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APPELLATE PANEL DECISION AND ORDER SC Court of Appeals

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1421162

Karen M. Duncan,

EMPLOYEE,
CLAIMANT/RESPONDENT

vs.

Eaton Corporation,

EMPLOYER,

and

Old Republic Insurance Company,

CARRIER,
DEFENDANTS/APPELLANTS.

Appellate Panel Review held in Columbia, South Carolina on March 21, 2017
pursuant to Notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed: June 13, 2017

APPEARANCES: Claimant/Appellant represented by Willie J. Peters, Esquire and Darren S. Haley, Esquire

Defendants/Respondents represented by J. Russell Goudelock, II

STATEMENT OF THE CASE

Claimant sustained an admitted injury to her left shoulder by accident arising out of and in the course of her employment with Defendant, Eaton Corporation ["Employer"], on September 26, 2014. Defendants furnished medical benefits and temporary disability benefits. Defendants asserted that Claimant has reached maximum medical improvement and sought a determination regarding permanent partial specific scheduled loss of use to Claimant's left shoulder.

Claimant asserted that she is entitled to compensation benefits for permanent partial specific scheduled loss of use to her left shoulder. She also contended that she needs and is entitled to additional medical evaluation and treatment.

Defendants filed a WCC Form 21 (Employer's Request for Hearing) on February 22, 2016 to pay permanent disability compensation benefits to Claimant. A hearing was held on August 30, 2016 in Laurens, South Carolina before Commissioner Avery B. Wilkerson, Jr. Commissioner Wilkerson issued a Decision and Order on December 1, 2016, finding that the Claimant sustained 10% permanent partial specific scheduled loss of use to her left shoulder. The Claimant filed a Form 30 (Request for Commission Review) seeking review by the Full Commission and taking exception to Commissioner Wilkerson's permanent disability award.

In the appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. §42-17-50, review the award, weigh the evidence that was presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

On March 21, 2017, oral arguments were presented before the Appellate Panel. Based upon oral arguments, review and consideration of the parties' Appellate Briefs, review of the

hearing transcript, review of submitted documentary evidence of record, and review of the portions of the Workers' Compensation Commission's file admitted into the record, the Appellate Panel affirms the Decision and Order of the Single Commissioner. Accordingly, the following Findings of Fact and Conclusions of Law shall become the law of the case and, therefore, the Decision and Order of the Hearing Commissioner is hereby **AFFIRMED** in its entirety.

FINDINGS OF FACTS AND RULINGS OF LAW

1. Claimant sustained a compensable work injury on September 26, 2014, to her left shoulder only.
2. Claimant did not sustain any other or additional injury, including but not limited to an injury to her neck, left arm, left hand or left fingers, by accident or repetitive trauma arising out of or in the course of her employment with Employer.
3. At the time of the work injury, Claimant earned average weekly wages of \$548.97 with an applicable compensation rate of \$366.00.
4. Claimant was out of work because of injury from March 17, 2015 through April 29, 2015. Defendants furnished appropriate weekly temporary disability compensation benefits to Claimant.
5. Claimant returned to work at light duty on April 30, 2015 and has continued to work at full duty without restrictions since September 2, 2015.
6. Dr. Anthony Timms, Claimant's treating physician, assigned Claimant a permanent impairment rating of 3% to the left upper extremity, which is equivalent under the *AMA Guides* to an impairment rating of 5% to the left shoulder.

7. Dr. William DeVault evaluated Claimant on one occasion only and assigned Claimant a permanent impairment rating of 53% to her left shoulder. Dr. DeVault's impairment rating does not appropriately follow the AMA Guides. It is based upon an erroneous combination of multiple medical conditions and erroneous calculations. An appropriate calculation, based upon findings reflected in Dr. DeVault's medical report, would reflect an impairment rating of 13% to the left shoulder.

8. Dr. Anthony Timms is the authorized treating physician. He evaluated Claimant's condition and followed Claimant's progress on multiple occasions for almost one year. Greater weight is attributed to Dr. Timms' medical opinion.

9. Claimant has sustained 10% permanent partial specific scheduled loss of use to her left shoulder.

10. Defendants have provided Claimant with appropriate medical care because of her work injury.

11. Claimant has not required any additional medical treatment for her left shoulder since October 14, 2015.

12. Claimant reached maximum medical improvement on October 14, 2015.

13. No further medical treatment or evaluation after October 14, 2015 will effect a cure, give relief, or tend to lessen any period of Claimant's disability.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. Pursuant to S.C. Code Ann. Sections 42-1-40, 42-1-150, 42-9-30(14) and other applicable law, Claimant is entitled to compensation benefits for 10% permanent partial specific

scheduled loss of use to her right shoulder at a compensation rate of \$366.00 weekly for thirty weeks commencing effective October 15, 2015. Such benefits shall be paid to Claimant in an appropriate lump sum.

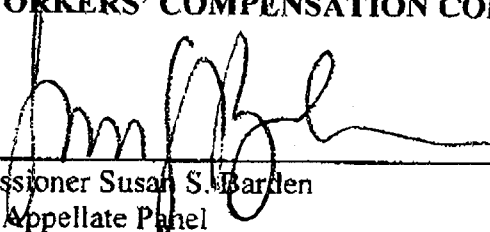
3. Pursuant to S.C. Code Ann. Sections 42-1-120, 42-15-60 and other applicable law, Claimant is entitled to no further medical evaluation or treatment to Claimant after October 14, 2015.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Order of the Single Commissioner is hereby **AFFIRMED IN FULL**, and the Findings of Fact and Conclusions of Law set forth above are the final decision of the Workers' Compensation Commission. Accordingly, Claimant is entitled to receipt, in a lump sum, of disability compensation benefits commencing effective October 15, 2015 at a compensation rate of \$366.00 weekly for thirty weeks.

IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



Commissioner Susan S. Barden
For the Appellate Panel

WE CONCUR:



Commissioner Gene McCaskill



Commissioner Melody L. 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 Valerie Deller on June 13, 2017

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Haley Law Firm LLC

Attorneys and Counselors at Law

Via USPS Mail and Email

July 10, 2017


Creel Court Reporting
1230 Richland Street
Columbia, SC 29201
Attn: Sonia Wallace-Sanders

RE: Request for Transcript
Karen Duncan v. Eaton Corporation, and Old Republic Insurance Company
W.C.C. File No. 1421162

To Whom It May Concern:

Karen Duncan, by her attorney, hereby requests a transcript of the hearing in the above-referenced matter that took place on March 21, 2017, before the South Carolina Workers' Compensation Commission Appellate Panel. Please advise further as to any costs involved.

Very truly yours,
THE HALEY LAW FIRM


Willfe J. Peters, Esq.
For the Firm

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SC Court of Appeals



DARREN S HALEY
ATTORNEY AT LAW
TRUST ACCOUNT
 1007 PENDLETON ST
 GREENVILLE, SC 29601

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Date 7/10/17

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South Carolina Court of Appeals

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FOR WCC No: 1421162

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