

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

WCC Number: 1601273
Appellate Case No.: 2018-000073

RECEIVED

APR 16 2018

SC Court of Appeals

Dianna Owens (Employee), Respondent,

v.

Pee Dee Community Action Partnership (Employer),

and

South Carolina State Accident Fund (Carrier),Appellants.

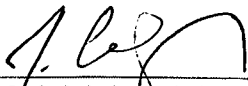
AGREEMENT FOR DISMISSAL

This matter is currently pending before the South Carolina Court of Appeals; however, the underlying claim has now been resolved by agreement of the parties. Therefore, pursuant to Rule 260(b), SCACR, the parties agree that the pending appeal is no longer necessary and the parties respectfully request that the pending appeal be dismissed. Please note that pursuant to S.C. Code Ann. §42-9-390, a copy of the approved Workers' Compensation settlement agreement is attached.

I AGREE


Stephen J. W. Dera, Esquire
Attorney for Respondent

Dated: 4/13/18
Columbia, South Carolina



J. Gabriel Coggiola, Esquire
Attorney for Appellants

Dated: 04/13/18
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION**

Dianna F. Owens,)
) Employee,)
) Claimant,)
)
-vs-)
)
Pee Dee Community Action Agency,)
)
) Employer,)
)
and State Accident Fund ,)
)
) Carrier ,)
)
) Defendants.)

AGREEMENT AND FINAL RELEASE

W.C.C. FILE NO. 1601273

CARRIER FILE NO. 2016-000264

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This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of Dianna F. Owens ("Claimant"). Claimant is represented by Stephen J. Wukela, Esquire, and Defendants, Pee Dee Community Action Agency and State Accident Fund, are represented by John Gabriel Coggiola, Esquire of Willson Jones Carter & Baxley, P.A. The South Carolina Workers' Compensation Commission has jurisdiction. The parties agree that venue is proper in Florence County, South Carolina.

Claimant was an employee of Pee Dee Community Action Agency and on or about February 1, 2016, she sustained an injury by accident arising out of and in the course of said employment when she fell over a set of children's stair-steps, causing injuries to her right arm and right shoulder. In addition, Claimant sustained an aggravation of her pre-existing cervical and lumbar spine conditions as a result of her accident. Disputes have now arisen concerning

Claimant's entitlement to further medical care and treatment, further temporary total disability compensation and the extent of causally related permanent disability, if any. Claimant's compensation rate is Two Hundred Sixty One and 35/100 Dollars (\$261.35).

The parties hereto now advise that in their opinion the matter is in bona fide dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement, Defendants have agreed to pay and Claimant has agreed to accept the total final settlement sum of Eighty Thousand and 00/100 Dollars (\$80,000.00) in full settlement and satisfaction of any and all indemnity liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said work accident occurring on or about February 1, 2016, while Claimant was an employee of Pee Dee Community Action Agency.

As an integral part of this settlement agreement, it is expressly understood and agreed that Defendants shall be responsible for all causally related medical expenses related to Claimant's right arm, right shoulder, cervical spine and lumbar spine authorized by them and incurred through the date of this agreement and as approved by this Commission pursuant to the South Carolina Worker's Compensation Fee Schedule. In addition, the parties agree that Defendants remain financially responsible for Claimant's ongoing future treatment to Claimant's right arm and right shoulder pursuant to S.C. Code Ann. §42-15-60. With respect to Claimant's future treatment to the cervical and lumbar spine, Defendants have no responsibility for ongoing medical treatment pursuant to the Order of the Commission dated April 4, 2018, stating there is no evidence to support a finding that Claimant requires additional treatment to her lumbar and cervical spine to tend to lessen her period of disability. Claimant fully understands and acknowledges that the

payment of the sum of Eighty Thousand and 00/100 Dollars (\$80,000.00) represents resolution of any and all indemnity benefits available to Claimant under the South Carolina Workers' Compensation Act, including a potential change of condition.

WHEREAS, full and complete medical reports are on file with the South Carolina Workers' Compensation and these are duly considered by it in approving this Settlement Agreement and Release.

WHEREAS, the Claimant hereby requests this Commission approve the allocation of the aforementioned proposed settlement sum as follows: Twenty-Six Thousand Six Hundred Sixty-Six and 66/100 (\$26,666.66) Dollars toward the payment of attorney's fees and Two Thousand One Hundred Ninety-Eight and 38/100 (\$2,198.38) Dollars toward the payment of costs and Fifty-One Thousand One Hundred Thirty-Four and 96/100 (\$51,134.96) Dollars in compromise settlement of disputed past and future disability compensation benefits at the rate of Fifty-Two and 88/100 (\$52.88) Dollars per week commencing May 1, 2018 for a period of Nine Hundred Sixty-Seven (967) weeks thereafter, which is the Claimant's life expectancy pursuant to §19-1-50 of the Code of Laws of South Carolina, 1976, as Amended, James v. Anne's, Inc., 2010 S.C. Lexis 340 (S.C. Oct. 25, 2010), and by the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

It is expressly understood Defendants take no position and make no representation as to the requested allocation of the settlement sum as set forth above and that the proposed allocation in no way affects the absolute release of Defendants.

Claimant hereby asserts that she has been fully advised by her attorney of record of all of her rights under the South Carolina Workers' Compensation Act, and that Claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion Claimant's attorney

concur and asserts that he has fully advised Claimant of all her rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. Claimant hereby asserts that she recognizes that her consent to, and the approval of, this Settlement Agreement and Release is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid work accident occurring on or about February 1, 2016, while Claimant was an employee of Pee Dee Community Action Agency.

Claimant also expressly represents and agrees that she sustained no work accidents or work injuries while employed by Pee Dee Community Action Agency other than the work accident and resulting injury occurring on or about February 1, 2016.

The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for Claimant that Claimant has been fully apprised of her rights under the South Carolina Workers' Compensation Act.

The parties acknowledge that the opinions stated by the physicians regarding the nature and extent of the employee's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Accordingly, Claimant and Defendant (Employer, Carrier and/or servicing agent) agree that this settlement agreement cannot be voided in the future for any reason, including on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.


NOW, THEREFORE, IT IS AGREED, SETTLED, APPROVED, and ORDERED that upon the payment of the sum of Eighty Thousand and 00/100 Dollars (\$80,000.00) by Defendants, and the acceptance of said sum by Claimant, Defendants be, and they hereby are, fully and forever

discharged of all liability, obligations and/or responsibilities for indemnity benefits of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid work accident occurring on or about February 1, 2016, while Claimant was an employee of Pee Dee Community Action Agency, so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions, but Defendants remain responsible for all future causally related treatment to Claimant's right shoulder and right arm in accordance with S.C. Code Ann. §42-15-60. Claimant enters into this Agreement and Final Release freely and voluntarily, without undue influence, coercion, or duress of any kind.

WE CONSENT TO THE FOREGOING AGREEMENT:

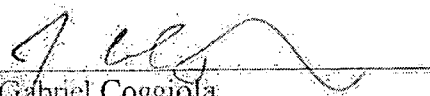


Dianna F. Owens, Claimant

Dated: _____


Stephen J. Wukela
Attorney for Claimant

WILLSON JONES CARTER & BAXLEY, P.A.

BY: 

John Gabriel Coggiola
Attorneys for Defendants

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA

John Gabriel Coggiola
Direct (803) 227-2889
Fax (803) 782-2527
jgcoggiola@wjlaw.net

3600 Forest Drive, Suite 204
Columbia, SC 29204
www.wjcbllaw.com

April 13, 2018

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Dianna Owens v. Pee Dee Community Action Agency
Appellate Case No.: 2018-000073

Dear Ms. Kitchings:

I am the attorney for the respondents in the above caption matter which is pending before the South Carolina Court of Appeals. Counsel for respondent, Stephen Keeler, Junior, and I have now resolve this matter per a settlement agreement, which has been approved by the Worker's Compensation commission.

Enclosed for filing, please find the original and two copies of the fully executed agreement for dismissal. In addition, I have attached copies of the South Carolina Worker's Compensation Commission approved settlement agreement in accordance with S.C. Code Ann. §42-9-390. Finally, I have enclosed two (2) extra copies and two (2) self-addressed stamped envelopes for the return of the date stamped Agreement to my attention and to the attention of Mr. Wukela, who is copied on this correspondence. If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.

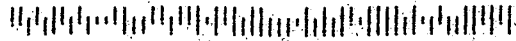


John Gabriel Coggiola

JGC/jgc

Enclosure(s)

cc: Mr. Stephen J. Wukela, Jr.
Ms. Meredyth Harden (via Email)



NEOPOST

FIRST-CLASS MAIL

04/13/2018

US POSTAGE \$001.84⁰



ZIP 29209
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mjl

WILLSON JONES CARTER & BAXLEY, P.A.
ATTORNEYS AT LAW
3600 FOREST DRIVE, SUITE 204
COLUMBIA, SC 29204

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JENNY ABBOTT KITCHINGS, CLERK
THE SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211