the sole exception being such medical, hospital, surgical and nursing expenses as have previously been incurred by the Claimant at the request of the Defendants) connected with the aforesaid accident, injuries and problems sustained by the Claimant after the payment and receipt of said sum of **One Hundred and Fifty Five Thousand Dollars (\$155,000.00)**.

The parties are hereby filing this SETTLEMENT AGREEMENT AND RELEASE with the South Carolina Workers' Compensation Commission as required by S.C. Code Ann. §42-9-390 (amended July 1, 2007).


Kelly McPherson
Employee/Claimant


Fred W. Riesen, Jr., Esquire
Riesen Law Firm, LLP
Attorney for the Employee/Claimant

Charleston County School District
Employer/Self-Insured

By: 
Matthew O. Riedle
Young Clement Rivers, LLP
Attorney for the Employer/Self-Insured

The South Carolina Court of Appeals

Kelly McPherson, Claimant/Appellant,

v.

Charleston County School District,
Employer/Carrier/Respondent.

Appellate Case No. 2016-000597

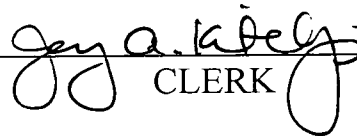
Trial Court Case No. 1104105

ORDER

The parties have informed the Court that they have reached a settlement agreement. Accordingly, the appeal is dismissed and remanded to the Workers' Compensation Commission for approval. If the Workers' Compensation Commission does not approve the settlement, the Court will upon request reinstate the appeal. If the Workers' Compensation Commission approves the settlement, the parties shall promptly notify this Court. The Court may send the remittitur upon approval of the settlement or 90 days from the date of this order unless good cause is shown why this case should not be remitted.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

FILED

4-3-17

cc:

Frederick W. Riesen, III, Esquire
Frederick W. Riesen, Jr., Esquire
Matthew Oliver Riddle, Esquire
Catherine Holland Chase, Esquire
Stephen Lynwood Brown, Esquire