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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Avery B. Wilkerson, Commissioner
Melody L. James, Commissioner
R. Michael Campbell, Commissioner

RECEIVED

JUN 02 2017
SC Court of Appeals

WCC File No. 1302654

Wanda Joe Employee, Claimant, Appellant,

v.

S.C. Department of Disabilities and Special Needs, Employer, and State Accident Fund,
Carrier, Respondents.

APPELLANT'S FINAL BRIEF

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Attorney for Employee/Claimant/Appellant

[Redacted signature area]

STATEMENT OF ISSUES ON APPEAL

1. **Did the Full Commission Panel err in fully affirming the Order of the Single Commissioner which gave the greatest weight to Dr. Gunter and therefore found that:**
 - a. **Appellant reached maximum medical improvement on April 1, 2015;**
 - b. **Appellant sustained a 14% permanent partial disability to her back as a result of the work injury of March 7, 2013;**
 - c. **There is no evidence in the record that any additional medical treatment would tend to lessen the period of Appellant's disability;**
 - d. **Respondents were entitled to stop payment of temporary total compensation effective March 15, 2016, and were entitled to a credit for the overpayment of temporary total compensation since April 1, 2015; and**
 - e. **Appellant is not entitled to any further medical benefits or treatment as a result of her work injury.**

2. **Did the Full Commission Panel err in fully affirming the Order of the Single Commissioner which excluded the independent medical evaluation report of Dr. Johnson?**

STATEMENT OF THE CASE

This is an appeal from the Workers' Compensation Commission. This case was heard by the Full Commission Panel in Columbia, South Carolina on August 15, 2016. Appellant sustained a compensable injury by accident on March 7, 2013, when she was assisting a seizing patient. Appellant suffered an injury to her back. It is Appellant's position in this matter that she is not at maximum medical improvement as a result of her March 7, 2013, accident and that she would benefit from additional medical treatment as a result of the same. Specifically, Appellant requests authorization for further spinal cord stimulator trial counseling and/or pain management procedures.

It is Respondents' position in this matter that Appellant is at maximum medical improvement for an injury to Appellant's lumbar spine as of April 1, 2015, per the opinion of Dr. Brett Gunter, an authorized treating physician.

The medical evidence submitted reflects that Appellant treated for lumbar spine injuries from March 7, 2013, until being released by Dr. Gunter on April 1, 2015. Prior to Dr. Gunter's assumption of care, Appellant was treated by Dr. Rakesh Chokshi. Appellant was treated with medication, injections, and physical therapy. Appellant was further evaluated by Dr. Donald Johnson, who opined that Appellant is, from a surgical standpoint, at maximum medical improvement. However, Dr. Johnson indicated that she would benefit from ongoing advanced pain management (i.e., injections, physical therapy, possibly rhizotomy procedure) and possible spinal cord stimulator trial as suggested by Dr. Chokshi.

Appellant contended that since her work injury, several of her symptoms remain unresolved. Specifically, low back pain with radiation, numbness and tingling into her bilateral lower extremities, right greater than left.

A hearing was set in front of the Single Commissioner on June 17, 2015, in Florence, South Carolina, to determine issues set forth on the Form 21. On March 15, 2016, the Single Commissioner ordered that Appellant was entitled to a PPD award to the back consistent with fourteen (14%) percent, that Appellant was not entitled to any additional medical treatment, and that Respondents were entitled to a credit of temporary total disability benefits (TTD) from April 1, 2015, to March 15, 2016.

Appellant filed a Form 30 on March 28, 2016, to appeal the Single Commissioner's Order that affords the opinion of Dr. Gunter the greatest weight despite the longer medical relationship between Dr. Chokshi and Appellant, excludes the independent medical evaluation of Dr. Johnson, and ultimately held that:

Appellant reached maximum medical improvement on April 1, 2015;

There is no evidence of record that any additional medical treatment would tend to lessen the period of Appellant's disability;

Respondents were entitled to stop payment of temporary total compensation effective March 15, 2016, and were entitled to a credit for the overpayment of temporary total compensation since April 1, 2015, and;

Appellant is not entitled to any further medical benefits or treatment as a result of her work injury.

A hearing was set in front of the Full Commission Panel on August 15, 2016, in Columbia, South Carolina to determine the issues set forth on the Form 30. On October 25, 2016, the Full Commission Panel affirmed in full the Order of the Single Commissioner, which held that Appellant was entitled to a PPD award to the back consistent with fourteen (14%) percent, that Appellant was not entitled to any additional medical treatment, that Respondents were entitled to a credit of temporary total disability benefits (TTD) from April 1, 2015, to March 15, 2016, that Appellant reached maximum medical improvement on April 1, 2015, and as such that Respondents were not liable for any additional medical, surgical, hospital or other medical treatment to Appellant after said date.

Claimant now appeals to this Court.

ARGUMENT

1. **THE FULL COMMISSION PANEL ERRED IN FULLY AFFIRMING THE ORDER OF THE SINGLE COMMISSIONER WHICH GAVE THE GREATEST WEIGHT TO DR. GUNTER, AND THEREFORE FOUND THAT:**
 - a. **APPELLANT REACHED MAXIMUM MEDICAL IMPROVEMENT ON APRIL 1, 2015;**
 - b. **APPELLANT SUSTAINED A 14% PERMANENT PARTIAL DISABILITY TO HER BACK AS A RESULT OF THE WORK INJURY OF MARCH 7, 2013;**
 - c. **THERE IS NO EVIDENCE IN THE RECORD THAT ANY ADDITIONAL MEDICAL TREATMENT WOULD TEND TO LESSEN THE PERIOD OF APPELLANT'S DISABILITY;**
 - d. **RESPONDENTS WERE ENTITLED TO STOP PAYMENT OF TEMPORARY TOTAL COMPENSATION EFFECTIVE MARCH 15, 2016, AND WERE ENTITLED TO A CREDIT FOR THE OVERPAYMENT OF TEMPORARY TOTAL COMPENSATION SINCE APRIL 1, 2015; AND**
 - e. **APPELLANT IS NOT ENTITLED TO ANY FURTHER MEDICAL BENEFITS OR TREATMENT AS A RESULT OF HER WORK INJURY.**

The Full Commission Panel erred in fully affirming the Order of the Single Commissioner which gave the greatest weight to Dr. Gunter, and therefore made subsequent findings that are inconsistent with the evidence of record. In addition to Dr. Gunter, a spinal surgeon, Appellant was evaluated by Drs. Chokshi and Johnson, both spinal surgeons, with regard to her back. After a failed discogram, Dr. Chokshi ruled out surgical intervention. Dr. Johnson agreed. However, when Appellant last saw Dr. Chokshi on September 10, 2014, Dr. Chokshi recommended a spinal cord stimulator trial. Appellant was unsure as to whether she wanted to undergo this procedure and requested a second opinion, which gives rise to Dr. Gunter's assumption of care. Appellant saw Dr. Gunter on two occasions. At the first visit on November 19, 2014, Dr. Gunter noted that Appellant wished to pursue additional counseling on the spinal cord stimulator trial. Dr. Gunter noted at that time that the Appellant had numbness and tingling in the front of her lower legs into the tops of her feet and toes. Dr. Gunter ordered physical therapy. Dr. Gunter next saw Appellant on April 1, 2015, at which time he released her

from his care and deemed her at maximum medical improvement. Dr. Gunter never discussed any ongoing pain management techniques with Appellant, spinal cord stimulator trial or otherwise. (Claimant's Full Commission Brief pp. 4-5; R. p. 39-40).

“MMI is a medical issue that requires a medical opinion concerning the health status of a person taking into consideration whether additional care and treatment will lessen the claimant's impairment. Assuming the physician reaches the opinion that the claimant no longer needs medical care or treatment related to the work injury because the claimant has reached a medical plateau, then MMI has occurred.” Beard, Poteat, Lamar, Sumwalt, Bluestein, Sullivan, *The Law of Workers' Compensation Insurance*, (S.C. Bar 6th Ed. 2012), Ch. 9 – Benefits, p. 329. It is reasonably impossible for an injured worker to have reached maximum medical improvement when there is evidence of a blatant disparity between the evaluative efforts made by a treating physician and an injured worker's undisputed ongoing symptoms.

2. THE FULL COMMISSION PANEL ERRED IN FULLY AFFIRMING THE ORDER OF THE SINGLE COMMISSIONER WHICH EXCLUDED THE INDEPENDENT MEDICAL EVALUATION REPORT OF DR. JOHNSON.

By way of an independent medical evaluation, Appellant was evaluated by Dr. Donald Johnson of Southeastern Spine Institute on June 10, 2015. Dr. Johnson agreed that Appellant was at maximum medical improvement from a surgical standpoint. However, citing Appellant's positive EMG nerve conduction study, evidencing radiculopathy, Dr. Johnson opined that Appellant would benefit from “ongoing pain management with physician visits every one to two months to include medications, potential course of physical therapy, potential repeat injections, facet medical branch blocks, facet rhizotomy (if successful, repeat rhizotomies every 18 months) and possible spinal cord stimulator trial as suggested by Dr. Chokshi.” (Id.; R. p. 39-40).

Respondents contended that the inclusion of Dr. Johnson's report would unfairly prejudice them, based on its submission by way of an Amended Form 58. Respondents filed their Form 21 on April 16, 2015. Appellant saw Dr. Johnson on June 10, 2015. Appellant testified at her deposition on June 3, 2015, that she had an appointment to see Dr. Johnson on June 10, 2015, and Dr. Johnson's report was completed on June 16, 2015.

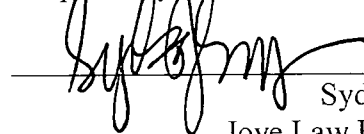
Appellant testified that while her thoracic back pain had improved with treatment since the initial injury, her low back pain with numbness and tingling into her bilateral lower extremities are ongoing without resolution. Furthermore, Appellant testified at the hearing that she is willing to try any treatment recommendation made available to her to obtain relief from her symptoms. (Tr. pp. 22; R. p. 80).

Based on the foregoing, we ask that this Court find that Appellant is entitled to further medical examination and/or treatment with regard to her unresolved symptoms.

CONCLUSION

This Court should reverse the Decision and Order of the Full Commission Panel and allow Appellant further medical examination and/or treatment.

Respectfully submitted,



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Dated: June 1, 2017

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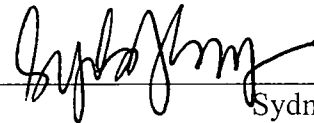
v.

S.C. Department of Disabilities and Special Needs, Employer, and State Accident Fund,
Carrier, Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCAR.

June 1, 2017



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Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2017, addressed to the attorney of record, Sarah S. Alphin, Esq., 3600 Forest Drive, Suite 204, Columbia, South Carolina 29204.

And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2017, addressed to the attorney of record Ashley K. Dixon, Esq., 3600 Forest Drive, Suite 204, Columbia, South Carolina 29204.


And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2017, addressed to Wanda Joe, Post Office Box 737, Timmons ville, South Carolina 29161.

And

I certify that I have served the Appellant Brief by depositing a copy of it in the United States Mail, postage prepaid, on June 1, 2017, addressed to the South Carolina Workers' Compensation Commission, 1333 Main Street, Columbia, SC 29202.

June 1, 2017



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STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
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and
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Carrier,
Respondent.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 1, 2017, I mailed the original Appellant's Final Brief, Proof of Service and Certificate of Counsel:

Ms. Jenny Abbott Kitchings
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 VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

by placing a copy of said documents in the United States Mail with sufficient postage thereon.



Robert Callahan
Legal Assistant to Sydney J. Lynn