

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1609488**

HERMAN L. TATE, SR., EMPLOYEE CLAIMANT/APPELLANT

VS.

NESTLE FROZEN FOOD/NESTLE USA, EMPLOYER,

AND

INDEMNITY INSURANCE CO OF N.A., CARRIER DEFENDANTS/RESPONDENTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on June 18, 2018, per notices
timely and properly served upon
all parties of interest.

RECEIVED

DEC 19 2018

SC Court of Appeals

Appellate Panel Decision and Order

filed, November 27, 2018

APPEARANCES: CLAIMANT/APPELLANT represented by Michael A. Hart, Esquire, of Greenville, South Carolina; and

DEFENDANTS/RESPONDENTS represented by Ashley Kirkham, Esquire, of Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by the Defendants from the Decision and Order of Commissioner Scott Beck, filed March 7, 2018.

The Defendants appeal the Decision and Order of Commissioner Scott Beck, finding the Claimant was entitled to benefits under the Act, as the accident in question did constitute a compensable injury by accident.

By way of background, the claim is before the South Carolina Workers' Compensation Commission pursuant to Form 50 filed on August 15, 2017. It is the position of the Claimant that he sustained a compensable injury to his right shoulder on June 13, 2016. Accordingly, the Claimant sought payment for all causally-related medical care; any additional medical treatment deemed necessary and temporary total disability benefits from the date of the injury to February, 21, 2017.

Pursuant to the Form 51 filed on September 15, 2017, the Defendants denied the claim in its entirety. It is the position of the Defendants that the claim is not compensable under Section 42-1-160 as the Claimant has not met his burden of proving he was injured within the course and scope of his employment. The Defendants maintain the Claimant did not meet his burden of proving a compensable injury by accident, as the stories of how he was injured are inconsistent and mutually exclusive.

A Hearing on the matter was held on January 17, 2018, before Commissioner Scott Beck ("Single Commissioner"). By way of the Decision and Order dated March 7, 2018, the Single Commissioner determined the Claimant met the burden of proving he sustained a compensable injury by accident arising out of and in the course of his employment. The Single Commissioner found the events surrounding the Claimant's injury were not mutually exclusive but rather a chain of events in close proximity to each other. The Single

Commissioner further determined the Claimant was entitled to compensation for temporary total disability and permanent partial disability. The Single Commissioner also found the Claimant was also entitled to payment for any causally related medical care.

By way of Form 30 filed with the Commission on May 8, 2018, the Defendants appealed the Order of the Single Commissioner to the Full Commission Appellate Panel based upon the following grounds:

1. The Single Commissioner erred in finding as fact and concluding as law Claimant suffered a compensable injury by accident to his right shoulder which occurred on June 13, 2016.
2. The Single Commissioner erred in finding as fact and concluding as law Claimant is entitled to temporary total disability benefits from June 13, 2016 until he reached maximum medical improvement on February 21, 2017.
3. The Single Commissioner erred in finding as fact and concluding as law that Claimant is entitled to future medical care consistent with Dr. Wyland's recommendations.
4. The Single Commissioner erred in find as fact and concluding as law that Claimant suffered a 35% permanent partial disability to his right shoulder.
5. The Single Commissioner erred in finding that Claimant's versions of how the injury occurred are not mutually exclusive but rather a chain of events in very close proximity to each other.

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be **Affirmed** in its entirety.

FINDINGS OF FACT

The Appellate Panel has carefully considered and reviewed all of the evidence presented by the parties in this claim, including the claimant's Hearing and deposition testimony; the Hearing testimony of Terrance Green; the medical evidence and exhibits and

the legal positions argued on behalf of both parties. From this evidence, IT IS FOUND AS A FACT THAT:

1. Defendants deny this claim based upon an assertion that Claimant has given inconsistent versions of how the injury occurred. To the contrary, these versions are not mutually exclusive but rather a chain of events in very close proximity to each other. As such, the greater weight of the evidence supports a finding of compensability to the Claimant's right shoulder.
2. Claimant is entitled to causally related medical care to be paid by the Defendant.
3. Claimant is entitled to TTD from date of injury 2/21/2017, until the date of maximum medical improvement.
4. Claimant concedes he is at MMI as of February 21, 2017.
5. Dr. Wyland's questionnaire dated 7/17/17 (Claimant 7-8) addresses impairment, restrictions, and future medical care. However, based upon his depo at page 11, the impairment rating of 16% is to the shoulder, not the upper extremity.
6. Based upon significant restrictions assigned which subject Claimant to sedentary duties, the Claimant is entitled to an award of 35% PPD to the right shoulder.
7. Claimant is entitled to future medical care consistent with Dr. Wyland's recommendations at Claimant 6. Claimant is also entitled to lifetime repair, maintenance, or replacement of causally related medical hardware.

CONCLUSIONS OF LAW

Accordingly, as provided in South Carolina Code of Laws, (1976, as amended)

Section 42-17-40, it is the determination of this Appellate Panel:

1. Under Section 42-1-160, the Claimant did sustain injuries by accident arising

out of and in the course of the employment to his left arm and right arm on January 15, 2014.

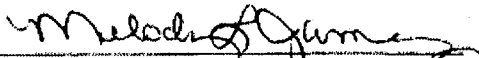
2. That pursuant to Section 42-1-160, the Claimant suffered a compensable injury by accident to his right shoulder, which injury occurred on June 13, 2016.
3. That as a result of his injury by accident the Claimant has undergone various modalities of treatment, as noted in the APA submissions of the parties.
4. That pursuant to Section 42-9-10, the Claimant is entitled to temporary total disability benefits from the date of the injury until he reached maximum medical improvement on February 21, 2017, according to his doctor, Dr. Douglas Wyland.
5. That pursuant to Section 42-15060, the Claimant is entitled to include future medical care consistent with Dr. Douglas Wyland's recommendations from Claimant's APA page 6.

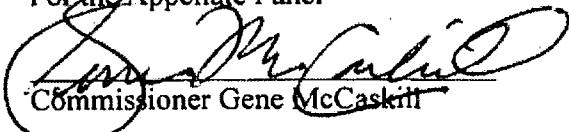
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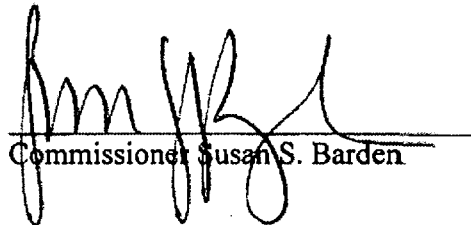
IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on March 7, 2018, is hereby **AFFIRMED**.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Melody James
For the Appellate Panel


Commissioner Gene McCaskill



Commissioner Susan S. Barden

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 Eugenia Hollmon on November 27, 2018