

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0917785

RECEIVED

OCT 13 2017

SC Court of Appeals

Paula Russell,

CLAIMANT/RESPONDENT,

vs.

Wal-Mart Stores, Inc.,

EMPLOYER,

and

Illinois National Insurance Company,

CARRIER,
DEFENDANTS/APPELLANTS

Appellate Panel Review held in Columbia, South Carolina,
on June 19, 2017, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
9-15, 2017

APPEARANCES:

Respondent Paula Russell, Claimant represented by C. Daniel Vega, Esquire, of Chappell, Smith & Arden in Columbia, South Carolina.

Defendants/Appellants represented by Johnnie W. Baxley, III, Esquire of Willson Jones Carter & Baxley, P.A. in Mt. Pleasant, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, and on March 20, 2017, he issued the following Order:

IT IS ORDERED that Defendants shall pay Claimant benefits pursuant to a change of condition for the worse, commencing on November 21, 2011, of the lumbar injury sustained November 3, 2009.

IT IS FURTHER ORDERED that Defendants shall provide and pay for Claimant's medical care and treatment related to the change of condition for the worse, commencing November 21, 2011 to the present and continuing of the further order of the Commission.

IT IS FURTHER ORDERED that Defendants shall pay for Claimant's reasonable costs and expenses incurred while obtaining medical care and treatment related to the change of condition for the worse, commencing November 21, 2011 to the present and continuing of the further order of the Commission.

IT IS FURTHER ORDERED that Defendants shall pay temporary total disability benefits in the amount of \$681.36 per week, commencing December 1, 2011, to the present and continuing until further order of the Commission.

IT IS SO ORDERED!

Within the statutory period, Defendants filed an Application for Review in the case, setting forth their reasons, copies of which were furnished to all interested parties. All parties appeared at oral arguments on June 19, 2017, and presented their case on appeal.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

By appeal, it is respectfully submitted that the Single Commissioner erred in finding as a fact and concluding as a matter of law in the following particulars listed below. Such errors are errors of fact and law:

1. *Did the Single Commissioner err in Findings of Fact #1, in basing his decision on workers' compensation benefits in part on the prior factual findings of Commissioner Roche, which were set aside by the Full Commission and have no precedential value or weight, instead of reviewing the record de novo using the preponderance of the evidence standard as instructed by the Court of Appeals?*

2. *Did the Single Commissioner err in Findings of Fact #12 and #13, in stating conclusively that the Claimant did not have any prior work restrictions or leg or buttock pain based on Commissioner Wilkerson's June 8, 2011 order, even though Commissioner Wilkerson did not address these issues in his order?*

3. *Did the Single Commissioner err in Findings of Fact #18 and #19, in stating that the Claimant's "new" pain and symptoms began in her leg and buttock around September or October of 2011, such findings being based on surmise and conjecture, rather than medical evidence stated to a reasonable degree of medical certainty? Does the preponderance of evidence in the record support this factual finding?*

4. *Did the Single Commissioner err in Findings of Fact #20, in concluding that Dr. Merritt opined that Claimant's condition had worsened contrary to the greater weight and substantial evidence of record, especially taking into consideration that Dr. Merritt did not state his opinion to reasonable degree of medical certainty on November 21, 2011? Does the preponderance of evidence in the record support this factual finding?*

5. *Did the Single Commissioner err in Findings of Fact #21 and 22, in indicating that Wal-Mart refused to accommodate the Claimant's restrictions and terminated her, even though the greater weight of the evidence proves that Wal-Mart was accommodating the Claimant's restrictions and that the Claimant voluntarily resigned from Wal-Mart? Does the preponderance of evidence in the record support these factual findings?*

6. *Did the Single Commissioner err in Findings of Fact #26, in stating that Dr. Edwards opined that Claimant did not have radicular symptoms after her 2009 injury, but now has pain centered in her lower back that radiates into her legs, even though Dr. Edwards did not offer an opinion as to this matter and the medical narrative simply reiterated the Claimant's subjective history? Does the preponderance of evidence in the record support this factual finding?*

7. Did the Single Commissioner err in Findings of Fact #28, by stating that Dr. Edwards recommended surgery after a July 24, 2012 MRI, when he did not recommend surgery and only discussed surgery with the Claimant on her own request?

8. Did the Single Commissioner err in Findings of Fact #30, 31, and 32, in stating that Dr. Merritt testified that there was a slightly larger disc protrusion in the MRI that was touching the nerve root and that the Claimant had new radicular symptoms, when his testimony regarding these issues were speculative and not stated to a reasonable degree of medical certainty? Does the preponderance of evidence in the record support these factual findings?

9. Did the Single Commissioner err in Findings of Fact #33, by stating to a reasonable degree of medical certainty that Claimant suffered a change in condition for the worse, even though Dr. Merritt's deposition, taken as a whole, is speculative and does not meet the standard of medical evidence to a reasonable degree of medical certainty? Does the preponderance of evidence in the record support these factual findings?

10. Did the Single Commissioner err in Finding of Fact #34, by stating that Dr. Merritt recommended additional treatment, up to but not excluding surgery, even though his deposition testimony did not take an affirmative stance on the Claimant's future surgical needs?

11. Did the Single Commissioner err in Findings of Fact #36, 37, 38, 39, 40, 41, 42, and 43, by mischaracterizing or misstating Dr. Edwards testimony when:

a. Fact #36 only provided part of Dr. Edwards answer, and omitted Dr. Edwards' testimony that "radiographically, there's not a significant difference" in the MRI scan?

b. Fact #37 indicated that Dr. Edwards testified to a reasonable degree of medical certainty that there was change to the Claimant's nerve making it more painful, but Dr. Edwards did not provide this opinion to a reasonable degree of medical certainty as indicated on page 13 of his deposition transcript?

c. Fact #38 indicated that the Claimant's symptoms were worse and clinically different in 2012 than 2010, even though Dr. Edwards clarified that radiographically she was not worse?

d. Fact #39 indicates that Dr. Edwards stated the Claimant's radiculopathy was caused by a combination of mechanical direct compression and chemical irritation to the nerve, when he was unable to state this fact to a reasonable degree of medical certainty

and merely postulated that chemical leaking and mechanical compression could be causing the Claimant's subjective symptoms?

e. Fact #40 indicates that Dr. Edwards testified that the disc pathology was causing the Claimant's worsening, when he did not state that fact and merely indicated that the Claimant's disc pathology was causing her symptoms and that the disc pathology was fairly consistent before and after the alleged worsening?

f. Fact #42 omitted certain testimony from Dr. Edwards answer on page 18 of his deposition transcript?

g. Fact #43 incorrectly stated that Dr. Edward recommended surgery for the changed condition, when he never stated to a reasonable degree of medical certainty that the Claimant has suffered a worsening of her condition?

Are these findings supported by the preponderance of evidence in the record, or are they snippets of testimony cherry-picked to provide the basis for an award despite the weight of the evidence?

12. Did the Single Commissioner err in Findings of Fact #45 - #66, by stating as fact any findings by Commissioner Roche when her Order was expressly overturned by the Full Commission and therefore such findings are entitled to no weight or precedential value? Did the Single Commissioner incorrectly rely upon prior Single Commission findings that were expressly overturned by the Full Commission? Does the preponderance of evidence in the record support these findings?

13. Did the Single Commissioner err in Findings of Fact #68 - 72 by mischaracterizing and misinterpreting the basis for Defendants' appeal and arguments?

14. Did the Single Commissioner err in Findings of Fact #91-94 by mischaracterizing the "findings" of the Court of Appeals and basing his decision in part upon mischaracterized factual findings which were not made by the Court of Appeals?

15. Did the Single Commissioner err in Findings of Fact #95, when stating that the South Carolina Court of Appeals reversed and remanded the matter to the Commission to enter an order consistent with their findings, when the Court of Appeals merely reversed and remanded the matter to the Commission to evaluate this case and make its own findings under a preponderance of the evidence standard? Did this misunderstanding by the Single Commissioner of the directives

of the Court of Appeals lead to this erroneous decision and factual findings that are not supported by the preponderance of the evidence?

16. *Did the Single Commissioner err in Findings of Fact #98, in stating that the Claimant suffered a change of condition for the worse as outlined in the overturned order of Commissioner Roche? Did the Single Commissioner fail to properly review the preponderance of the evidence and make factual findings, as opposed to relying upon old factual findings that had already been overturned by the Full Commission? Does the preponderance of the evidence in the record support this finding?*

17. *Did the Single Commissioner err in Finding of Fact #102, 103, and 104, in stating that Dr. Merritt testified within a reasonable degree of medical certainty, consistent with the requirements of the Act, that Claimant suffered a change of condition for the worse and that the change of condition was a physical, anatomical change, even though preponderance of the evidence states otherwise? Did the Single Commissioner err in failing to make factual findings in light of the preponderance of evidence and instead just re-stated the findings of Commissioner Roche?*

18. *Did the Single Commissioner err in Findings of Fact #105, 106, and 107, in stating that Dr. Edwards testified within a reasonable degree of medical certainty, consistent with the requirements of the Act, that Claimant suffered a change of condition for the worse and that the change of condition was a physical, anatomical change, even though substantial evidence states otherwise? Did the Single Commissioner err in failing to make factual findings in light of the preponderance of evidence and instead just re-stated the findings of Commissioner Roche?*

19. *Did the Single Commissioner err in Findings of Fact #108 and #109 in implying that objective evidence is not appropriate in a change of condition for the worse standard even though objective evidence is an integral part of the preponderance of evidence standard?*

20. *Did the Single Commissioner err in Findings of Fact #110 and #111, in finding the Claimant's testimony "admittedly credible" and that the Full Commission erred in finding the Claimant's testimony conclusory and self-serving, based on the fact that Defense counsel simply stated that she came across well?*

21. *Did the Single Commissioner err in Findings of Fact #112, 113, and 114, in stating that the Claimant was able to establish that she had new complaints that were not present at the time of the original award, that her present condition is different than the condition in existence when the first award was made, and that her condition had worsened, when such factual findings are based exclusively on the claimant's testimony and not based upon a preponderance of evidence in the record? Did the Single Commissioner err in basing these factual findings on only*

certain evidence while ignoring other competent evidence as opposed to making factual findings based upon the preponderance of evidence in the record?

22. *Did the Single Commissioner err in Findings of Fact #115 that the Claimant needs surgery and that her need is new and occurred after the original award, even though there is evidence to the contrary in this claim? Does the preponderance of evidence in the record support this factual finding?*

23. *Did the Single Commissioner err in Findings of Fact #116, in stating affirmatively that the Claimant had difficulty driving and working due to her symptoms, even though the preponderance of objective evidence shows that she was able to complete her job without issue?*

24. *Did the Single Commissioner err in Findings of Fact #117 and 118 finding that a preponderance of evidence supports a finding that Claimant suffered a change of condition for the worse, is eligible for further benefits under the Act?*

25. *Did the Single Commissioner err in Findings of Fact #119-124 by simply restating the award of Commissioner Roche which has no weight or precedential value since it was overturned by the Full Commission, and where such findings are not supported by the preponderance of evidence?*

26. *Did the Single Commissioner err in Findings of Fact #123, in stating that the Claimant was terminated on December 1, 2011, when the greater weight of the evidence indicates that the Claimant was being accommodated prior to December 1, 2011 and that she resigned her employment sometime after December 1, 2011 when Defendants would not move her to another location?*

27. *Did the Single Commissioner err in Findings of Fact #124, in reinstating Commissioner Roche's award of temporary total disability benefits from December 1, 2011, to the present and continuing? Procedurally, did the Single Commissioner err in awarding back temporary benefits without the taking of any new testimony or evidence regarding that issue and reinstating an award that was based upon testimony and evidence from February 2013? Does the preponderance of evidence in the record support such an award? Is the reinstatement of the original award from the Single Commissioner an error of law?*

28. *Did the Single Commissioner err in concluding as a matter of law, in Conclusions of Law #2, based on Commissioner Roche's overturned Order that the Claimant was awarded a change of condition for the worse commencing on November 21, 2011, ongoing temporary total disability benefits commencing December 1, 2011, to the present and continuing, and causally related medical care and treatment for the change in condition along with reasonable reimbursement costs and expenses? Was it factual error for the Commissioner to simply reinstate the old findings of Commissioner Roche as opposed to making new findings based upon a preponderance of evidence in the record?*

29. *Did the Single Commissioner err in concluding as a matter of law, in Conclusions of Law #8, that Claimant has met her burden of proving a change of condition for the worse commencing November 21, 2011?*

30. *Did the Single Commissioner err in concluding as a matter of law, in Conclusions of Law #9 and #10, that the Claimant is awarded causally related medical care and treatment along with reasonable reimbursement costs for expenses incurred while obtaining care and temporary total disability benefits commencing December 1, 2011, to the present and continuing? Are these awards errors of law procedurally and factually?*

31. *Did the Single Commissioner err in failing to make factual findings regarding the weight given to the competing evidence in this matter?*

32. *Did the Single Commissioner err in failing to make factual findings regarding whether there has been proof by a preponderance of the evidence that there has been a change of condition caused by the original injury occurring after the last payment of compensation?*

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. section 42-17-50, 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 or inconsistent with those of the Single Commissioner.

The Full Commission is empowered to make its own findings of fact and to reach its own conclusions of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2d 162 (1992). In this case, we find that the Single Commissioner should have had a full evidentiary hearing on the issue of benefits to be awarded if there is a finding of a change of condition for the worse. Due to the failure to conduct such a hearing on that issue and the Single Commissioner's improper reinstatement of a previous award of Commissioner Roche, we vacate the Order dated March 20, 2017, and remand the matter back to the Single Commissioner for a full evidentiary hearing.

PROCEDURAL HISTORY

On February 11, 2013, a hearing was held before Commissioner Andrea C. Roche to determine the issues raised in Claimant's Form 50. After considering the evidence presented, Commissioner Roche found that Claimant suffered a change of condition for the worse and was entitled to additional medical care and attention as well as temporary total disability benefits. Defendants appealed this decision and a hearing was held before the Full Commission on December 16, 2013. The Full Commission issued its order on January 30, 2014, and found that no change in condition had occurred due to the fact that no objective evidence showed a change in condition and the greater weight of the evidence did not support a worsening of condition. Claimant appealed this decision to the South Carolina Court of Appeals arguing that the Full Commission erred by using an objective evidence standard. The South Carolina Court of Appeals heard the appeal on October 20, 2014, and issued its decision on January 20, 2016. The Court of Appeals found that the Full Commission erred in requiring the Claimant to establish her claim for a change of condition with objective evidence. The Court reiterated the standard that the Commission use a preponderance of evidence standard when deciding these claims.

The Court of Appeals remanded to the Commission to determine if the Claimant sustained a changed in condition based upon a preponderance of evidence. The Court of Appeals found that the Commission erred in requiring a change of condition to be established by objective evidence and they reversed and remanded on that issue alone. On remand and without a hearing, Commissioner Campbell concluded that the Claimant met her burden of proving a change of condition for the worse. Additionally, Commissioner Campbell reinstated the original award of Commissioner Roche which awarded causally related medical care and treatment commencing November 21, 2011, and temporary total disability benefits commencing December 1, 2011, to

the present and continuing. Commissioner Campbell's Decision and Order was filed on March 20, 2017, and Appellants subsequently and timely filed a Form 30 appealing this Decision and Order on March 31, 2017.

ISSUES PRESENTED

- I. **Did the Single Commissioner err in finding Claimant/Respondent sustained a change of condition for the worse under S.C. Code Ann. Sec. 42-17-90 as a result of her original November 3, 2009, accident at work when the preponderance of evidence in the record does not support such findings (Grounds for Appeal # 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 17, 18, 21, 22, 23, 24, 26, 29, 30, 31, 32)?**

- II. **Did the Single Commissioner err in failing to review the evidence de novo to determine whether the Claimant sustained a change of condition for the worse by a preponderance of the evidence and in awarding benefits (Grounds for Appeal # 12, 13, 14, 15, 16, 17, 18, 19, 20, 25, 27, 28, 29, 30, 31, 32)?**

DISCUSSION

The Appellate Panel first addresses Issue II, as our ruling on that issue necessitates our decision to vacate the order of Commissioner Campbell and remand the case. The Defendants argued that, even if there had been a compensable change of condition for the worse, the Single Commissioner erred in simply reinstating the 2013 award of Commissioner Roche and erred by not conducting a full evidentiary hearing on the issue of benefits. We agree.

Although we find that the Single Commissioner properly addressed benefits, such benefits should have only been awarded after a full evidentiary hearing on the issues of medical treatment, medical benefits, temporary benefits, and permanent benefits. It was improper and an error of law for the Single Commissioner to simply reinstate the prior award of benefits by Commissioner Roche dated August 5, 2013. Those previous findings and the award had already been overturned by the Full Commission, and as an operation of law, the findings, conclusions, and award of Commissioner Roche no longer existed and cannot be reinstated. Claimant argues Commissioner

Campbell properly reinstated Commissioner Roche's findings because Commissioner Roche's findings are the "law of the case." Claimant argues the Orders must necessarily have been consistent with one another because those issues had already been litigated, were unappealed, and could not be relitigated. However, the Full Commission unanimously reversed Commissioner Roche's findings, stating Claimant failed to meet her burden of proof that she sustained a change of condition for the worse and reversing her award of benefits. Thus, it is legal error to reinstitute Commissioner Roche's overturned findings.

Further, the award of benefits in this matter without allowing Defendants to have an evidentiary hearing, to present evidence, or to cross-examine the claimant, had the effect of denying the Defendants due process to present a defense to this claim for benefits. By reinstating the award of Commissioner Roche from 2013, which consisted of an award of ongoing temporary benefits and medical treatment, it deprived the Defendants of the opportunity to challenge the claimant's entitlement to any of those benefits or present evidence on those issues. Obviously, the Defendants had an opportunity to present evidence before Commissioner Roche's original award, but that occurred at an evidentiary hearing in February 2013. Since that time, the Defendants have had no opportunity to present any additional evidence regarding Claimant's entitlement to workers' compensation benefits. The Single Commissioner's decision to simply reinstate the award of Commissioner Roche denied the Defendants due process on the issue of benefits.

Finally, the Single Commissioner made an award of benefits that apply to the time period from November 21, 2011, through the present and continuing without any factual or evidentiary basis for such award. As indicated above, the last time either party submitted any testimony or evidence was at a hearing on February 11, 2013. The Single Commissioner made an award of ongoing temporary compensation and medical treatment even after that date despite a complete

lack of evidence and testimony as to whether the claimant's need for medical treatment has continued and temporary disability has continued. There is simply no evidence or factual basis for such an award since there was not a full evidentiary hearing.

It is improper and prejudicial to both parties in this claim to simply reinstate findings that are almost four years old. If benefits are to be awarded, there must be an evidentiary hearing so that accurate and up-to-date factual findings and awards can be made. We find that the Single Commissioner, on the issue of whether there had been a change of condition for the worse, correctly limited his review to the evidence and record that had been presented at the hearing on February 11, 2013. We find that the Single Commissioner erred in not having a full evidentiary hearing and accepting new testimony on the issue of benefits due if there has been a change of condition for the worse.

The Defendants also asserted that the Single Commissioner inadvertently misstated and mischaracterized a number of important and relevant facts. However, based upon our decision that the Single Commissioner erred in not conducting a full evidentiary hearing on any award of benefits and our subsequent decision to vacate the order of Commissioner Campbell and remand the case, there is no need for us to address this issue.

Additionally, the Defendants have asserted that the preponderance of evidence in the record including the medical records, the diagnostic testing, and the medical testimony, and the testimony of the Claimant do not support the finding of the Single Commissioner that Claimant sustained a physical worsening of condition after the original award. The Claimant has asserted that the preponderance of the evidence in the record supports that the Claimant has sustained a worsening of her condition. Again, the appellate panel does not need to address this issue. We have decided to vacate the order of Commissioner Campbell and remand the claim for a new hearing based upon

the award of benefits issue, and thus there is no need to address this additional ground.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. The South Carolina Workers' Compensation Commission has exclusive jurisdiction over this matter.

2. The claim was originally adjudicated at a hearing before Commissioner Avery Wilkerson on April 13, 2011. An Order was issued on June 8, 2011, and the Claimant was awarded 7% permanent partial disability to the back and ongoing anti-inflammatory medication as per the Form 14B completed by Dr. Merritt on March 29, 2011, as long as such medication is causally related to her work accident and tends to lessen her period of disability as per the authorized treating physician.

3. Subsequent to the original award, the Claimant filed an application for a change of condition per section 42-17-90.

4. A hearing regarding the alleged change of condition was adjudicated before Commissioner Andrea Roche on January 16, 2013. Commissioner Roche found Claimant sustained a compensable change of condition claim, and awarded Claimant ongoing medical treatment.

5. Defendants/Appellants appealed to the Full Commission and received an Order in their favor dated January 30, 2014. The Full Commission unanimously reversed Commissioner Roche's findings, stating Claimant failed to meet her burden of proof that she sustained a change of condition for the worse.

6. The Claimant appealed to the South Carolina Court of Appeals, and it heard the case

on October 20, 2015. The South Carolina Court of Appeals issued its decision on January 20, 2016, reversing and remanding the Full Commission's January 30, 2014 Order. The South Carolina Court of Appeals found the Commission erred in requiring Claimant to establish her claim for a change of condition by objective evidence. See Russell v. Wal-Mart Stores, Inc., 415 S.C. 395, 782 S.E.2d 753 (Ct. App. 2016). The Court of Appeals remanded this matter to the Commission.

7. Commissioner R. Michael Campbell adjudicated the case on remand without a hearing and issued an Order on March 20, 2017. The Single Commissioner reinstated Commissioner Roche's findings and benefits award.

8. Defendants/Appellants filed a Form 30 to appeal the Single Commissioner's Order, and the Full Commission heard the case on June 19, 2017.

9. We find that the Single Commissioner erred in simply reinstating the 2013 award of Commissioner Roche and erred by not conducting a full evidentiary hearing on the issue of benefits. Any award of benefits should have only been awarded after a full evidentiary hearing on the issues of medical treatment, medical benefits, temporary benefits, and permanent benefits.

10. The award of benefits in this matter without allowing Defendants to have an evidentiary hearing, to present evidence, or to cross-examine the claimant, had the effect of denying the Defendants due process to present a defense to this claim for benefits. By reinstating the award of Commissioner Roche from 2013, which consisted of an award of ongoing temporary benefits and medical treatment, the Single Commissioner deprived the Defendants of the opportunity to challenge the claimant's entitlement to any of those benefits or present evidence on those issues.

11. The Single Commissioner made an award of benefits that applied to the time period from November 21, 2011, through the present and continuing without any factual or evidentiary basis for such award. The last time either party submitted any testimony or evidence was at a hearing

on February 11, 2013. The Single Commissioner made an award of ongoing temporary compensation and medical treatment even after that date despite a complete lack of evidence and testimony as to whether the claimant's need for medical treatment has continued and temporary disability has continued.

12. The Defendants also asserted that the Single Commissioner inadvertently misstated and mischaracterized a number of important and relevant facts. However, based upon our decision that the Single Commissioner erred in not conducting a full evidentiary hearing on any award of benefits and our subsequent decision to vacate the order of Commissioner Campbell and remand the case, there is no need for us to address this issue.

13. The Defendants also asserted that the preponderance of evidence in the record including the medical records, the diagnostic testing, and the medical testimony, and the testimony of the Claimant do not support the finding of the Single Commissioner that Claimant sustained a physical worsening of condition after the original award. However, based upon our decision that the Single Commissioner erred in not conducting a full evidentiary hearing on any award of benefits and our subsequent decision to vacate the order of Commissioner Campbell and remand the case, there is no need for us to address this issue.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

1. Pursuant to S.C. Code Ann. section 42-17-90, 42-9-10, 42-9-30 et seq., we find that the Single Commissioner erred in simply reinstating the 2013 award of Commissioner Roche and erred by not conducting a full evidentiary hearing on the issue of any award of benefits under the

Act.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Single Commissioner's March 20, 2017 Order is hereby VACATED and REMANDED to the Single Commissioner to conduct a full evidentiary hearing. The remand hearing shall be a de novo hearing as to the issues of whether the claimant has sustained a compensable change of condition and whether she is entitled to any benefits as a result thereof.

IT IS FURTHER ORDERED that at the remand hearing, the Single Commissioner shall review the evidence submitted at the hearing on February 11, 2013, and issue findings of fact and conclusions of law concerning the issue as to whether the claimant has had a change of condition for the worse per 42-17-90. At the remand hearing, the Single Commissioner shall conduct a full evidentiary hearing and allow both parties to submit testimony, medical records, and other additional evidence for consideration as to the issue of any award of benefits under the Act if the change of condition claim is found to be compensable.

AND IT IS SO ORDERED!

VACATED AND REMANDED

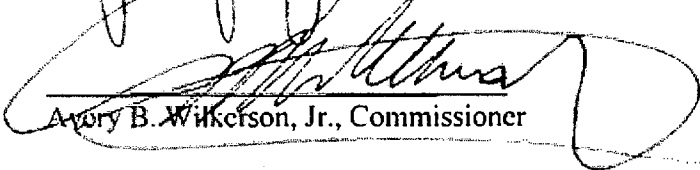
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Aisha Taylor, Commissioner



Susan S. Barden, Chair/Commissioner



Ivory B. Wilkerson, Jr., Commissioner

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 September 14, 2017