

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE WORKERS COMPENSATION COMMISSION

Aisha Taylor, Commissioner  
T. Scott Beck, Commissioner  
Avery B. Wilkerson, Commissioner

WCC File No. 1318602  
Appellate Case No. 2017-001246

**RECEIVED**  
SEP 05 2017  
SC Court of Appeals

Dorothy Miller, Employee, Claimant, Respondent,  
v.  
Husqvarna, Employer, and Ace American Insurance, Carrier, Appellants.

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**INITIAL REPLY BRIEF OF APPELLANTS**

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September 5, 2017



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In reply to Claimant/Respondent's Brief, Defendants/Appellants, argue the following:

### ARGUMENT

**The Commission erred in: 1. finding repetitive trauma injuries to the claimant's shoulders and an exacerbation of a preexisting condition; 2. awarding temporary total disability benefits; and 3. authorizing Dr. Nahigian as the treating physician.**

The claimant contends that she made repeated inquiries about her shoulders after her acute work injury in October 2013 but due to her shoulders not being authorized for treatment nothing was done to address her complaints until she attended physical therapy in May of 2015. This is untrue. The claimant visited numerous doctors complaining about her shoulders and relating her problems to a motor vehicle accident. By the time the claimant even mentioned anything wrong with her shoulders and a tear was evident, the claimant hadn't worked with the employer for years. The evidence does not support a finding of an aggravation of a preexisting condition to her shoulders because no doctor has stated that she had an aggravation. Further, the only doctor who stated the claimant suffered from a repetitive trauma was Dr. Nahigian who changed his statements on numerous occasions.

The claimant's attorney contends that the injury was gradual in onset and meets the definition of a repetitive injury pursuant to S. C. Code Ann. Section 42-1-172. However, the tear, which became evident in 2015, did not show up until a year after the claimant stopped working for Husqvarna and surgery was already contemplated for the claimant's shoulder in 2013. Under South Carolina law, the injuries were not repetitive. The claimant never mentioned any work duties or problems doing her work with regards to her shoulders for years of treatment with various doctors. In fact, the claimant has consistently attributed her shoulder problems to her motor vehicle accident. Specifically, in September of 2012, she complained that her shoulder problems were from her whiplash injury and she has not been the same since. The whiplash injury

was a wholly unrelated event, not part of any work injury, and was traumatic and not gradual in onset. On August 30, 2013, less than two months before her alleged date of accident with the employer, she presented with severe shoulder pain to TRMC and mentions nothing about her work. (Def.'s APA p. 580). Dr. Buckaloo's questionnaire stating that the problems were not part of her work injury is supported by the evidence as a whole. As such, it should have been given more weight.

The claimant contends that since defendants did not submit evidence that the claimant was offered alternative duty or that she maintained subsequent employment, that she is entitled to temporary total disability benefits. This is untrue. TTD results from an inability because of the work related injury to work. The record is clear of one thing, the claimant has worked, and has actively sought work. Therefore, the commission's finding that the claimant is entitled to temporary total disability was in error.

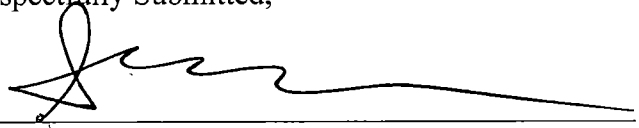
While defendants contend that the claimant should be awarded no medical treatment as she has reached MMI for the accepted body parts and the shoulders are not compensable, the claimant was erroneously awarded medical treatment through Dr. Nahigian.

The Defendants did not fail to offer treatment but rather had no duty to offer treatment as this was a denied claim. As such, once the shoulder problems were found compensable, the Defendants should be allowed to direct treatment.

**CONCLUSION**

Based on the above cited arguments, the Defendants would respectfully request that the Order of South Carolina Workers Compensation Appellate Panel be reversed in its entirety.

Respectfully Submitted,



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**PROOF OF SERVICE**

I certify that I have served the *Reply Brief* by depositing a copy of the same in the United States Mail, postage prepaid, on September 5, 2017 to the following parties, and or their representatives:

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September 5, 2017

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SC Court of Appeals

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Post Office Box 11629  
Columbia, S.C. 29211

Re: Dorothy Miller, Employee, Respondent v. Husqvarna, Employer and Ace American Insurance Company, Appellants.  
Appellate Case No. 2017-001246

Dear Honorable Kitchings:

Please find enclosed the Reply Brief and Proof of Service in the above matter.

By copy of this letter, I am hereby serving Dorothy Miller, through her attorney, Chip Alexander. If you have any questions, please do not hesitate to contact me.

Sincerely,

Shelby G. Hapeshis  
Huff & Hapeshis, LLC

SGH/caw

Enclosure

cc: Chip Alexander, Esquire

1900.0490