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SC Court of Appeals

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1413546

TIMOTHY A. MCDUFFIE, EMPLOYEE, CLAIMANT,

VERSUS

JOHNSON FOOD SERVICES, LLC, EMPLOYER,

AND

GREAT AMERICAN ALLIANCE INSURANCE CO./STRATEGIC COMP., CARRIER,
DEFENDANTS.

HEARING: Held on June 18, 2018 in Columbia, South Carolina.

APPEARANCES: Claimant represented by Andrew N. Safran, Esquire, Post Office Box 12089, Columbia, South Carolina 29211.

Defendants represented by Benjamin M. Renfrow, Esquire, Willson, Jones, Carter & Baxley, P.A., 872 S. Pleasantburg Drive, Greenville, South Carolina 29607.

PURPOSE OF HEARING: Review of the March 13, 2018 Order of The Honorable Avery B. Wilkerson, Jr.

DECISION AND ORDER OF THE APPELLATE PANEL

FILED:

November 27, 2018

STATEMENT OF THE CASE

This is an appeal from the March 13, 2018 Order of The Honorable Avery B. Wilkerson, Jr., which determined: (a) Defendants', Johnson Food Service's and Great American Alliance Insurance Company's/Strategic Comp.'s, repeated attempts to direct Claimant, Timothy A. McDuffie, to a spine surgeon were "inconsistent with this Commission's prior identification of his treatment needs"; (b) their current effort to "obtain an evaluation to determine **whether** treatment is warranted ("if any") certainly constitutes an attempt to relitigate a previously resolved issue"; (c) after considering "the essentially undisputed facts and the law of this case, . . . Mr. McDuffie has established 'good cause' per . . . [the provisions of S.C. Code Ann.] Section 42-15-60 [(2015)] . . . for Commission designation of a treating physician"; and (d) selection of Dr. J. Kelby Hutcheson to serve as Mr. McDuffie's physician was appropriate under the present circumstances.

Essentially, Defendants contend: (a) they have never denied Mr. McDuffie's need for/entitlement to treatment for the back injury component at any time during the course of this claim; (b) their directing Mr. McDuffie to Dr. Karl A. Lozanne, a neurosurgeon, "for an evaluation and current recommendations for treatment **if any**" was not inconsistent with this Commission's explicit directive to "provide treatment"; (c) this second

attempt to compel Mr. McDuffie to undergo surgical evaluation for a posttraumatic facet syndrome, which the Appellate Panel previously found to be a non-surgical condition, rather than to provide the mandated "treatment", did not justify Commissioner Wilkerson's designation of a treating physician per Section 42-15-60; (d) his ruling deprived them of an unassailable statutory right to direct medical care; and (e) Commissioner Wilkerson's designation of Dr. Hutcheson inappropriately allowed Mr. McDuffie to choose his own physician,

In response, Mr. McDuffie maintains: (a) the law of this case unequivocally establishes Defendants vigorously contested his entitlement to further treatment of his back injury component following a June 5, 2015 discharge from care by their designated physician, Dr. Michael W. Peelle; (b) as the Appellate Panel explicitly found his posttraumatic facet syndrome required receipt of nonsurgical modalities in the form of, at minimum, "lumbar facet/medial branch blocks", Defendants' attempt to redirect him to Dr. Peelle (a surgeon who had not detected this causally related pathology during his initial course of care), as well as their effort to compel evaluation by Dr. Lozanne to determine whether ("if any") treatment "is needed . . . in this situation", was clearly violative of the Appellate Panel's "treatment" mandate; (c) Commissioner Wilkerson was not only vested with the statutory authority to designate a treating physician, but also properly concluded he had established "good

cause" pursuant to Section 42-15-60 in this instance; and (d) the hearing record does not support Defendants' contention Commissioner Wilkerson's designation of Dr. Hutcheson was either the product of his specific request or inappropriate under the current circumstances.

In rendering the March 13, 2018 rulings, Commissioner Wilkerson found as facts:

1) On September 19, 2014, Mr. McDuffie sustained compensable injuries to his back and left leg when he tripped over an exposed pipe at the Johnson Food Services, LLC facility located at Ft. Jackson military base. Following this injury, he initially received treatment through Dr. Stewart Young of First Care, who prescribed physical therapy in conjunction with medication before recommending orthopaedic evaluation for "[p]ersistent low back, left thigh and left knee" (See, October 12, 2016 Order, Finding of Fact No. 7).

2) Defendants then directed Mr. McDuffie for evaluation by Dr. Michael W. Peelle of Moore Orthopaedics, who: (a) observed several clinical abnormalities that led him to obtain a lumbar MRI scan; (b) indicated this scan did not reveal any disc pathology; (c) offered no additional treatment; and (d) discharged him effective January 5, 2015. (See, October 12, 2016 Order, Finding of Fact No. 8 and 9).

3) As he remained symptomatic, Mr. McDuffie subsequently underwent evaluations by Drs. Johnson, Riber and Lembo, who each:

(a) determined the consequences of his compensable injury had produced a facetogenic pain syndrome; (b) recommended treatment in the form of facet injections/medial branch blocks; and (c) confirmed the nature/degree of his causally related symptoms/pathology prohibited him from engaging in unrestricted work activities. (See, October 12, 2016 Order, Finding of Fact Nos. 10-11 and 17-28).

4) After considering Mr. McDuffie's testimony, as well as the opinions expressed by Drs. Johnson, Riber and Lembo, this Commission specifically found:

(a) his testimony, including description of the injury mechanism and the nature/location of all symptoms associated with this accident, are wholly consistent with the medical evidence; (b) this medical evidence certainly confirms the onset of low back and left leg pain shortly after sustaining the admittedly compensable September 19, 2014 trauma; (c) while the apparent absence "of structural abnormalities on his MRI" led Dr. Peelle to discharge him from active care, Drs. Johnson, Riber and Lembo unanimously confirmed a scan of this nature is not diagnostic of facetogenic pain; (d) **these medical specialists also convincingly verified/explained the positive correlation between their diagnosis of posttraumatic facet syndrome with not only his relevant clinical findings (including diminished lumbar extension), but also the September 19, 2014 mechanism of injury;** (e) these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment; and (f) this treatment, aimed toward a posttraumatic facet syndrome diagnosed by Drs. Johnson, Riber and Lembo, proximately results from the consequences of

his September 19, 2014 compensable accident. (See, October 12, 2016 Order, Finding of Fact No. 30) (Emphasis added).

5) This Commission further found:

(a) the evidence, including consistent opinions expressed by Drs. Johnson, Riber and Lembo, **convincingly indicates Mr. McDuffie's compensable accident has created a lumbar posttraumatic facet syndrome;** (b) **this causally related condition has produced not only persistent back pain, but also associated left leg symptoms** (See, testimony of Drs. Riber and Johnson); (c) Mr. McDuffie has not reached the point of maximum medical improvement relative to this causally related back injury component; (d) **the treatment he requires for this compensable back injury component includes, but is not limited to, the lumbar facet/medial branch blocks identified by these physicians;** and (e) Mr. McDuffie's receipt of these additional treatment modalities for his back injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his September 19, 2014 compensable accident. (See, October 12, 2016 Order, Finding of Fact No. 31) (Emphasis added).

6) Based on this evidence, the Commission concluded:

(a) Mr. McDuffie's receipt of treatment for the posttraumatic lumbar facet syndrome diagnosed by Drs. Johnson, Riber and Lembo is reasonable, medically necessary and geared toward lessening his ultimate period of disability per Section 42-15-60; (b) *this treatment shall include, but not be limited to, performance of lumbar facet/medial branch blocks, in accordance with the treatment recommendations outlined by these physicians;* (c) Defendants will be afforded the right to provide treatment for Mr. McDuffie's back injury component per Section 42-15-60, but *strictly based upon the undersigned's ruling that Mr. McDuffie's diagnosed posttraumatic*

facet syndrome is causally related to the consequences of his compensable accident, so as to ensure receipt of this treatment; and (d) this obligation to provide ongoing medical treatment shall continue until this Commission determines he has achieved maximum medical improvement. (See, October 12, 2016 Order, Conclusion of Law No. 6.)(Italics added).

7) This Commission consequently ordered that Defendants shall "accept financial responsibility for treatment of Mr. McDuffie's lumbar posttraumatic facet syndrome through an appropriate specialist of its choosing, who shall provide treatment for this condition as a causally related result of Mr. McDuffie's compensable accident"

8) As confirmed by counsel, following Mr. McDuffie's counsel's March, 2017 request for treatment of the spinal injury component, Defendants attempted to redirect him to Dr. Peelle. In view of this surgeon's previous inability to identify the subsequently diagnosed posttraumatic facet syndrome and indication Mr. McDuffie required no further care, his counsel: (a) informed defense counsel this course of action was inconsistent with the Commission's October 12, 2016 Order; and (b) objected to either reevaluation by Dr. Peelle or his designation as Mr. McDuffie's treater.

9) Per email correspondence dated January 2, 2018, Defendants case nurse advised counsel that Defendants had scheduled a January 12, 2018 appointment for Mr. McDuffie with Dr. Lozanne. (See, Exhibit A). As confirmed by inspection of

his curriculum vitae information, Dr. Lozanne, a neurosurgeon, does not personally treat posttraumatic facet syndrome, but rather specializes in surgical care of spinal disorders. (See, Exhibit B).

10) In this connection, the extensive factual findings contained in the October 12, 2016 Order verify: (a) lumbar facet syndrome is initially treated with facet joint injections and/or medial branch blocks; (b) radiofrequency rhizotomy, depending upon the response to these injections/blocks, is also a consideration; (c) this treatment is routinely provided by conservative spine care physicians; and (d) the treatment Defendants are obliged to provide does not involve surgical intervention. (See, October 12 2016 Order, Finding of Fact Nos. 11, 17, 19, 23, 25-27 and 30-31; Conclusion of Law No. 6).

11) While the Commission afforded Defendants the opportunity to designate a physician, it likewise: (a) emphasized Defendants' obligation "to provide treatment"; (b) required that "this treatment shall include, but not be limited to, performance of lumbar facet/medial branch blocks, in accordance with the treatment recommendations outlined by . . . Drs. Johnson, Riber and Lembo"; and (c) similarly instructed the "treatment" of Mr. McDuffie's lumbar posttraumatic facet syndrome . . . [be provided] through an appropriate specialist" (See, October 12, 2016 Order, Conclusion of Law No. 6 and "AWARD").

12) To date, Defendants have attempted to refer Mr. McDuffie to two surgeons for assessment of a condition (posttraumatic facet syndrome) this Commission has previously found does **not** require surgery, but instead warrants procedures (injections and possible radiofrequency rhizotomy) performed by nonsurgical spine physicians. Additionally, Defendants have indicated a primary purpose for these evaluation is to determine **if treatment is necessary**, despite this Commission's ruling Mr. McDuffie shall receive this facet "treatment".

Additionally, Commissioner Wilkerson concluded as matters of law:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On September 19, 2014, Mr. McDuffie, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (1976, as amended), sustained compensable injuries to his back and left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2007), while performing duties arising out of and within the course and scope of his employment with Johnson Food Service, LLC, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976).

3. While Defendants have appealed several aspects of this Commission's October 12, 2016 Order, they admittedly did not contest the determination as to Mr. McDuffie's back injury

component, including: (a) his need for non-surgical treatment . . . [that] includes, but is not limited to, the lumbar facet/medial branch blocks identified by" Drs. Johnson, Lembo and Riber; (b) "these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment"; (c) they were simply "afforded the right to provide treatment for Mr. McDuffie's back injury component per Section 42-15-60, but strictly based upon the . . . [Commission's] ruling that Mr. McDuffie's diagnosed posttraumatic facet syndrome is causally related to the consequences of his compensable accident so as to ensure receipt of treatment"; and (d) this treatment of Mr. McDuffie's lumbar posttraumatic facet syndrome . . . [would be provided] through an appropriate specialist". (Italics added). These findings/conclusions/rulings consequently constitute the law of this case. See, Hudson v. Lancaster Convalescent Center, 407 S.C 112, 754 S.E. 2d 486, 490 (2012).

4. Given the law of this case, Defendants' attempts to: (a) direct Mr. McDuffie to a surgeon are inconsistent with this Commission's prior identification of his treatment needs; and (b) obtain an evaluation to determine **whether** treatment is warranted ("if any") certainly constitutes an attempt to relitigate a previously resolved issue.

5. Section 42-15-60 empowers this Commission to "override the employer's choice of providers and order a change in the medical or hospital service provided" in the event a controversy arises between the parties and "good cause" for this designation is established by the employee. See, Carter v. Aiken County Government, 366 S.C. 102, 620 S.E. 2d 99, 104 (Ct. App. 2005); Hall v. United Rentals, 371 S.C. 69, 636 S.E. 2d 876, 885 (Ct. App. 2006).

6. Our Appellate Courts have likewise recognized this Commission is vested with the authority to designate a treating physician in accordance with its assessment of an individual's particular medical needs. Gattis v. Murrell's Inlet, VFW, 353 S.C. 100, 576 S.E. 2d 191, 198 (Ct. App. 2003). ("Where it deems it necessary, the . . . [C]ommission may override an employer's choice of medical provider. . . ."; See also, Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E. 2d 547, 555 (Ct. App. 2006).

7. After duly considering the parties' respective positions, in light of the essentially undisputed facts and the law of this case, I conclude: (a) Mr. McDuffie has established "good cause" per Section 42-15-60 for Commission designation of a treating physician; and (b) the current circumstances warrant directing him to Dr. Hutcheson for receipt of treatment in accordance with the Appellate Panel's October 12, 2016 Order.

After reviewing the hearing record, in light of this Commission's prior Order, relevant legal authority and arguments of counsel, We hereby fully affirm Commissioner Wilkerson's factual determinations and ruling based upon the following **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

FINDINGS OF FACT

1. On September 19, 2014, Mr. McDuffie sustained compensable injuries to his back and left leg when he tripped over an exposed pipe at the Johnson Food Services, LLC facility located at Ft. Jackson military base in Richland County, South Carolina. Following this injury, he initially received treatment through Dr. Stewart Young of First Care, who prescribed physical therapy in conjunction with medication before recommending orthopaedic evaluation for "[p]ersistent low back, left thigh and left knee pain" (See, October 12, 2016 Order, Finding of Fact Nos. 1 and 7).

2) Defendants then directed Mr. McDuffie for evaluation by Dr. Michael W. Peelle of Moore Orthopaedics, who: (a) observed several clinical abnormalities that led him to obtain a lumbar MRI scan; (b) indicated this scan did not reveal any disc pathology; (c) offered no additional treatment; and (d) discharged him effective January 5, 2015. (See, October 12, 2016 Order, Finding of Fact Nos. 8 and 9).

3) As he remained symptomatic, Mr. McDuffie subsequently underwent evaluations by Drs. John F. Johnson, Ezra B. Riber and

Nancy R. Lembo, who each: (a) determined the consequences of his compensable injury had produced a facetogenic pain syndrome; (b) recommended treatment in the form of facet injections/medial branch blocks; and (c) confirmed the nature/degree of his causally related symptoms/pathology prohibited him from engaging in unrestricted work activities. (See, October 12, 2016 Order, Finding of Fact Nos. 10-11 and 17-28).

4) In response to the effectively unanimous opinions of Drs. Johnson, Riber and Lembo, Defendants: (a) deposed each of these physicians; (b) initially maintained Mr. McDuffie had reached the point of maximum medical improvement effective December 31, 2014 through the filing of a May 8, 2015 W.C.C. Form 21 (later withdrawn following filing of a July 10, 2015 W.C.C. Form 51); and (c) reiterated their position Mr. McDuffie had "been released at MMI by authorized treating physician", in conjunction with a denial of further medical care, through this Form 51. (See, May 16, 2016 Order of the Honorable Aisha G. Taylor, pp. 2-3 and 7; October 12, 2016 Order of the Appellate Panel, Finding of Fact Nos. 19-21, 23-24 and 26-27; July 10, 2015 W.C.C. Form 51).

5) After considering Mr. McDuffie's testimony, as well as the opinions expressed by Drs. Johnson, Riber and Lembo, the Appellate Panel specifically found:

(a) his testimony, including description of the injury mechanism and the nature/location

of all symptoms associated with this accident, are wholly consistent with the medical evidence; (b) this medical evidence certainly confirms the onset of low back and left leg pain shortly after sustaining the admittedly compensable September 19, 2014 trauma; (c) while the apparent absence "of structural abnormalities on his MRI" led Dr. Peelle to discharge him from active care, Drs. Johnson, Riber and Lembo unanimously confirmed a scan of this nature is not diagnostic of facetogenic pain; (d) these medical specialists also convincingly verified/explained the positive correlation between their diagnosis of posttraumatic facet syndrome with not only his relevant clinical findings (including diminished lumbar extension), but also the September 19, 2014 mechanism of injury; (e) these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment; and (f) this treatment, aimed toward a posttraumatic facet syndrome diagnosed by Drs. Johnson, Riber and Lembo, proximately results from the consequences of his September 19, 2014 compensable accident. (See, October 12, 2016 Order, Finding of Fact No. 30) (Emphasis added).

6) The Appellate Panel further found:

(a) the evidence, including consistent opinions expressed by Drs. Johnson, Riber and Lembo, convincingly indicates Mr. McDuffie's compensable accident has created a lumbar posttraumatic facet syndrome; (b) this causally related condition has produced not only persistent back pain, but also associated left leg symptoms (See, testimony of Drs. Riber and Johnson); (c) Mr. McDuffie has not reached the point of maximum medical improvement relative to this causally related back injury component; (d) the treatment he requires for this compensable back injury component includes, but is not limited to, the lumbar facet/medial branch blocks

identified by these physicians; and (e) Mr. McDuffie's receipt of these additional treatment modalities for his back injury component is reasonable, medically necessary and geared toward lessening the ultimate period of disability produced by the consequences of his September 19, 2014 compensable accident. (See, October 12, 2016 Order, Finding of Fact No. 31) (Emphasis added).

7) Based on this evidence, the Appellate Panel concluded:

(a) Mr. McDuffie's receipt of treatment for the posttraumatic lumbar facet syndrome diagnosed by Drs. Johnson, Riber and Lembo is reasonable, medically necessary and geared toward lessening his ultimate period of disability per Section 42-15-60; (b) *this treatment shall include, but not be limited to, performance of lumbar facet/medial branch blocks, in accordance with the treatment recommendations outlined by these physicians;* (c) Defendants will be afforded the right to provide treatment for Mr. McDuffie's back injury component per Section 42-15-60, but *strictly based upon the undersigned's ruling that Mr. McDuffie's diagnosed posttraumatic facet syndrome is causally related to the consequences of his compensable accident, so as to ensure receipt of this treatment;* and (d) this obligation to provide ongoing medical treatment shall continue until this Commission determines he has achieved maximum medical improvement. (See, October 12, 2016 Order, Conclusion of Law No. 6.) (Italics added).

8) The Appellate Panel consequently ordered that Defendants shall "accept financial responsibility for treatment of Mr. McDuffie's lumbar posttraumatic facet syndrome through an appropriate specialist of its choosing, who shall provide

treatment for this condition as a causally related result of Mr. McDuffie's compensable accident"

9) As confirmed by counsel, following Mr. McDuffie's counsel's March, 2017 request for treatment of the spinal injury component, Defendants attempted to redirect him to Dr. Peelle. In view of this surgeon's previous inability to identify the subsequently diagnosed posttraumatic facet syndrome and indication Mr. McDuffie required no further care, his counsel: (a) informed defense counsel this course of action was inconsistent with the Commission's October 12, 2016 Order; and (b) objected to either reevaluation by Dr. Peelle or his designation as Mr. McDuffie's treater.

10) Per email correspondence dated January 2, 2018, Defendants' case nurse advised Mr. McDuffie's counsel that they had scheduled a January 12, 2018 appointment for him with Dr. Lozanne. Mr. McDuffie's counsel subsequently filed the January 11, 2018 Motion to Quash, which: (a) included attached curriculum vitae information indicating Dr. Lozanne, a neurosurgeon, did not personally treat posttraumatic facet syndrome, but rather specializes in surgical care of spinal disorders; and (b) simply requested the Commission to "designate an appropriate specialist for treatment in accordance with the October 12, 2016 Order", without identifying any particular medical provider. (See, January 11, 2018 Notice of Motion and Motion to Quash).

11) In response to this Motion, Defendants maintained that, notwithstanding the Appellate Panel's previous ruling relative to Mr. McDuffie's need for/entitlement to treatment of the causally related posttraumatic facet syndrome diagnosed by Drs. Johnson, Riber and Lembo, he was obliged to undergo additional evaluation by Dr. Lozanne "to determine what medical care is needed **if any** in this instance." (See, Defendants' January 22, 2018 "Response to Claimant's Motion to Quash Notice of Medical Appointment and Designate Treating Physician").

12) Inspection of the extensive factual findings contained in the October 12, 2016 Order verifies: (a) lumbar facet syndrome is initially treated with facet joint injections and/or medial branch blocks; (b) radiofrequency rhizotomy, depending upon the response to these injections/blocks, is also a consideration; (c) this treatment is routinely provided by conservative spine care physicians; and (d) the treatment Defendants are obliged to provide does not involve surgical intervention. (See, October 12 2016 Order, Finding of Fact Nos. 11, 17, 19, 23, 25-27 and 30-31; Conclusion of Law No. 6).

13) While the Appellate Panel previously afforded Defendants the opportunity to designate a physician, it likewise: (a) emphasized Defendants' obligation "to provide **treatment**"; (b) required that "this treatment shall include, but not be limited to, performance of lumbar facet/medial branch blocks, in accordance with the treatment recommendations outlined by . . .

Drs. Johnson, Riber and Lembo"; and (c) similarly instructed the "treatment" of Mr. McDuffie's lumbar posttraumatic facet syndrome . . . [be provided] through an appropriate specialist" (See, October 12, 2016 Order, Conclusion of Law No. 6 and "AWARD").

14) To date, Defendants have: (a) attempted to refer Mr. McDuffie to two surgeons for assessment of a condition (post-traumatic facet syndrome) this Commission has previously found does **not** require surgery, but instead warrants procedures (injections and possible radiofrequency rhizotomy) performed by nonsurgical spine physicians; (b) indicated a primary purpose for these evaluations is to determined if **treatment is necessary**, despite the Appellate Panel's unappealed ruling Mr. McDuffie shall receive this facet "treatment"; and (c) not provided any treatment for the back injury component mandated by the October 12, 2016 Order.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, WE CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On September 19, 2014, Mr. McDuffie, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2015), sustained

compensable injuries to his back and left leg within the meaning of S.C. Code Ann. Section 42-1-160 (2015), while performing duties arising out of and within the course and scope of his employment with Johnson Food Service, LLC, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (2015).

3. While Defendants previously appealed several aspects of the Appellate Panel's October 12, 2016 Order, they admittedly did not contest the determination as to Mr. McDuffie's back injury component, including: (a) his need for non-surgical treatment "includes, but is not limited to, the lumbar facet/medial branch blocks identified by" Drs. Johnson, Lembo and Riber; (b) "these specialists, who each regularly encounter facetogenic pain in their respective practices, likewise reliably established his need for previously unprovided facet-directed treatment"; (c) they were simply "afforded the right to provide treatment for Mr. McDuffie's back injury component per Section 42-15-60, but strictly based upon the . . . [Appellate Panel's] ruling that Mr. McDuffie's diagnosed posttraumatic facet syndrome is causally related to the consequences of his compensable accident so as to ensure receipt of treatment"; and (d) this "treatment of Mr. McDuffie's lumbar posttraumatic facet syndrome . . . [would be provided] through an appropriate specialist". These findings/conclusions/rulings consequently constitute the law of this case. See, Hudson v. Lancaster Convalescent Center, 407 S.C 112, 754 S.E. 2d 486, 490 (2012).

4. Given the law of this case, Defendants' attempts to: (a) direct Mr. McDuffie to a surgeon are inconsistent with the Appellate Panel's prior identification of his treatment needs; and (b) obtain an evaluation to determine **whether** treatment is warranted ("if any") certainly constitutes an attempt to relitigate a previously resolved issue.

5. Section 42-15-60 empowers this Commission to "override the employer's choice of providers and order a change in the medical or hospital service provided" in the event a controversy arises between the parties and "good cause" for this designation is established by the employee. See, Carter v. Aiken County Government, 366 S.C. 102, 620 S.E. 2d 99, 104 (Ct. App. 2005); Hall v. United Rentals, 371 S.C. 69, 636 S.E. 2d 876, 885 (Ct. App. 2006).

6. Our Appellate Courts have likewise recognized this Commission is vested with the authority to designate a treating physician in accordance with its assessment of an individual's particular medical needs. Gattis v. Murrell's Inlet, VFW, 353 S.C. 100, 576 S.E. 2d 191, 198 (Ct. App. 2003). ("Where it deems it necessary, the . . . [C]ommission may override an employer's choice of medical provider. . . ."; See also, Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E. 2d 547, 555 (Ct. App. 2006).


7. After duly considering the parties' respective positions, in light of the essentially undisputed facts and the law of this case, We conclude: (a) Mr. McDuffie has established

"good cause" per Section 42-15-60 for Commission designation of a treating physician; (b) the current circumstances warrant directing him to Dr. Hutcheson for receipt of treatment in accordance with the Appellate Panel's October 12, 2016 Order; and (c) the contents of the record neither support Defendants' assertion Mr. McDuffie was allowed to direct his own care nor their contention designation of Dr. Hutcheson was inconsistent with the terms of Section 42-15-60.

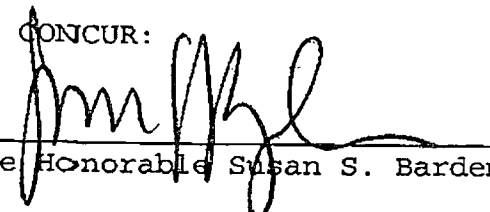
ORDER

ACCORDINGLY, IT IS HEREBY ORDERED that: (a) Commissioner Wilkerson's March 13, 2018 rulings are affirmed in their entirety; and (b) Defendants shall accept financial responsibility for Mr. McDuffie's receipt of treatment, in accordance with the Appellate Panel's October 12, 2016 Order, through Dr. Hutcheson.

IT IS SO ORDERED.


The Honorable Gene McCaskill
Commissioner
South Carolina Workers' Compensation
Commission

WE CONCUR:


The Honorable Susan S. Barden


The Honorable Melody L. James

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

CERTIFIED MAIL



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