THE STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPEAL FROM THE HEARING COMMISSIONER
WCC FILE NO.: 1302012

Juanita Jackson, Claimant..... Appellant/Respondents,

v.

SC DSN, Employer and State Accident Fund,
Insurer.....Respondent/Appellants.

AFFIRMED, AS MODIFIED, IN PART;
REVERSED IN PART

This matter came before the Full Commission on cross-appeals by the Parties. After review of the briefs, the record before us, and the oral argument of the Parties, the Appellate Panel hereby **AFFIRMS IN PART, AS MODIFIED, AND REVERSES, IN PART**, the Decision of the Hearing Commissioner.

FACTUAL/PROCEDURAL BACKGROUND

On March 1, 2013, Claimant sustained an admitted accident working as a nurse at the Department of Disability and Special Needs when she was pushed by a patient and struck her head. (APA p. 353). Defendants admitted the accident, commenced temporary total and authorized medical, including the treatment of neurologist Dr. George Sandoz. Additionally, Claimant has been examined by Dr. David Scott at USC Orthopaedics (formerly Moore Orthopaedics) and Dr. Lind.

Claimant filed a Form 50 seeking the follow findings:

1. That the Claimant sustained injury by accident to her cervical spine, lumbar spine, brain, and psyche;

2. That the Claimant is entitled to further medical treatment including a cervical MRI; a cervical epidural steroid injection; evaluation and treatment of her lumbar spine by an orthopaedic; and an MRI of the brain;

3. That the Claimant is entitled to an increase in her average weekly wage based upon concurrent employment.

4. That the Claimant has suffered severe and permanent brain damage.

5. That the Claimant is totally and permanently disabled and entitled to lifetime benefits pursuant to S.C. Code §42-9-10.

Despite the fact the Claimant had not been found to be at MMI, the Claimant contended that an award on permanency and her brain injury were appropriate, citing McMahan v. S.C. Department of Education-Transportation, Opinion No. 5415, (Ct. App. 2016) in which the Court of Appeals stated that under a fact specific set of circumstances, it is possible that a claimant can be found permanently and totally disabled prior to reaching MMI.

At the Hearing, the Defendants admitted injury to the cervical spine, lumbar spine, and psyche and agreed to provide additional medical treatment including a cervical MRI, a cervical ESI, evaluation and treatment of the lumbar spine, and a brain MRI. The Defendants argued, however, that the Claimant had not yet reached MMI and any ruling on permanency or a permanent brain injury were premature, and that McMahan v. S.C. Department of Education-Transportation was inapposite to the facts of this case. Alternatively, the Defendants contended that the Claimant did not suffer a severe permanent physical brain injury and further denied the Claimant was permanently and totally disabled. In addition, the Parties disputed the correct calculation of the Claimant's average weekly wage and compensation rate for her concurrent

employment arising out of Claimant's part-time employment. This concurrent employment extended over the course of 52 weeks, though the Claimant collected only 28 paychecks due to the sporadic nature of her part-time employment. The Defendants contended her AWW/CR for this concurrent employment should be her concurrent wages divided by 52 weeks, the number of weeks over which she received wages; the Claimant contended her AWW/CR for her concurrent employment should be her wages divided by the actual number of weeks for which wages were paid.

On the issue of whether Claimant suffered severe, permanent, and physical brain damage, the Hearing Commissioner determined that the Claimant was not at MMI and therefore held that the question of whether the Claimant had sustained a brain injury, and whether, if so, the Claimant had suffered physical brain damage was premature. (Order ¶¶ 12, 16). He distinguished this case from the case of McMahan v. S.C. Department of Education-Transportation in declining to rule on issues of permanency.

On the average weekly wage and compensation rate issue, the Hearing Commissioner ruled that the Claimant's concurrent wages should be calculated by dividing her AWW/CR by the number of actual weeks the Claimant worked rather than 52 weeks as contended by the Defendants.

Following the issuance of the Decision & Order, the Claimant appealed the issue of whether she suffered a brain injury, whether a determination of permanency was premature and whether the Claimant was entitled to a permanent award under §42-9-10(C) (lifetime benefits for physical brain damage) or §42-9-10(A) (500 weeks). The Defendants appealed the Hearing Commissioner's calculation of the Claimant's average weekly wage and compensation rate.

LAW/ANALYSIS

I. Claimant's Appeal

(Prematurity; Permanency; Brain Injury; Physical Brain Damage; Total and Permanent Disability)

The threshold issue before the Hearing Commissioner and on appeal is whether the Hearing Commissioner erred in concluding that a determination of permanency is premature, as the parties agree the Claimant has not reached MMI. At oral argument, Claimant's counsel conceded that the Hearing Commissioner correctly determined that this case was not ripe for a determine of permanency. Claimant's counsel further stated that had the Hearing Commissioner ruled simply that a determination of permanency was premature, and ended the inquiry there, the Claimant would not have appealed and would have, instead, awaited MMI to litigate permanency. (Tr. 02/20/2018, p. 6-10). However, Claimant's counsel explained that the Claimant felt bound to appeal factual findings the Commissioner made on the underlying evidence as to whether the Claimant had sustained a brain injury and was permanently and totally disabled. (Tr. 02/20/2018, p. 6-10) The Claimant's counsel argued:

> COMMISSIONER BECK: But you asked for him to do that didn't you?
>
> MR. WUKELA: Well, yes, I did, Commissioner. But once the Commissioner, I think, had said that that determination was premature. If Commissioner makes also findings as to that determination, now I've got to appeal it because I don't want to be bound by those findings even though the determination's premature, if that makes sense.
>
> COMMISSIONER BECK: It does.
>
> MR. WUKELA: And, in truth, if the commissioner's order had said, no, Wukela, it's premature and we're not gonna take it up, that'd have been the end of the inquiry. But once there are these

findings, I'm almost bound to appeal those findings even though I don't think they're binding technically and they don't revolve (sic) the issue because the Commissioner found the determination was premature.
But, you know, Finding Number 13 is an example of that.

(Tr. p. 7, lines 5 - 25)

. . .

COMMISSIONER BECK: Number 13 and probably Finding of Fact 14 are inconsistent with Finding of Fact 15.

MR. WUKELA: Correct, Commissioner. That's precisely correct, Commissioner. And, in fact, in my brief, page 11, I set out several findings that I suspect, in addition to those two, might fall into the same category. Given the fact that they go beyond the finding that a determination is premature and made findings about the underlying facts that I question whether a subsequent commissioner on a determination of premature (sic) would be bound by. And therefore, I'm bound to appeal.

(Tr. p. 9, lines 7 - 20)

The Commission questioned Defense counsel on this point:

COMMISSIONER BECK: Do you believe that Findings of Fact 13 and 14 are inconsistent with Finding of Fact 15?

MR. HORNER: And when you say Finding of Fact 15, do you mean the fact that he concludes that ---

COMMISSIONER BECK: The determination.

MR. HORNER: Premature.

COMMISSIONER BECK: It's premature. Yet he finds in 13 that he's not [P&T].

MR. HORNER: Well, I think the issue is, I think, claimant walked in there and asks for a permanent and total disability decision. And Commissioner McCaskill is faced with ---

COMMISSIONER BECK: Well ---

MR. HORNER: --- the decision of do I find him perm total, or is there some evidence that persuades me that they're not perm total at this time?

COMMISSIONER BECK: But he can't then go on and say that a determination of permanency is premature.

MR. HORNER: Well, he has to in a way because he has to come up with findings of fact that support his decision that permanency is premature, and he does that by saying ---

COMMISSIONER BECK: He does that based on his distinction of McMahan.

MR. HORNER: Correct. He does that based upon ---

COMMISSIONER BECK: It's almost like that should have come first. And then you wouldn't have needed 13 and 14.

MR. HORNER: Perhaps not. If he had said I'm only ruling on the fact that you are -- that McMahan doesn't apply; you're not at MMI, so I'm not ruling on anything else.

COMMISSIONER BECK: It was premature, period.

MR. HORNER: Period. I agree he could have done that. But I don't -- one, I don't think these decisions are binding on the next commissioner. I don't.

(Tr. p. 10, line 16 - p. 12, line 4)

. . .

MR. HORNER: ...I don't think it's binding on the next commissioner is because I think this one is peculiar or particular to that Form 50 and that really the finding that this is premature is the overriding finding of the Commissioner McCaskill's decision.

COMMISSIONER BECK: So you concede that one the record that it is not binding ---

MR. HORNER: I would.

COMMISSIONER BECK: --- as to a future disability award?

MR. HORNER: I would . . .

(Tr. p. 13, line 9 - p. 13, line 20)

> COMMISSIONER BECK: Object to the order being amended removing those findings of fact?
>
> MR. HORNER: I anticipated that, to be honest. I anticipated that those would be either reworded or removed altogether. So I don't have an objection to that because I believe that what Commissioner McCaskill ---
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> COMMISSIONER BECK: It doesn't change the outcome?
>
> MR. HORNER: It doesn't change the outcome. And I think the outcome is it was premature.

(Tr. p. 14, line 17 - p. 15, line 1)

We affirm the Hearing Commissioner's finding that a determination of permanency is premature and find that because he made such a determination, no other factual findings as to the alleged brain injury or alleged total disability were necessary to his decision. Because we agree with the Hearing Commissioner that such determination was premature because the Claimant was not at MMI, those questions of permanency, brain injury, and permanent and total disability are reserved for a determination *de novo* at a subsequent hearing.

Defendants' Appeal

The second issue on appeal was the Hearing Commissioner's ruling on the Claimant's average weekly wage and compensation rate for her concurrent part-time employment. Defendants argue that the Hearing Commissioner incorrectly calculated the AWW/CR for the concurrent employment. We agree and reverse the Hearing Commissioner.[1]

In the present case, the Claimant was injured on or about March 1, 2013, while working for the Department of Special Needs. She had a part-time concurrent job, as well, during the

[1] As to her employment with the Department of Special Needs, the Claimant's average weekly wage and compensation rate are $707.12 and $471.44, respectively. These numbers are not disputed by either party.

year before her injury. Claimant first began working at Florence Nursing on March 4, 2012, with her last day of work being January 30, 2013. There is no evidence in the record indicating she was unable to work at her concurrent job up until her injury on March 1, 2013.

As to this concurrent employment, the Claimant argued that the AWW/CR should be calculated using the Claimant's total concurrent wages and dividing those wages by the actual number of weeks for which wages were paid, i.e. 28 weeks. This calculation would result in an average weekly wage from her concurrent employment of $262.35. The Defendants argued that the AWW/CR with respect to her concurrent employment should be calculated by dividing her part-time, supplemental, concurrent wages she earned over the course of the year preceding her injury (for which she was available to work), or 52 weeks. This would result in an average weekly wage of $141.27 for her concurrent employment. The Hearing Commissioner ultimately ruled that the Claimant's AWW/CR for her concurrent employment should be calculated by taking the concurrent wages and dividing it by 28 weeks.

On appeal, the Defendants argued that the Hearing Commissioner erred in determining the Claimant's AWW/CR. Defendants argue that the Hearing Commissioner's decision on the AWW/CR is contrary to the statutory intent of South Carolina Code §42-1-40, is counter to the case law addressing this issue, and the ruling results in an unfair and unjust result while rewarding the Claimant with a windfall. We agree.

In reviewing the evidence regarding the Claimant's part-time employment, her hours were sporadic at best. Claimant had a 6-week gap after her first day at her concurrent job, and frequently had two-week gaps in May, June, and July. She did not work between July 17th and August 23rd, a 5-week gap. She did not work from September 10th until September 23rd, a 2-week gap. Finally, she did not work at all between January 31, 2013, and her injury on March 1, 2013, a gap of 4 weeks.

We find that despite the fact the Claimant may have only worked part-time during 28 weeks out of the year, her wages were earned over a 52-week period, and ended with the date of her injury. Though the Claimant received 28 weekly paychecks over this 52-week period, the Claimant's concurrent employment took place over 52 weeks. There is no indication that Claimant had other work available to her during the remaining 24 weeks she could work but did not. Her concurrent employment did not start and end over a 28-week period but over 52 weeks. For this reason, we agree that her AWW/CR for her concurrent employment should be based on 52 weeks.

Average weekly wage is defined in South Carolina Code section 42-1-40, which states in relevant part:

> "Average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury [ ].
>
> "Average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred [ ] divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained. [ ]
>
> *When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.* Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings.

S.C. Code §42-1-40 (emphasis added).

Claimant argues that she is entitled to divide her concurrent wages by 28 weeks, the actual number of weeks for which wages were paid, based upon that portion of South Carolina §42-1-40 which states: "'Average weekly wage' must be calculated by taking

the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred [] divided by fifty-two or by the actual number of weeks for which wages were paid, *whichever is less*." Claimant argues that since she was paid for 28 weeks, her wages should be divided by 28. We disagree.

While the statute speaks to dividing wages by 52 weeks or by the actual number of weeks which wages were paid, whichever is less, we believe that dividing by less than 52 weeks is only applicable when a claimant's employment does not extend over a 52-week period. This interpretation is not only consistent with the statute, but also with the intent of the statute, which is to compute an "average weekly wage[] *as will most nearly approximate the amount which the injured employee would be earning were it not for the injury*." S.C. Code §42-1-40.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. Bohlen v. Allen, 228 S.C. 135, 89 S.E.2d 99 (1955) (emphasis added). Statutes must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect. S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Courts cannot concentrate on isolated phrases in the statute, but instead must read the statute as a whole and in a manner consistent with the statute's purpose. State v. Sweat, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008). However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly

absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. Stackhouse v. Rowland, 86 S.C. 419, 68 S.E. 561 (1910).

Claimant's interpretation has the potential to lead to a plainly absurd result, particular in those situations where a claimant works part-time work in addition to her full-time employment and though she available to work over a 52-week period, for whatever reason she does not. The statute, when read as a whole, intends to establish an AWW/CR that most approximates a claimant's earnings. The statute attempts to address those wages over a period of time which the employment "extends." In the present case, the Claimant's part-time concurrent employment "extended" over 52 weeks, though she may not necessarily have been able to work every week due to factors not relevant here. Her inability to work 52 weeks a year in her concurrent employment, however, was not due her injury but rather the nature of the part-time job itself.

For whatever reason—be it her schedule, the nursing home's schedule, or some other reason—over the next 52 weeks, the Claimant earned $7,345.80 in her part-time wages. Under decision of the Hearing Commissioner, the Claimant's AWW/CR results in her making the equivalent of $13,642.20 a year and not the $7,345.80 the Claimant actually earned. While this number would have been a fair approximation of the Claimant's AWW/CR had she been injured after only 28 weeks on her part-time job, the Hearing Commissioner's Decision and Order does not approximate the $7,345.80 she actually made over the period of 52 weeks while at Florence Nursing.

Additionally, we believe an issue similarly enough to the facts in this case has been addressed by the Supreme Court. In Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978), the claimant earned the maximum allowed under the law ($2,500) without jeopardizing his Social Security income. His employment lasted about 3-4 months a year. He subsequently suffered an injury and the issue of his average weekly wage became a debated one.

The Commission ultimately calculated the claimant's average weekly wage in a way that extrapolated out the wage that the claimant would have earned if he had worked the entire year when the claimant had no intention of doing so. This resulted in the claimant's AWW/CR far exceeding his actual income over the course of a year. In reversing, the Supreme Court stated:

> Factually analyzed, we have an employee who for reasons satisfactory to himself, while fully capable of working, quit and withdrew his services from the labor market except for three or four months in the year. Disability has caused him to lose approximately $2,500.00 per year. Failure to receive any amount over and above that figure in the past or future is not attributable to the injury he has sustained, but rather is attributable to the pattern of work activity he has voluntarily assumed.

Bennett v. Gary Smith Builders, 271 S.C. at 98 (emphasis added).

The Court went on to hold that it was "grossly unfair" to the employer to require payments of almost twice the actual average weekly wage, and noted that the objective of wage calculation is to arrive at a fair approximation of the claimant's probable future earning capacity and the amount which the injured employee would be earning were it not for the injury. Id. This same reasoning has been applied in several other cases. See Foreman v. Jackson Minit Markets, Inc., 265 S.C. 164, 217 S.E. (2d) 214 (1975); McCummings v. Anderson Theatre Co., 225 S.C. 187, 81 S.E. (2d) 348 (1954); Brunson v. Wal-Mart Stores, Inc., 344 S.C. 107, 111, 542 S.E.2d 732, 734 (Ct.App.2001)

Finally, South Carolina Code section 42-1-40 gives the Commission the discretion to fashion any other method of computing the average weekly wage that will approximate the amount the injured employee would earn, but for the injury. See S.C. Code § 42-1-40. ("When for exceptional reasons the foregoing would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.") We find such exceptional circumstances are present in the current. The Claimant's

ability to earn wages in her concurrent employment was obviously limited, either by her primary employment or by the amount of work available to her. As in Bennett, the Hearing Commissioner's award nearly doubles the actual amount that the Claimant earned in her part-time concurrent employment. Calculating her average weekly wage and compensation rate that nearly doubles her wages results in an AWW/CR that is unfair to the Employer. Basing her AWW/CR on the 52-week period over which the Claimant worked for Florence Nursing more closely approximates the Claimant's earnings in her concurrent employment. Therefore, we **REVERSE** the Hearing Commissioner as to the Claimant's average weekly wage and compensation rate.

Based upon the aforementioned law and analysis of the issues in this case, the Full Commission issues to the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Claimant sustained an injury by accident arising out of and within the course and scope of her employment on March 1, 2013.

2. The Claimant alleges that she sustained injuries to her cervical spine, lumbar spine, brain, and psyche.

3. The Defendants contend that the injuries sustained by her are limited to her head, back (cervical and lumbar), and psyche.

4. In viewing the evidence as a whole, we affirm the finding that the Claimant has not reached MMI.

5. Defendants are to provide an MRI of the cervical spine.

6. Defendants are to provide the Epidural Steroid Injection ordered by Dr. Sandoz.

7. Defendants are to provide an orthopedic evaluation of the lumbar spine with an orthopedist who specializes in treatment of the spine, as recommended by the authorized treating physician, Dr. Sandoz.

8. As to whether Claimant is permanently and totally disabled under either §42-9-10(A) or §42-9-10(C), we find that such a determination is premature at this time.

9. In this case, that treatment needs to progress before a determination as to the ability of the Claimant to earn wages is determined with finality.

10. Regarding the average weekly wage and compensation rate, the Parties concede the average weekly wage and compensation rate of the Claimant for her job the Department of Special Needs is $707.12 and $471.44 respectively. Thus, this is her base AWW/CR without her concurrent employment added.

11. As to the average weekly wage and compensation rate for Claimant's concurrent employment, the Claimant earned $7,345.80 in her part-time wages for Florence Nursing over the course of a 52-week period prior to the date of her injury.

12. That despite that Claimant only worked 28 weeks out of the preceding 52 weeks, her part-time concurrent employment extended over a period of 52 weeks.

13. Claimant had numerous, large gaps between work days that were 2, 3, or even 5 weeks long for her part-time employer that were unrelated to the accident in question.

14. Though the reason for her sporadic work schedule did not appear in the record, it appears to be simply the nature of her concurrent employment. In any event, the Defendants were in no way responsible for her sporadic work schedule.

15. Given that her earning occurred over a 52-week period, we find that the AWW/CR for her concurrent employment shall be calculated using the aforesaid 52 weeks.

16. Failing to divide her AWW by 52 weeks would be tantamount to her earning $13,642.20 over the course of 2012-13, an amount nearly double what she earned.

17. Finding a combined AWW/CR of $969.47 and $646.32 respectively would be grossly unfair to her Employer.

18. Finding a combined AWW/CR of $969.47 and $646.32 would not amount to a fair approximation of the Claimant's probable future earning capacity in her concurrent, part-time employment.

20. Accordingly, the Claimant's Average Weekly Rate and Compensation Rate for her concurrent employment, to be added to her compensation rate for her employment with the Department of Special Needs, are $141.27 (AWW) and $94.18 (CR).

CONCLUSIONS OF LAW

The aforementioned findings are governed by, or have otherwise been made in light of, the following principles of South Carolina law:

1. Pursuant to S.C. Code § 42-3-20 and§ 42-3-180, this Commission has jurisdiction over the parties to hear the issues in dispute.

2. Pursuant to S.C. Code § 42-1-130, Claimant, Juanita Jackson, is a covered employee.

3. Pursuant to S.C. Code § 42-1-140, SC Department of Disabilities and Special Needs, is a covered employer.

4. Pursuant to S.C. Code § 42-1-150, there was an employer/employee relationship between the parties on the alleged date of accident.

5. The Full Commission has jurisdiction over this appeal.

6. Pursuant to S.C. Code § 1-23-320(b) and Regulation 67-607, the Hearing before the Hearing Commissioner was timely and properly served upon all parties of interest and venue was proper.

7. Pursuant to S.C. Code § 42-15-20, the Claimant gave timely notice of her accident and injuries to her employer.

8. Pursuant to S.C. Code § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.

9. The burden is on the Claimant to prove such facts as will render the injury compensable, and such an award must not be based on surmise, conjecture or speculation. Crosby v. Wal-Mart Store, Inc., 330 S.C. 489, 493, 499 S.E.2d 253, 255 (Ct. App. 1998).

10. Pursuant to S.C. Code § 42-1-40, "average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury.

11. Pursuant to S.C. Code § 42-1-40, the "average weekly wage" must be calculated by taking the total wages paid for the last four quarters immediately preceding the quarter in which the injury occurred [ ] divided by fifty-two or by the actual number of weeks for which wages were paid, whichever is less. When the employment, prior to the injury, extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, as long as results fair and just to both parties will be obtained.

12. Pursuant to S.C. Code § 42-1-40, when for exceptional reasons the calculations set forth in § 42-1-40 "would be unfair, either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury. Whenever allowances of any character made to an employee in lieu of wages are a specified part of a wage contract they are deemed a part of his earnings." See also Bennett v. Gary Smith Builders, 271 S.C. 94, 245 S.E.2d 129 (1978)

13. To avoid an unfair result to the employer, the Claimant's average weekly wage and compensation rate for her concurrent employment shall be divided by the period over which she earned such wages, or 52 weeks.

14. Pursuant to S.C. Code § 42-1-40, the Claimant's combined compensation rate is $565.62.

15. Pursuant to § 42-1-160, Claimant sustained compensable injuries to her back(lumbar and cervical), head, and psyche while in the course and scope of her employment.

16. Pursuant to §42-1-172, upon reaching maximum medical improvement, an injured employee may be entitled to benefits pursuant to§§ 42-9-10, -20, or -30.

17. Pursuant to§ 42-15-60, Claimant has not reached maximum medical improvement and is thus entitled to additional medical treatment for her cervical and lumbar spine as recommended by the authorized treating physician, Dr. Sandoz, as stated herein.

18. Pursuant to§§ 42-9-10, -20 and -30, determinations of permanency and whether Claimant suffered a permanent, severe, physical brain injury are premature, as Claimant has not reached maximum medical improvement.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Decision of the Hearing Commissioner is **AFFIRMED IN PART, AS MODIFIED**, and **REVERSED IN PART**, as set forth in the Full Commission's Decision and Order.

IT IS FURTHER ORDERED that Claimant has not reached maximum medical improvement and therefore, a determination of permanency under either §42-9-10(A) or §42-9-10(C) is premature. The Employer/Carrier shall continue to provide the Claimant continued temporary total disability benefits pursuant to §42-9-10 and medical benefits pursuant to §42-15-60 until further order of the Commission.

IT IS FURTHER ORDERED that Defendants shall provide an MRI of Claimant's cervical spine and the Epidural Steroid Injection ordered by Dr. Sandoz. Defendants shall also provide an orthopedic evaluation of Claimant's lumbar spine with an orthopedist who specializes in treatment of the spine as recommended by the authorized treating physician. Dr. Sandoz.

IT IS FURTHER ORDERED that Defendants shall pay the Claimant back due indemnity benefits pursuant to the increase in her compensation rate from $471.44 to $565.62. Defendants shall continue to pay indemnity benefits at the rate of $565.62 until further order of the Commission.

AND IT IS SO ORDERED!

South Carolina Workers' Compensation Commission

T. Scott Beck, Chair

Avery B. Wilkerson, Jr. Commissioner

R. Michael Campbell, II, 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 August 24, 2018

Stephen J. Wukela

From:	appeals@wcc.sc.gov
Sent:	Friday, August 24, 2018 9:36 AM
To:	BJTHOMPSON@SAF.SC.GOV; CADAN@SAF.SC.GOV; EFICKLING@SPEED-SETA.COM; ESPRADLEY@SPEED-SETA.COM; PSNYDER@SAF.SC.GOV; STEPHEN@WUKELALAW.COM; STEVE@WUKELALAW.COM; TSTEWART@SPEED-SETA.COM; VJACKSON@SAF.SC.GOV; APPEALS@WCC.SC.GOV
Subject:	Full Commission Order - WCC#:1302012 - JACKSON
Attachments:	OB5E4A.pdf

Attached is the Full Commission Order for WCC#: 1302012

R08 ORD - Full Commission Order - 8/24/2018 - ORDER#: 72827 - WCC #: 1302012