

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

W.C.C. FILE NO: 1221499

Doretta Butler

EMPLOYEE,  
CLAIMANT/RESPONDENT

VS.

ITW Labels

EMPLOYER,

AND

American Zurich Insurance Company/Zurich  
North America c/o Broadspire

CARRIER,  
DEFENDANTS/APPELLANTS,

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Appellate Panel Review held in Columbia, South  
Carolina, on April 18, 2017 per notices timely  
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

June 14, 2017

APPEARANCES: Claimant/Appellant represented by Stephen B. Samuels, Esquire  
Defendants/Respondents represented by Jason W. Lockhart, Esquire

## STATEMENT OF THE CASE

A Hearing was held before the Single Commissioner pursuant to Forms 50 and 51. The Claimant alleged that she sustained a compensable injury to the neck, right hand, right shoulder and/or right upper extremity while in the course and scope of the Claimant's employment with the Employer in April 2012. The Claimant maintained that the Claimant's alleged work-related injuries arose as a result of a specific work-related accident or, in the alternative, the Claimant's performance of repetitive activities while working with the Employer. The Claimant also maintained that she had not reached maximum medical improvement and was entitled to temporary total disability benefits from December 2014 to the present and continuing, causally-related medical care until she reaches maximum medical improvement, as well as with reimbursement for medical care incurred to date. Furthermore, the Claimant requested that Dr. Mazoue be designated as the authorized treating physician. In response, the Defendants maintained that the Claimant could not satisfy her burden of proving a compensable injury to the neck, right hand, right shoulder and/or right upper extremity pursuant to Section 42-1-160 and/or Section 42-1-172 of the Act.

A hearing in this matter was held before Commissioner McCaskill on March 7, 2016. At the conclusion of the hearing, Commissioner McCaskill issued a Decision and Order making the following Findings of Fact and Conclusions of Law:

## FINDINGS OF FACTS

Based upon the testimony and exhibits submitted, the undersigned makes the following Findings of Fact:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of the case.
2. Claimant's average weekly wage is Four Hundred Twenty-Nine and 86/100 (\$429.86)

Dollars, with an applicable compensation rate of Two Hundred Eighty-Six and 59/100 (\$286.59) Dollars.

3. Notice of Hearing was timely and properly served upon all parties of interest.
4. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that the Claimant alleges she sustained an injury by accident on 04/10/12 while lifting laminate. Her initial injury was allegedly exacerbated by continuous repetitive use of lifting heavy materials and running them through a machine culminating in inability to work after 04/13/12. This claim is pled under both §42-1-160 and §42-1-172.
5. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Claimant is alleging injuries to her right shoulder, right arm, right hand and neck.
6. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that the alleged psyche injury is held in abeyance.
7. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that the Defendants deny the claim. They assert that the Claimant cannot meet her burden under either §42-1-160 or §42-1-172.
8. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Claimant first visited the Emergency Department at Providence on 04/14/12. The report from that visit reads in part, "pt presents today with complaint of right shoulder and forearm pain X3 days. pain worse to touch or movement. pt feels better with holding shoulder adducted with elbow flexed. pt denies any trauma. No swelling this arm. Pain described as throbbing. pt has job in which she has repetitive arm movements. pt denies fever, heat or edema to this arm." (verbatim transcription) (APA p. 1).
9. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that this report does not reflect any report by the Claimant of a work-related injury. (APA pp. 1-9).
10. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Claimant visited Palmetto Health Richland on 04/17/2012. The report from that visit reads in part, "The patient is a 39-year-old female coming in today. She has developed this right arm pain that has been going on for a week. She says it hurts more at nighttime. She was seen at Providence and had a kind of pain in her right chest and progressed down her right arm. She denies any swelling in her right arm. She says she had a workup including a chest x-ray, which has been normal. They did not give her any follow-up and she is just concerned as the pain has not gotten any better, it has gotten slightly worse. She states that she does not know what is causing this pain but is just causing some concern. She says she has no pain with movement. She

says pain is a 9/10 and she describes as an intense pain. Denies any fever or chills. Denies any trauma to her arm.” (APA p. 15).

11. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that Claimant saw Dr. Simon Tanksley on 05/11/12. He records of that encounter, “...the pain occurred 1 month(s). The context of the pain: occurred not following a fall, not during sports and not in association with work...” (APA p. 40).
12. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that, on 05/31/12, she saw Dr. Raymond C. Sweet of University Specialty Clinics. Dr. Sweet writes of that visit that the Claimant was complaining of right arm pain and numbness, mainly in the shoulder. “My impression is asymptomatic cervical disk C 5-6 and probably has shoulder pathology on the right of some sort. We will make her an appointment to see an orthopaedist specialist over here. I will not need to see her back since I do not feel that she has a neurosurgical problem. No evidence of myelopathy or radiculopathy.” (APA pp. 65-66).
13. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that Dr. Sweet’s letter does not mention any nexus of her complaints or presentation to her work. (APA pp. 65-66).
14. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that Claimant saw Dr. Andrew T. McGown of University Specialty Clinics on 06/11/12. He writes, “The patient is a 40-year-old black female here for consultation for Dr. Sweet’s office in neurosurgery. The patient arrives today with regard to right shoulder issues. This has been going on for about three months. She has had no specific injury but she started with chest pain and then had some cervical spine issues. [Dr. Sweet] sent her over here for the continued shoulder pain despite having the cervical issues addressed. He was concerned that maybe there was some shoulder pathology.” (APA p. 68).
15. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that the above-reference report of Dr. McGown makes no mention of any nexus of her complaints or presentation to her work. (APA p. 68).
16. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that Claimant saw Dr. Christopher Mazoue on 09/14/12. He writes of that encounter, “[Claimant] is a 40-year-old right-hand dominant female. Apparently on approximately April 10, 2012 she had an insidious onset of right shoulder pain. She, I believe, works laminating furniture but cannot recall that her work actually caused this injury. She had a severe onset of chest pain that radiated outward from the arm.” (APA p. 72).
17. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, I find that he also writes of his Upper Extremity Evaluation

performed on the Claimant that day, "Pain started April 10th and has not been to work since then. Does not remember a specific event. Says that pain originated at her chest and radiated out. Went to the ER at Providence originally Dx with muscle strain. Has seen Dr. McGown who recommended therapy. Pt claims that therapy has helped some, but has not provided pain relief." (APA p. 70).

18. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Dr. Mazoue writes in part of that encounter, "Ms. Butler is here for a follow-up of the MRI of her right shoulder...I think this is a very difficult problem...She is exhibiting pain and depression that are certainly out of proportion from what we see on exam or the MRI." (APA p. 75).
19. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Claimant saw Dr. Mazoue again on 08/16/13. He writes of that encounter "[Claimant] returns today after canceling her surgery 5 months ago for her R shoulder SAD, DCE, biceps tenodesis. She states the pain in her shoulder is the same as it was when we last saw her. She wears an icy hot patch during the day and finds some relief with this. She is not interested in surgery due to financial reasons. She is here today to discuss other options." (APA p. 81).
20. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that there is a questionnaire completed by Dr. Mazoue on 01/26/15 which he completed after meeting with Claimant's counsel. He so testified in his deposition. (APA p. 111; Dr. Mazoue's Depo. Tr. p. 20).
21. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, in that questionnaire, Dr. Mazoue indicates to a reasonable degree of medical certainty that he believes the Claimant's right shoulder injury is most likely related to her activities as a laminator. He also indicated that he believed that her shoulder injury "Most likely occurred on April 10, 2012, while the employee was engaged in the regular duties of her employment as a laminator particularly lifting heavy rolls." He further indicated that there was a direct causal relationship between the condition under which the work is performed and the injury. (APA p. 111).
22. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that he also answers "yes" to the statement, "My opinion is based on the history and symptoms reported by the patient, the signs shown on the physical examination, imaging studies, and the operative findings." He then adds in his own handwriting, "And review of records with regards to onset of pain and dysfunction and subsequent medical care". (Dr. Mazoue testified in his deposition as to what the handwritten note says.) (APA p. 111; Dr. Mazoue's Depo. Tr. pp. 20-21, 24).
23. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Dr. Mazoue was deposed by the parties on 08/29/16. I have read that deposition in its entirety. In that deposition, Dr. Mazoue does not change

his opinion to any of the above. (Dr. Mazoue's Depo. Tr. pp. 22, 28-29, 38).

24. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, when I view the evidence as a whole, I am not persuaded that the Claimant had an injury by accident on or about 04/10/13.
25. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, there simply is not any description in the medical records or in the Claimant's testimony that persuades me that there was an injury by accident as defined in the Act.
26. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, as to a repetitive injury, I must determine whether there enough evidence in the record to tip the scale in the Claimant's favor.
27. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that there is no indication in the medical records – other than the opinion of Dr. Mazoue – that the Claimant was injured at work. I find that lack of reference troubling.
28. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that there are several indications throughout the record that her injury is not job-related. (APA pp. 1, 13, 30, 35, 40, 68, 70, 72, 85, 254, 270).
29. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, while an argument can be made that if her work is repetitive, there is little testimony as to the repetitive nature of the job.
30. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that the Aetna form which the husband completed for the Claimant lists an answer of "No" to the question, "Is this condition work related?" (H. Tr. pp. 31, 51, 53; APA p. 254).
31. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that the Claimant testified that she did not know her injury was caused by work. (H. Tr. pp. 26, 31).
32. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, when the evidence is viewed as a whole, I am not persuaded that the Claimant has met her burden as to compensability.
33. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, clearly, she has medical issues. She has had surgery and the record is replete with references to the right upper extremity medical issues she has had.
34. Based on the substantial evidence, including Claimant's testimony and the medical

records of Claimant, I find that Dr. Mazoue has opined that those issues are work-related. That being said, his conclusion as to that work nexus does not come while he is actively treating her. It comes some time later in a medical questionnaire. (APA p. 111). As such, I cannot give that opinion the weight I would normally give such opinion offered contemporaneously to the alleged date of injury.

35. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, even after extensive review, I cannot make a finding of compensability without speculation. The record alone simply does not lead me to find otherwise.
36. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that, as such, the claim is dismissed with prejudice.
37. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that did not satisfy her burden of proving a compensable injury by accident and/or compensable repetitive trauma while in the course and scope of her employment with the Defendants.
38. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, I find that Claimant is not entitled to any benefits under the Act.

### CONCLUSIONS OF LAW

It is concluded that under the South Carolina Workers' Compensation Act, §42-1-110, S. C.

Code of Laws, et. seq. that:

1. Pursuant to S. C. Code Ann. §42-17-20, and based on the substantial evidence, jurisdiction and venue are proper.
2. Pursuant to S. C. Workers' Compensation Rules and Regulations, Rule 67-210(b) and Rule 67-213(c), and based on the substantial evidence, the parties were properly served the Notice of Hearing.
3. Pursuant to S. C. Code Ann. §42-1-140, and based on the substantial evidence, Claimant's average weekly wage is Four Hundred Twenty-Nine and 86/100 (\$429.86) Dollars; with an applicable compensation rate of Two Hundred Eighty-Six and 59/100 (\$286.59) Dollars.
4. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
5. Only the facts and circumstances of the injury can determine whether it is compensable and, therefore, whether the employee's remedy is exclusively under the Compensation Law. Thompson v. J.A. Jones Const. Co., 199 S.C. 304, 19 S.E.2d. 226 (1942).

6. A workers' compensation claimant has the burden of proving facts that show the alleged injury arose out of and in the course and scope of employment. Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (S.C. 1998).
7. A "possibility" is not enough to show that a worker's injury arose out of and in the course and scope of his employment. Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960).
8. Expert medical testimony is designed to aid the Commission in reaching the correct conclusion, and therefore, the Commission determines the weight and credit to be given to the expert testimony. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (S.C. 1999).
9. Pursuant to the application of S. C. Code Ann. §42-1-160, and based on the substantial evidence, including the testimony of Claimant and the medical records of Claimant, Claimant has not sustained her burden of proving a compensable injury to the right shoulder, right arm, right hand and/or neck as a result of the alleged April 2012 work accident.
10. Pursuant to the application of S. C. Code Ann. §42-1-172, and based on the substantial evidence, including the testimony of Claimant and the medical records of Claimant, Claimant has not sustained her burden of proving a compensable repetitive trauma injury to the right shoulder, right arm, right hand and/or neck as a result of the alleged April 2012 work accident.
11. Claimant is not entitled to any benefits under the Act.

Following the Decision and Order, Claimant filed a Form 30 and asserted several exceptions to the Decision and Order:

1. Whether the single commissioner erred, as a matter of fact and law, in finding various medical records did not reflect a report of a work-related injury (Findings of Fact #25, 27-28);
2. Whether the single commissioner erred, as a matter of fact and law, in finding Claimant did not sustain a compensable injury under Sections 42-1-160 or 42-1-172 (Findings of Fact #24, 28-29, 32, 37);
3. Whether the single commissioner erred, as a matter of fact and law, in disregarding the opinions of Dr. Tanksley that Claimant's injury happened in connection with her work (Findings of Fact #11);
4. Whether the single commissioner erred, as a matter of fact and law, in giving normal weight to Dr. Mazoue's opinion in the questionnaire and deposition because "his conclusion as to that work nexus does not come while he is actively treating her," when Dr. Mazoue gave these opinions less than a month after his examination of Claimant at a time when he would

have continued treating her, had she been able to afford treatment or had the claim been accepted (Findings of Fact #34);

5. Whether the single commissioner erred, as a matter of fact and law, in finding only Dr. Mazoue opined the injury was work-related when Dr. Tanksley also opined the injury occurred in connection with work (Findings of Fact #11, 34);
6. Whether the single commissioner erred, as a matter of fact and law, in finding “there are several indications throughout the record that her injury is not job-related” (Findings of Fact #28);
7. Whether the single commissioner erred, as a matter of fact and law, in failing to apply Schlumberger for the proposition that a misdiagnosis is not evidence that an injury is not connected to work;
8. Whether the single commissioner erred, as a matter of fact and law, in denying the claim for benefits due to injuries to the right shoulder, right arm, right hand and/or neck (Findings of Fact #24, 28-29, 32, 37); and
9. Whether the single commissioner erred, as a matter fact and law, in finding Claimant failed to sustain her burden of proof when the uncontradicted lay and medical evidence confirmed she had suffered a work-related injury (Findings of Fact #37)

### **EVIDENCE OF THE CASE**

#### **Testimony of the Claimant**

The Claimant was the only witness to testify on her behalf. The Claimant testified that she is currently 44 years of age. (H. Tr. p. 18). The Claimant indicated that she graduated from high school and studied for two years at Midlands Technical College. (H. Tr. p. 18). The Claimant indicated that she began working with the Employer in March 2000 as a laminator/inspector, and was employed as a laminator/inspector on the date of her alleged April 2012 work-related accident. (H. Tr. pp. 19-20, 23-24). The Claimant testified that her job duties as a laminator/inspector required her to lift and run materials on a daily basis. (H. Tr. pp. 21-22). The Claimant testified that she is right-hand dominant. (H. Tr. p. 23).

The Claimant testified that she sustained an injury to the right upper extremity while in the course and scope of her employment with the Employer on either April 10, 2012 or April 11, 2012. (H. Tr. p. 24). The Claimant testified that she was injured due to lifting the rolls and from the

repetitive nature of sending the rolls through the machine. (H. Tr. p. 23). The Claimant stated that, while she developed right upper extremity pain and problems, she did not think, at the time, that the above-referenced problems came from her job with the Employer. (H. Tr. p. 26). The Claimant indicated that she “thought [she] was hurting those days until [she found] out the right diagnosis.” (H. Tr. p. 26). The Claimant testified that she told her employer (specifically Stacie Dash) her injury was work related “in the end of July when I found out what was wrong with me.” Claimant stated that she did this again in December 2012 when Mr. House called to tell her the plant was closing and advise her about insurance. Claimant testified Dr. Tanksley “was the doctor that originally discovered that I had slipped disc in my neck.” (H. Tr. p. 32). Specifically, the Claimant stated that she believed she determined she had suffered a work-related injury after undergoing an evaluation with Dr. Sweet, and indicated that it was not until then “when I understand that it was not my slipped disc. It was my rotator cuff.” (H. Tr. p. 32).

The Claimant indicated that she sought and received initial medical treatment at Providence Hospital in Columbia, South Carolina, on April 14, 2012. (H. Tr. pp. 26-27). The Claimant testified that she sought and received additional medical treatment with Family Medicine Center and Dr. Mazoue, who is an orthopedic physician in Columbia, South Carolina. (H. Tr. p. 35). The Claimant indicated that she eventually received treatment from Dr. Mazoue in the form of surgery, which was performed in April 2014. (H. Tr. pp. 34-35). The Claimant indicated that she has not undergone a follow-up examination with Dr. Mazoue since being examined in December 2014, and has been unable to seek additional medical treatment with Dr. Mazoue due to the fact that the Claimant no longer has health insurance and does not have money for any insurance. (H. Tr. pp. 35-36, 51, 57).

The Claimant indicated that she continues to experience severe right hand and/or right upper extremity problems. (H. Tr. p. 36). More specifically, the Claimant stated that she cannot write with her right hand nor can she pick up objects with her right hand nor can she sleep well. (H. Tr. p. 36). The Claimant testified that she could possibly return to work with the Employer if “I would have

been [an] inspector. That's just looking at sheets." (H. Tr. pp. 37, 59). The Claimant admitted that she can lift her right upper extremity overhead, but it hurts from the top of her shoulder to her elbow. (H. Tr. pp. 37-38).

On cross-examination, the Claimant was presented with the diagnostic reports of Providence Hospital, Palmetto Health Richland, Family Medical Center, Dr. McGown and Dr. Mazoue, and most of the records shown to her by defense counsel made no mention of the Claimant providing her physicians with a history of a work-related accident. With regard to the above-referenced medical records, the Claimant admitted that she did not provide the medical providers with a history of work-related injury because "I was informed that I had a slipped disc in my neck. I didn't know that it was my rotator cuff." She added "The pain did start at work, but I didn't think it came from work." (H. Tr. pp. 38-48, 70-72). The Claimant indicated that she did not begin to provide the physicians with complaints of pain and problems due to a work-related injury until she was diagnosed with a rotator cuff injury. (H. Tr. pp. 46-47). More specifically, the Claimant testified that she informed Dr. Mazoue in September 2012 that she had been injured on the job due to lifting rolls. (H. Tr. pp. 48-49). However, the Claimant's deposition testimony indicates that Claimant told Dr. Mazoue the injury resulted from "lifting boxes" at work. (Clmt.'s November 24, 2014 Depo. Tr. p. 40). Claimant further explained that "we have material that come in rolls. We have material that come in boxes as well. When I do inventory, I lift the boxes of rolls. I can lift rolls of material too as well. They either come in sheets, boxes, or rolls." (H. Tr. Pp. 49-50).

The Claimant testified that she also filed for and received short-term disability benefits through her employment with the Employer, and that documentation, which was part of her application for short-term disability benefits indicating that her medical condition was not the result of a work-related accident, may have been completed by her husband as opposed to by the Claimant. (H. Tr. pp. 51, 53). The Claimant stated that she last received long-term disability benefits in December 2014, and that her only current source of income is her husband's wages. (H. Tr. pp. 51-

52). The Claimant admitted that her applications for short term and long term disability indicated that her condition was not work-related. (H. Tr. pp. 53-55). The Claimant testified “At that time when this paper was filled out, I was under the impression that I had a slipped disc in my neck. So I didn’t know it was a work-related injury.” (H. Tr. P. 31).

The Claimant indicated that she is not currently being written out of work by a physician. (H. Tr. pp. 58-59). The Claimant testified that she is only currently experiencing problems with the right shoulder and/or right upper extremity, and is not experiencing problems with her neck. (H. Tr. pp. 60-61).

### **Medical Evidence**

The Claimant initially sought treatment at Providence Hospital on April 14, 2012. (APA pp. 1-9). The Claimant cited complaints of right shoulder pain, which had been present for three days. (APA p. 1). The report stated “Patient has job in which she has repetitive arm movements.” (APA p. 1). X-rays of the right shoulder, right forearm, and chest were normal. (APA p. 7-9). The Claimant sought treatment at Palmetto Health Richland on April 17, 2012. (APA pp. 15-17). The Claimant cited pain in her right arm, which had been present for one week. (APA p. 15). However, the Claimant reported that she did not know what was causing the pain. (APA p. 15). An x-ray of the right shoulder, which was performed on May 9, 2012, was unremarkable. (APA p. 24).

Claimant saw Dr. Tanksley on May 2, 2012. Dr. Tanksley ordered a cervical MRI. His electronic medical report contains the notation “not following a fall, not during sports and not in association with work.” (APA p. 35). On May 11, 2012, Dr. Tanksley filled out the physician’s portion of the Short Term Disability application. The diagnosis was “Cervical Radiculopathy.” On the question “Is condition due to injury or sickness arising out of the patient’s employment?” he checked “Unknown.” (APA pages 256-257). He referred Claimant to Dr. Sweet for acute radiculopathy.

On May 15, 2012, Claimant returned to Dr. Tanksley. He wrote a work excuse stating "Please excuse her from work, for the next two weeks, while we try to figure out what is causing patient's arm pain." (APA p. 43).

With regard to the neck, the Claimant underwent an examination with Dr. Sweet on May 31, 2012. (APA pp. 65-66). Dr. Sweet, who is a neurosurgeon in Columbia, South Carolina, diagnosed the Claimant with a cervical bulge at C5-6, and recommended that the Claimant undergo an orthopedic evaluation in light of the Claimant's right shoulder pain and problems. Dr. Sweet wrote "My impression is asymptomatic cervical disc C5-6 and probably has shoulder pathology on the right of some sort." (APA pp. 65-66).

On June 11, 2012, Claimant saw Dr. McGowan, a shoulder specialist, at University Orthopedics. On her intake paperwork, her husband wrote an injury date of "April 2012" which "started with chest pain and generated to shoulder and fingers." (APA p. 67). Dr. McGowan diagnosed her with shoulder pain and ordered physical therapy. (APA p. 69). Under history of present illness, Dr. McGowan wrote "Pain started April 10th and has not been to work since then. Does not remember a specific event. Says that pain originated at her chest and radiated out."

During this time, Claimant continued to see Dr. Tanksley. In his report of June 15, 2012, he noted she was seeing Dr. McGowan for a rotator cuff injury to her right shoulder. (APA p. 54). On July 30, 2012, Dr. Tanksley wrote in his electronic medical records "The context of the pain: occurred with movement, in association with work, not following a fall, not associated with cold weather, not associated with damp weather and not during sports." (APA p. 55).

Subsequently, on September 14, 2012, the Claimant underwent an evaluation with Dr. Mazoue, who is an orthopedic physician in Columbia, South Carolina. (APA pp. 72-74). Under history of present illness, Dr. Mazoue wrote "Pain started April 10th and has not been to work since then. Does not remember a specific event. Says that pain originated at her chest and radiated out." (APA p. 70). Claimant reported right shoulder pain, but could not recall that her work actually caused the injury.

Dr. Mazoue added "Apparently on approximately April 10, 2012, she had an insidious onset of right shoulder pain. She, I believe, works laminating furniture but cannot recall that her work actually caused this injury. She had a severe onset of chest pain that radiated out from the arm." (APA p. 72). Following a MRI of the right shoulder, Dr. Mazoue conducted diagnostic testing of the Claimant's right shoulder, which revealed the presence of rotator cuff tendinosis and subacromial bursitis as well as AC joint arthroplasty. (APA p. 80). Subsequently, Dr. Mazoue performed a right shoulder arthroscopic subacromial decompression with acromioplasty and distal clavicle excision and bursectomy on April 1, 2014. (APA pp. 89-91). Following the surgery, the Claimant underwent physical therapy for the right shoulder at Drayer Physical Therapy from April 4, 2014, through September 24, 2014. (APA pp. 130-210). On December 29, 2014, the Claimant followed-up with Dr. Mazoue. (APA pp. 108-110). Dr. Mazoue indicated that the Claimant's right rotator cuff "overall looks very good." (APA p. 110). Dr. Mazoue recommended an intra-articular corticosteroid injection by Dr. Pollock and instructed the Claimant to follow-up with him in three months. (APA p. 110).

On January 26, 2015, Dr. Mazoue filled out a questionnaire prepared by Claimant's attorney. He gave various opinions to a reasonable degree of medical certainty to the effect that "The patient's right shoulder injury most likely occurred on April 10, 2012, while the employee was engaged in the regular duties of her employment as a laminator lifting heavy rolls." Dr. Mazoue also stated she needed additional treatment, she was not at MMI, and should remain under work restrictions. On one question regarding the basis of his opinion, he handwrote the notation "and review of records with regards to onset of pain and dysfunction and subsequent medical care." (APA p. 111).

#### Dr. Mazoue's Deposition Testimony

Defendants noticed the deposition of Dr. Mazoue, which was conducted on August 29, 2016. Dr. Mazoue opined that the Claimant's right shoulder problems were related to her employment with the Employer despite the fact that Dr. Mazoue also admitted that the Claimant never provided him

with a history of sustaining an injury and/or an accident while employed with the Employer. (Dr. Mazoue's Depo. Tr. pp. 22, 28-29, 38). Dr. Mazoue stated in his deposition that a significant portion of the information, regarding the Claimant's alleged work-related accident, was provided to Dr. Mazoue by the Claimant's attorney. (Dr. Mazoue's Depo. Tr. pp. 21-22). Dr. Mazoue testified on direct questioning from Defense Counsel that he could not recall what medical evidence he reviewed with the Claimant's attorney prior to completing the questionnaire, although he did not believe they were from his practice. (Dr. Mazoue's Depo. Tr. pp. 25, 37, 46-47). After being shown additional medical records and deposition testimony from Claimant's Counsel on cross-examination, Dr. Mazoue testified that these additional records refreshed his memory as to the records that he reviewed when he filled out and signed the questionnaire. (Dr. Mazoue's Depo. Tr. pp. 21-37). Dr. Mazoue then reaffirmed the opinions he had given in the questionnaire. (Dr. Mazoue's Depo. Tr. P. 38). He also testified as to Dr. Tanksley's report stating the pain occurred with movement, in association with work "certainly suggests there's a connection." (Dr. Mazoue's Depo. Tr. P. 47). Dr. Mazoue also testified that, despite his recommendation for the Claimant to return to his office after evaluating her in December 2014, the Claimant has not returned. (Dr. Mazoue's Depo. Tr. p. 46). He added he had no reason to believe that her failure to return after December 2014 was due to anything other than financial or insurance reasons. (Dr. Mazoue's Depo. Tr. pp. 21-37).

## **FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **FINDINGS OF FACTS**

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of the case.
2. Claimant's average weekly wage is Four Hundred Twenty-Nine and 86/100 (\$429.86) Dollars, with an applicable compensation rate of Two Hundred Eighty-Six and 59/100 (\$286.59) Dollars.

3. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Claimant alleges she sustained an injury by accident on 04/10/12 while lifting laminate. Her initial injury was allegedly exacerbated by continuous repetitive use of lifting heavy materials and running them through a machine culminating in inability to work after 04/13/12. This claim is pled under both §42-1-160 and §42-1-172.
4. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Claimant is alleging injuries to her right shoulder, right arm, right hand and neck.
5. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that the alleged psyche injury is held in abeyance.
6. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that the Defendants deny the claim. They assert that the Claimant cannot meet her burden under either §42-1-160 or §42-1-172.
7. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Claimant first visited the Emergency Department at Providence on 04/14/12. The report from that visit reads in part, "pt presents today with complaint of right shoulder and forearm pain X3 days. pain worse to touch or movement. pt feels better with holding shoulder adducted with elbow flexed. pt denies any trauma. No swelling this arm. Pain described as throbbing. pt has job in which she has repetitive arm movements. pt denies fever, heat or edema to this arm." (verbatim transcription) (APA p. 1).
8. Based on the substantial evidence, including Claimant's testimony and the medical

records of Claimant, we find that this report does not reflect any report by the Claimant of a work-related injury. (APA pp. 1-9).

9. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Claimant visited Palmetto Health Richland on 04/17/2012. The report from that visit reads in part, "The patient is a 39-year-old female coming in today. She has developed this right arm pain that has been going on for a week. She says it hurts more at nighttime. She was seen at Providence and had a kind of pain in her right chest and progressed down her right arm. She denies any swelling in her right arm. She says she had a workup including a chest x-ray, which has been normal. They did not give her any follow-up and she is just concerned as the pain has not gotten any better, it has gotten slightly worse. She states that she does not know what is causing this pain but is just causing some concern. She says she has no pain with movement. She says pain is a 9/10 and she describes as an intense pain. Denies any fever or chills. Denies any trauma to her arm." (APA p. 15).
10. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Claimant saw Dr. Simon Tanksley on 05/11/12. He records of that encounter, "...the pain occurred 1 month(s). The context of the pain: occurred not following a fall, not during sports and not in association with work..." (APA p. 40).
11. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, on 05/31/12, she saw Dr. Raymond C. Sweet of University Specialty Clinics. Dr. Sweet writes of that visit that the Claimant was complaining of right arm pain and numbness, mainly in the shoulder. "My impression is

asymptomatic cervical disk C 5-6 and probably has shoulder pathology on the right of some sort. We will make her an appointment to see an orthopaedist specialist over here. I will not need to see her back since I do not feel that she has a neurosurgical problem. No evidence of myelopathy or radiculopathy.” (APA pp. 65-66).

12. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that Dr. Sweet’s letter does not mention any nexus of her complaints or presentation to her work. (APA pp. 65-66).

13. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that Claimant saw Dr. Andrew T. McGown of University Specialty Clinics on 06/11/12. He writes, “The patient is a 40-year-old black female here for consultation for Dr. Sweet’s office in neurosurgery. The patient arrives today with regard to right shoulder issues. This has been going on for about three months. She has had no specific injury but she started with chest pain and then had some cervical spine issues. [Dr. Sweet] sent her over here for the continued shoulder pain despite having the cervical issues addressed. He was concerned that maybe there was some shoulder pathology.” (APA p. 68).

14. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that the above-referenced report of Dr. McGown makes no mention of any nexus of her complaints or presentation to her work. (APA p. 68).

15. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that Claimant saw Dr. Christopher Mazoue on 09/14/12. He writes of that encounter, “[Claimant] is a 40-year-old right-hand dominant female. Apparently on approximately April 10, 2012 she had an insidious onset of right shoulder

pain. She, I believe, works laminating furniture but cannot recall that her work actually caused this injury. She had a severe onset of chest pain that radiated outward from the arm.” (APA p. 72).

16. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that he also writes of his Upper Extremity Evaluation performed on the Claimant that day, “Pain started April 10th and has not been to work since then. Does not remember a specific event. Says that pain originated at her chest and radiated out. Went to the ER at Providence originally Dx with muscle strain. Has seen Dr. McGown who recommended therapy. Pt claims that therapy has helped some, but has not provided pain relief.” (APA p. 70).

17. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that Dr. Mazoue writes in part of that encounter, “Ms. Butler is here for a follow-up of the MRI of her right shoulder...I think this is a very difficult problem...She is exhibiting pain and depression that are certainly out of proportion from what we see on exam or the MRI.” (APA p. 75).

18. Based on the substantial evidence, including Claimant’s testimony and the medical records of Claimant, we find that Claimant saw Dr. Mazoue again on 08/16/13. He writes of that encounter “[Claimant] returns today after canceling her surgery 5 months ago for her R shoulder SAD, DCE, biceps tenodesis. She states the pain in her shoulder is the same as it was when we last saw her. She wears an icy hot patch during the day and finds some relief with this. She is not interested in surgery due to financial reasons. She is here today to discuss other options.” (APA p. 81).

19. Based on the substantial evidence, including Claimant’s testimony and the medical

records of Claimant, we find that there is a questionnaire completed by Dr. Mazoue on 01/26/15 which he completed after meeting with Claimant's counsel. He so testified in his deposition. (APA p. 111; Dr. Mazoue's Depo. Tr. p. 20).

20. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, in that questionnaire, Dr. Mazoue indicates to a reasonable degree of medical certainty that he believes the Claimant's right shoulder injury is most likely related to her activities as a laminator. He also indicated that he believed that her shoulder injury "Most likely occurred on April 10, 2012, while the employee was engaged in the regular duties of her employment as a laminator particularly lifting heavy rolls." Dr. Mazoue further indicated that there was a direct causal relationship between the condition under which the work is performed and the injury. (APA p. 111).

21. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Dr. Mazoue also answers "yes" to the statement, "My opinion is based on the history and symptoms reported by the patient, the signs shown on the physical examination, imaging studies, and the operative findings." Dr. Mazoue then adds in his own handwriting, "And review of records with regards to onset of pain and dysfunction and subsequent medical care". (Dr. Mazoue testified in his deposition as to what the handwritten note says.) (APA p. 111; Dr. Mazoue's Depo. Tr. pp. 20-21, 24).

22. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Dr. Mazoue was deposed by the parties on August 29, 2016. We have read that deposition in its entirety. In that deposition, Dr. Mazoue does not change his opinion to any of the above. (Dr. Mazoue's Depo. Tr. pp. 22, 28-29, 38).

23. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, when we view the evidence as a whole, we are not persuaded that the Claimant had an injury by accident on or about April 10, 2012.
24. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, there simply is not any description in the medical records or in the Claimant's testimony that persuades us that there was an injury by accident as defined in the Act.
25. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, as to a repetitive injury, we must determine whether there enough evidence in the record to tip the scale in the Claimant's favor.
26. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that there is no indication in the medical records – other than the opinion of Dr. Mazoue – that the Claimant was injured at work. We find that lack of reference troubling.
27. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that there are several indications throughout the record that her injury is not job-related. (APA pp. 1, 13, 30, 35, 40, 68, 70, 72, 85, 254, 270).
28. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, while an argument can be made that if her work is repetitive, there is little testimony as to the repetitive nature of the job.
29. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that the Aetna form which the husband completed for the Claimant lists an answer of "No" to the question, "Is this condition work related?" (H.

Tr. pp. 31, 51, 53; APA p. 254).

30. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that the Claimant testified that she did not know her injury was caused by work. (H. Tr. pp. 26, 31).
31. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, when the evidence is viewed as a whole, we are not persuaded that the Claimant has met her burden as to compensability.
32. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, clearly, she has medical issues. She has had surgery and the record is replete with references to the right upper extremity medical issues she has had.
33. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Dr. Mazoue has opined that those issues are work-related. That being said, Dr. Mazoue's conclusion as to that work nexus does not come while he is actively treating the Claimant. It comes some time later in a medical questionnaire. (APA p. 111). As such, we cannot give that opinion the weight we would normally give such opinion offered contemporaneously to the alleged date of injury.
34. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, even after extensive review, we cannot make a finding of compensability without speculation. The record alone simply does not lead us to find otherwise.
35. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that, as such, the claim is denied.

36. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that the Claimant did not satisfy her burden of proving a compensable injury by accident and/or compensable repetitive trauma while in the course and scope of her employment with the Defendants.
37. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we find that Claimant is not entitled to any benefits under the Act.
38. Based on the substantial evidence, including the Claimant's testimony and the medical records of Claimant, we find that the Decision and Order of the Single Commissioner is affirmed with amendments.

#### CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et seq., that:

1. Pursuant to S.C. Code Ann. § 42-15-10 and § 42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).
4. Pursuant to S. C. Code Ann. §42-1-140, and based on the substantial evidence, Claimant's average weekly wage is Four Hundred Twenty-Nine and 86/100 (\$429.86) Dollars, with an applicable compensation rate of Two Hundred Eighty-Six and 59/100 (\$286.59) Dollars.

5. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999).
6. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
7. Only the facts and circumstances of the injury can determine whether it is compensable and, therefore, whether the employee's remedy is exclusively under the Compensation Law. Thompson v. J.A. Jones Const. Co., 199 S.C. 304, 19 S.E.2d. 226 (1942).
8. A workers' compensation claimant has the burden of proving facts that show the alleged injury arose out of and in the course and scope of employment. Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (S.C. 1998).
9. A "possibility" is not enough to show that a worker's injury arose out of and in the course and scope of his employment. Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960).
10. Expert medical testimony is designed to aid the Commission in reaching the correct conclusion, and therefore, the Commission determines the weight and credit to be given to the expert testimony. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (S.C. 1999).

11. Expert testimony is not binding upon the fact-finding body if there is competent substantial evidence to the contrary. Herndon v. Morgan Mills, 246 S.C. 201, 143 S.E.2d 376 (1965).
12. While the Workers' Compensation Act is liberally construed in favor of finding coverage, this liberality will not be indulged to the extent of doing violence to its substantive provisions by changing the meaning of the terms and conditions set forth therein. Teigue v. Appleton Co., 221 S.C. 52, 68 S.E.2d 878 (1952).
13. The Full Commission is constrained from resorting to a forced construction of the Workers' Compensation Act so as to expand its operation. Gilstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992).
14. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we conclude that, when we view the evidence as a whole, we are not persuaded that the Claimant sustained an injury by accident on or about April 10, 2012.
15. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we conclude that, as to a repetitive injury, we must determine whether there enough evidence in the record to tip the scale in the Claimant's favor.
16. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we conclude that, when the evidence is viewed as a whole, we are not persuaded that the Claimant has met her burden as to compensability.
17. Based on the substantial evidence, including Claimant's testimony and the medical records of Claimant, we conclude that, even after extensive review, we cannot make a finding of compensability without speculation.
18. Based on the substantial evidence, including Claimant's testimony and the medical

records of Claimant, we conclude that, as such, the claim is denied based on the Claimant's failure to satisfy her burden of proof as required by the South Carolina Workers Compensation Act.

19. Pursuant to the application of S. C. Code Ann. §42-1-160, and based on the substantial evidence, including the testimony of Claimant and the medical records of Claimant, Claimant has not sustained her burden of proving a compensable injury to the right shoulder, right arm, right hand and/or neck as a result of the alleged April 2012 work accident.
20. Pursuant to the application of S. C. Code Ann. §42-1-172, and based on the substantial evidence, including the testimony of Claimant and the medical records of Claimant, Claimant has not sustained her burden of proving a compensable repetitive trauma injury to the right shoulder, right arm, right hand and/or neck as a result of the alleged April 2012 work accident.
21. Claimant is not entitled to any benefits under the Act.
22. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed with amendments.

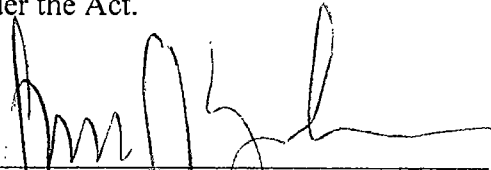
**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED WITH AMENDMENTS**.

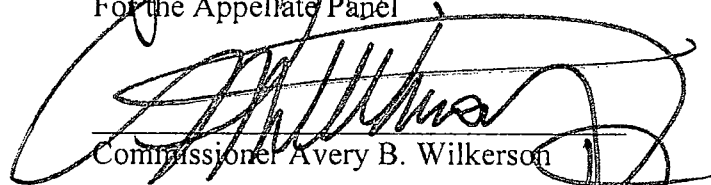
**IT IS HEREBY ORDERED** that the greater weight of the evidence supports a finding that Claimant did not sustain her burden of proving a compensable injury by accident as a result of her alleged April 10, 2012 work accident.

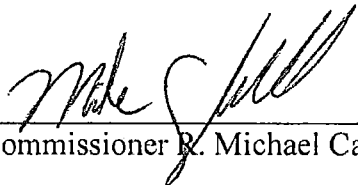
**IT IS HEREBY ORDERED** that the greater weight of the evidence supports a finding that Claimant is not entitled to any benefits under the Act.

**SO ORDERED.**

  
\_\_\_\_\_  
Commissioner Susan S. Barden.  
For the Appellate Panel

**WE CONCUR:**

  
\_\_\_\_\_  
Commissioner Avery B. Wilkerson

  
\_\_\_\_\_  
Commissioner R. Michael Campbell, II

**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 June 14, 2017***