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SC Court of Appeals

APPELLATE PANEL  
DECISION AND ORDER  
OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1119634

Sarah White,

Employee / Claimant,

Appellant,

Vs.

NHC Parklane,

Employer,

and

Premier Group Insurance,

Carrier,

Respondents.

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Appellate Panel Decision and Order filed

July 24, 2017

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APPEARANCES:

Employee / Claimant / Appellant represented by  
Christopher J. Archer, Esquire  
of Columbia, South Carolina

Employer / Carrier / Respondents represented by  
Clarke W. McCants, III, Esquire  
of Aiken, South Carolina.

## STATEMENT OF THE CASE

The Parties were heard by Commissioner Aisha Taylor on February 14, 2016 in Columbia, South Carolina. On July 26, 2016 she issued the following Order:

IT IS THEREFORE ORDERED that this matter shall be dismissed in its entirety with regard to any claim for compensation and other benefits under the Act, and as presented by the Claimant.

Within the statutory period, Counsel for the Employee filed an Application for Review in this case setting forth his reasons, a copy of which was furnished to all interested Parties prior to oral argument presented before an Appellate Panel on December 12, 2016 and comprised of Commissioners Avery B. Wilkerson, Jr., Melody L. James and R. Michael Campbell, II. All proffered testimony had been taken. Such, together with all documentary evidence, was delivered by oral argument to the individual members of the Appellate Panel convened on the aforesaid date.

By appeal, the Employee / Appellant respectfully submitted the following issues:

1. Did the Single Commissioner err in finding the Claimant relied on the differences between two MRI reports dated March 31, 2011 and August 12, 2011 to prove her claim?
2. Did the Single Commissioner err in finding that other than the two separate MRI reports completed by two different radiologist, there was no medical opinion stated to a reasonable degree of medical certainty that compared the two MRIs nor was there any medical opinion that established a causal connection between the different MRI reports and the Claimants alleged work-related injury?
3. Did the Single Commissioner err in finding that there was medical evidence in the record that the Claimant was receiving substantial pain medication and medical treatment for her lower back leading up to the alleged May 18, 2011 incident?
4. Did the Single Commissioner err in finding that on May 26, 2011, Dr. Toussaint of University Specialty Clinics opined that the Claimant's complaints

and diagnoses were related to her March 2011 work-related incident, which had already been adjudicated by Commissioner Beck?

5. Did the Single Commissioner err in finding the medical questionnaire completed by Larry Dillard, a physician's assistant, and his supervising physician, Dr. Richard Chang, was substantially outweighed by the preponderance of the evidence in the record as a whole for this matter?

6. Did the Single Commissioner err in finding Claimant's answers during cross-examination were non-responsive to the questions being asked?

7. Did the Single Commissioner err in finding Claimant failed to prove an injury by accident arising out of and in the course of her employment on May 18, 2011, by a preponderance of the evidence?

8. Did the Single Commissioner err in finding that pursuant to S.C. Code Ann. § 42-1-160 (1976, and other applicable law and regulation, the Claimant did not sustain any injury on May 18, 2011 as a result of an accident arising out of and in the course of any employment relationship with the Employer, and thereby barring her entitlement to compensation and benefits under the Act?

9. Did the Single Commissioner err in ordering the matter shall be dismissed in its entirety with regard to any claim for compensation and other benefits under the Act, and as presented by the Claimant?

In an Appellate Review, the Appellate Panel shall, pursuant to S. C. Code Ann. § 42-17-50 (1976), review the Award, weigh the evidence as 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.

After careful review of the record for this matter, and listening to and considering the statements and arguments of Counsel, a majority of the Appellate Panel hereby makes the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. The Claimant alleges a work-related injury to her back on May 18, 2011 within the course and scope of her employment.

2. The Claimant relies on the differences between two MRI reports dated March 31, 2011 and August 12, 2011 respectively to prove her claim. Other than the two separate MRI reports completed by two different radiologists, there is no medical opinion stated to a reasonable degree of medical certainty that compare the two MRI's nor is there any medical opinion that establishes a causal connection between the different MRI reports and the Claimant's alleged work-related injury.
3. There is medical evidence in the record that the Claimant was receiving substantial pain medication and medical treatment for her lower back leading up to the alleged May 18, 2011 incident.
4. On May 26, 2011, Dr. Toussaint of University Specialty Clinics opined that the Claimant's complaints and diagnoses were related to her March 2011 work-related incident, which has already been adjudicated by Commissioner Beck. (See Defendants' APAs).
5. The Claimant submitted a medical questionnaire completed by Larry Dillard, a physician's assistant, and his supervising physician, Dr. Richard Chang; however, this questionnaire is substantially outweighed by the preponderance of the evidence in the record as a whole for this matter. Additionally, the opinions stated in the questionnaire are not stated to a reasonable degree of medical certainty.
6. The Claimant testified at the hearing for this matter. We find as a fact that her answers during cross-examination were non-responsive to the questions being asked.
7. The Defendants called the Claimant's co-worker, Luther Washington, to testify at the hearing. Mr. Washington testified that he didn't remember an incident involving a shaken chair. He testified that he has Parkinson's Disease that sometimes affects his memory. Mr. Washington was very pleasant and we find his testimony was truthful; however, we cannot rely on his testimony as to whether or not an incident occurred due to his medical condition, which he admitted sometimes affects his memory.
8. The Claimant has failed to prove an injury by accident arising out of and in the course of her employment on May 18, 2011, by a preponderance of the evidence. All claims for benefits are denied.
9. The Claimant compensation rate in this matter is \$537.25 based upon an average weekly wage of \$805.83.

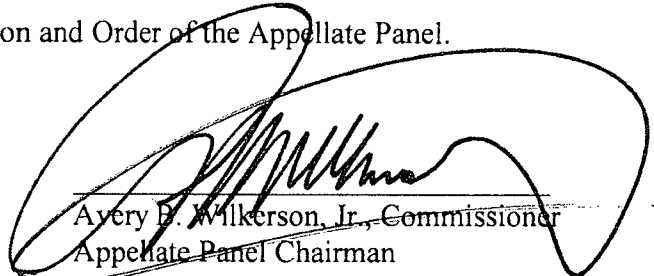
**CONCLUSIONS OF LAW**

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter.
2. Pursuant to S.C. Code Ann. § 42-1-160 (1976), and other applicable law and regulation, the Claimant did not sustain any injury on May 18, 2011 as a result of an accident arising out of and in the course of any employment relationship with the Employer, and thereby barring her entitlement to compensation and benefits under the Act.

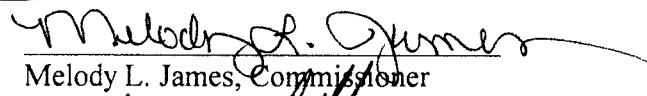
**ORDER**

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in this matter on July 26, 2016 is hereby affirmed by a majority of the Appellate Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

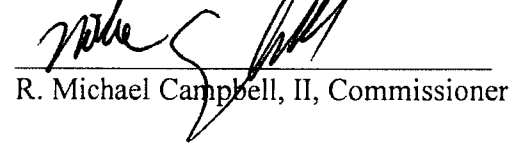
SO ORDERED.



Avery B. Wilkerson, Jr., Commissioner  
Appellate Panel Chairman



Melody L. James, Commissioner



R. Michael Campbell, II, Commissioner

Dated: July 24, 2017  
Columbia, South Carolina

**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 July 24, 2017**