

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO. 1312920

Debra Dunbar,

Claimant,

v.

Allendale County Sch. Dist. No. 1,

Employer,

and

State Accident Fund,

Carrier.

ORDER OF FULL COMMISSION

RECEIVED

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SC Court of Appeals

HEARING: Held in Columbia, South Carolina on October 22, 2018

APPEARANCES: Derrick L. Williams for the Claimant/Respondent, and Clarke McCants for the Defendant/Appellants;

PURPOSE OF HEARING: Hearing was set on Defendants' request for review (Form 30 appeal)

DECISION AND ORDER: Commission Panel: Commissioner Melody James, Commissioner Avery B. Wilkerson, and Aisha G. Taylor (chair)

FILED: December 5, 2018

## STATEMENT OF THE CASE

The South Carolina Workers' Compensation Commission scheduled the hearing before Chairman T. Scott Beck on April 10, 2018 pursuant to the Claimant's Form 50 hearing request, and the Defendants' Form 21.

In her Form 50 hearing request, the Claimant alleged that she was permanently and totally disabled as a result of her work-related accident sustained on July 22, 2013. The Claimant alleged injuries to her neck, with left-sided radiculopathy. The Claimant contended she was permanently and totally disabled under S.C. Code Ann. §§ 42-9-10 and 42-9-30 (21). As such, the Claimant further contended she was entitled to lifetime causally related medical care and reimbursement for causally related medical care. Because the Claimant underwent an internal fixation surgery related to his accident, she also alleged she was entitled to lifetime maintenance of any retained hardware. The Claimant sought a lump sum payment of any award, as well as inclusion of Utica-Mohawk language in the order, and counsel for the Claimant likewise requested a lump sum for attorney fees earned from any award to the Claimant.

The Defendants denied that the Claimant was permanently and totally disabled. Defendants did acknowledge that she is entitled to an award of permanency, but to the back only. Defendants further sought a credit for temporary total disability benefits paid beyond the date of maximum medical improvement. Defendants further acknowledged that the Claimant would be entitled to future causally-related medical care per the recommendations of Dr. Peelle. Defendants did not contest a lump sum of an award.

The Single Commissioner found that the Claimant had met her burden of proving she was permanently and totally disabled, pursuant to both § 42-9-30(21) as well as under the case of Clemmons v. Lowe's, 420 S.C. 282, 803 S.E.2d 268 (2017). The Commissioner ordered lifetime

causally-related medical treatment, payment of Claimant's permanent and total disability benefits in a lump sum, and payment of Claimant's attorney's fees in a lump sum. The Defendants filed an appeal to the Full Commission.

### **EVIDENCE OF THE CASE**

#### **Debra Dunbar**

Debra Dunbar ("Claimant") testified at the hearing. Claimant was the only witness to testify at the hearing.

Claimant was 56 years old at the time of the hearing and was accompanied at the hearing by her husband, with whom she has four children. (Hrg. Tr. Pg. 7, ll.6-17). She completed the ninth grade of school and dropped out in the tenth grade. (Hrg. Tr. Pg.7, ll.23-25; Pg.8, ll.1-2). She did not obtain a GED; rather she completed a high school diploma from Cornerstone Christian Academy. (Hrg. Tr. Pg.8, ll.3-16). She later got a general studies degree from Denmark Tech. (Hrg. Tr. Pg.8, ll.17-24).

Claimant is not currently working, and she last worked for the employer on November 13, 2016. (Hrg. Tr. Pg.9, ll.3-8). She had worked for the Allendale School District as a custodian for 11 years. (Hrg. Tr. Pg.9, ll.17-21). Her prior work included working at the Allendale County Hospital as a housekeeper, as a dry cleaner clerk, as a cook at Hardee's, and on a peach farm. (Hrg. Tr. Pg.10, ll.3-18).

Claimant was injured on July 22, 2013 when she slipped and fell on a wet spot on the floor that was just stripped. (Hrg. Tr. Pg.10, ll.19-25; Pg.11, ll.1-7). She landed on her head and injured her neck and left side. (Hrg. Tr. Pg.11, ll.5-13). She underwent a 2-level fusion by Dr. Peelle, but unfortunately, she did not get better after surgery. (Hrg. Tr. Pg.1, ll.13-25).

Claimant explained she was continuing to have problems as a result of the accident, including pain from across her shoulders, in her neck, as well as swelling in her neck. (Hrg. Tr. Pg.12, ll.1-7). Due to her ongoing issues, she was seen by Dr. LaMotta who did further x-rays and injections in her cervical spine. (Hrg. Tr. Pg.12, ll.11-25). She felt like both Dr. Peelle and Dr. Lamotta did everything they could to help her. (Hrg. Tr. Pg.13, ll.7-11). She was placed at permanent sedentary restrictions, tried to return to work, but the employer informed her that they could not accommodate her light duty/sedentary status long-term. (Hrg. Tr. Pg.13, ll.12-25).

Claimant still takes medications for her pain, but she did not know the names of what she was taking. (Hrg. Tr. Pg.14, ll.12-17). She testified that she cannot do much at all, because of her neck. If she tries to do too much activity, her neck swells. (Hrg. Tr. Pg.14, ll.18-24). She only drives a minimal amount, as her range of motion with her neck is not good. (Hrg. Tr. Pg.14, ll.25; Pg.15, ll.1-8). Claimant is also having issues with her left arm, including pain and numbness. (Hrg. Tr. Pg.15, ll.13-17). She has not had any other accidents since her work accident on July 22, 2013. (Hrg. Tr. Pg.15, ll.18-23). She underwent a vocational assessment by Mr. Glen Adams, who found she was unable to work. (Hrg. Tr. Pg.16, ll.6-17). She also qualified and was awarded SSDI the first time she applied. (Hrg. Tr. Pg.16, ll.18-25).

On cross examination, Claimant testified that her left arm issues sometimes come and go. (Hrg. Tr. Pg.18, ll.2-6). She could not recall the pain scale for her arm issues. She acknowledged pain in her neck, but she denied any lower back pain. (Hrg. Tr. Pg.18, ll.13-19). She testified her pain is in her neck, across her shoulder, and into her left arm. (Hrg. Tr. Pg.19, ll.7-13). She stated that she still has problems with her throat, which she testified was a result of the surgery. (Hrg. Tr. Pg.19, ll.14-24).

Claimant testified that she has been receiving medical treatment since her accident happened. Prior to working for the school district, she had worked a variety of jobs, including in the food service industry. (Hrg. Tr. Pg.20, ll.12-16). She acknowledged that she went to Denmark Tech and earned a general studies degree. (Hrg. Tr. Pg.21, ll.1-6). Although her grades were fine, she admitted that a lot of her classmates helped her with her work. (Hrg. Tr. Pg.21, ll.7-18). The reason she returned to school was to better herself and to motivate her kids, because some of them had dropped out. (Hrg. Tr. Pg.22, ll.11-17). She testified that she had tried to return to work after this accident, but just could not perform. (Hrg. Tr. Pg.22, ll.18-25; Pg.23, ll.1-7). She can handle her own finances and can use a computer and calculator. (Hrg. Tr. Pg.23, ll.11-18).

Upon the redirect examination, Claimant acknowledged that she tried to return to work after she was released, but she had problems with her balance, reaching, and lifting. (Hrg. Tr. Pg.24, ll.17-25; Pg.25, ll.1-5).

### **MEDICAL EVIDENCE AND TREATMENT**

#### **Allendale County Hospital**

Claimant reported to the Emergency Department of Allendale County Hospital following her work accident on July 22, 2013. Claimant presented with a head injury following a fall at work, while mopping the floor. She was kept for 2 days, and a series of testing was run on her. She was diagnosed with neck pain, contusion of the face and head, memory loss, dizziness, nausea and post-concussive headaches. (Cl. APA pg.5). A CT scan was done of her head, which did not show any abnormality. (Cl. APA pg.1). A CT of her cervical spine showed degenerative changes in her cervical spine. (Cl. APA pg.2). She was discharged with Percocet and Flexeril. She had several follow-ups through May 2015, to address the same issues – neck pain and headaches.

### **Low Country Health Care System & Aiken Neuroscience**

On July 26, 2013, Claimant reported to Low Country Health Care System after her discharge from Allendale County Hospital. She complained of pain in her head and dizziness. (Cl. APA pg.135). She continued to follow-up on August 5<sup>th</sup>, and August 14<sup>th</sup>, with the same complaints. On August 14, 2013, she was written out of work, as she still had significant headaches, back pain, and blurry vision.

Claimant was ultimately referred to a neurologist, Dr. Kamel, on November 12, 2013. She was also referred for nerve conduction studies. She was also given an EEG with photic stimulation and hyperventilation. Her initial MRI for her brain was normal. She was referred to pain management to deal with her ongoing pain. (Cl. APA pg.267).

### **Palmetto Health Orthopedics**

Claimant was initially seen by Kurt Judson, P.A. on November 14, 2014. She complained on neck pain, bilateral arm pain, and bilateral weakness and numbness. (Cl. APA pg.332). She was recommended for a cervical MRI to evaluate her for cord compression, which the provider thought was likely. Her cervical MRI was completed on January 28, 2015. The MRI showed "moderate narrowing of the left C5-6 neural foramen due to productive left C5-6 Luschka joint changes). (Cl. APA pg.331). "The right C5-6 neural foramen and right and left C4-5 and C6-7 neural foramina are widely patent." (Cl. APA pg.331).

Claimant was then referred to physical therapy for several visits. After therapy did not help her, she was recommended for a two-level fusion by Dr. Peelle on her June 19, 2015 visit. (Cl. APA pg.319-320). After some delay, her surgery was performed on November 23, 2015. Following her surgery, her left arm radiculopathy worsened. A post-surgical MRI was performed

on June 21, 2016. Her MRI did not show any significant changes, and she was released on July 8, 2016 with a 23% whole person impairment, and light duty restrictions. (Cl. APA pg.270-271).

**Dr. Bobby Ayers**

Claimant saw Dr. Bobby Ayers on July 12, 2016, as she was dealing with a significant amount of swelling in her neck. Dr. Ayers suggested a 2<sup>nd</sup> opinion with a specialist. (Cl. APA pg.338-340).

**Midlands Orthopaedic**

Dr. Ivan E. Lamotta was authorized by workers' compensation to perform an Independent Medical Examination on October 28, 2016. Dr. Lamotta confirmed the causation of the accident to her injuries, and he recommended a CT myelogram of her cervical spine to further diagnose any issues. The CT myelogram was performed on December 19, 2016, and it showed "uncovertebrak joint hypertrophy at the left C5-6. There does appear to be at least moderate residual foraminal stenosis at level C5-6 on the left side." (Cl. APA pg.371, 378-381).

Claimant underwent a series of injections from Dr. Lamotta. She was released on March 9, 2017, and she was assigned a 27% whole person and 71% cervical spine impairment. She was further assigned to permanent sedentary work status. (Cl. APA pg.354).

**Dr. Lamotta Questionnaire**

Dr. Lamotta completed a medical questionnaire on March 22, 2018, confirming the 27% whole person and 71% cervical spine impairments. He noted that "[t]hese impairments are pursuant to the AMA Guides. There is no change in the impairments to her cervical spine based on the Guides." (Cl. APA pg.382).

## Glen Adams Vocational Evaluation

Claimant underwent a psychological and vocational evaluation with Mr. Glen Adams on March 21, 2018. This was the only vocational report submitted in this case. Before discussing his findings regarding Claimant's permanent condition, Glen Adams undertook an extensive review of Claimant's accident and immediate medical issues; relevant medical history and treatment; personal life; activities of daily living; educational background; work history; and current complaints.

During her medical status portion of the evaluation, Claimant described pain of 7/10, and pain across her neck and shoulders. She continued to experience balance issues, and she still had swelling in her neck and left shoulder.

Claimant noted that she receives assistance with dressing herself, and she cannot do household chores such as mopping and lifting a clothes basket. She can do grocery shopping, but she has to have assistance in lifting groceries.

Claimant dropped out of school in the 10<sup>th</sup> grade. She completed a high school diploma at Cornerstone Christian School, which Mr. Adams noted "are not recognized as valid high school diplomas by the South Carolina Department of Education." He then assessed her prior work history, which is classified as "medium" to "heavy" and unskilled work.

Mr. Adams performed a transferrable skills analysis utilizing OASYS to identify potential occupations compatible with her vocational profile. Mr. Adams found that, "[n]o aspects of her work history, or her self-described academic and computer skills will enable her to re-enter the competitive labor market in a "sedentary" work capacity." Thus, the Claimant was deemed "totally vocationally disabled" as a result of her work accident on July 22, 2013.

### **Allendale County Hospital**

The Defendants submitted Allendale County Hospital records on the Claimant from December 17, 2011 through September 5, 2013. The 2011 reports related to low back issues, for which she was given Flexeril and Ibuprofen. She treated for few months and then was discharged.

The other records relate to her visits after on the date of and after work-related accident. On July 22, 2013, the date of the accident, she presented to the emergency room following her fall at work. The initial report notes "fell on concrete floor hit back of head while mopping/waxing school floor." (Def. APA pg. 25). She was diagnosed with a head contusion, and the CT scan of her head and neck showed tissue swelling. Prior to being discharged home, she began to vomit, so she was kept overnight for observation. (Def. APA. Pg. 20). She was written out of work initially for 3 days. (Def. APA. Pg. 32).

In the weeks and months following, she was seen on several dates for follow-ups. She was diagnosed with post-concussive headaches, trapezius strain/pain, musculoskeletal pain, and neck pain.

### **Allendale County Rescue Squad Patient Care Form**

The initial rescue squad paperwork, transporting the Claimant to the emergency room was submitted at Defendants' APA pages 70-71. This was noted as "emergent" and "urgent" care, and specifically notes that "patient hit the posterior portion of her head on the concrete floor." (Def. APA. Pg. 71).

### **Kerin McCormack, PA-C Low Country Health Care System**

Records from Low Country Health Care System were also submitted. On August 5, 2013, August 14, 2013, and August 27, 2013, the Claimant was treated for post-concussive headaches and back pain.

## Letter To And Response From Dr. Ivan Lamotta

Defendants submitted a letter to Dr. Lamotta requesting his opinions of the Claimant's entire spine or back impairment. Dr. Lamotta responded that the impairment would be 8%.

The matter before the Single Commissioner on April 10, 2018, resulted in a Decision and Order dated June 18, 2018. The Single Commissioner made the following specific Findings of Fact and Conclusions of Law:

1. *The parties concede that the Claimant is at MMI.*
2. *I find that the Claimant suffered a compensable injury to her neck with resulting left side radiculopathy.*
3. *I find that the Claimant has been rated at 27% whole person impairment and 71% cervical spine impairment.*
4. *I find that based upon Clemmons v. Lowe's, 420 S.C. 282, 803 S.E.2d 268 (2017), the Claimant is presumed permanently and totally disabled.*
5. *I find that the only vocational assessment in the record is presented by the Claimant and finds Claimant "totally vocationally disabled".*
6. *Defendants have failed to rebut the presumption, and therefore I find Claimant is permanently and totally disabled in accordance with § 42-9-30(21).*
7. *I find that the Claimant has sustained a greater than 50% loss of use to the back, pursuant to § 42-9-30(21). This Claimant is presumed to have suffered total and permanent disability under § 42-9-30(21).*
8. *Claimant is hereby entitled to lifetime causally related medical care.*
9. *Claimant is entitled to the award in a lump sum.*
10. *Defendant's request for credit is moot.*

11. *Based upon the submissions of the Claimant, and the absence of any submissions by the Defendant to the contrary, I find that the Claimant is permanently and totally disabled and is entitled to 500 weeks of benefits. This finding is based on the evidence as a whole, including all of the medical evidence, vocational evidence, the testimony of the Claimant, and pursuant to the Clemmons decision.*
12. *Claimant is entitled to lifetime causally-related medical care for Claimant's cervical spine. Claimant is also entitled to lifetime repair, maintenance, removal, or replacement of causally-related, retained hardware.*
13. *Defendants are responsible for payment of all outstanding and future, causally-related medical care.*
14. *Claimant's request for Utica-Mohawk allocation language pursuant to the James v. Anne's case is granted, which is noted in Finding of Fact #15 below.*
15. *It is hereby adopted as further Order of the Commission, that allocation language be included in this Order. The disability compensation she shall receive, which amounts to \$78,109.78 (seventy-eight thousand one hundred and nine and 78/100 Dollars) as of May 23, 2018, shall be allocated in the following fashion:*
  - a) *the sum of \$26,010.56 (twenty-six thousand and ten and 56/100 Dollars) to Mickle & Bass, LLC, as attorney fees pursuant to Commission Regulation 67-1205 (C);*
  - b) *the sum of \$3,041.07 (three thousand forty-one and 7/100 Dollars) to Mickle & Bass, LLC, as reimbursement for litigation expenses pursuant to Commission Regulation 67-1206; and*

c) *the sum of \$49,058.15 (forty nine thousand fifty eight and 15/100 Dollars) to the claimant, Debra Dunbar, as payment for permanent disability for a period of 1,425.32 weeks at the rate of \$34.42 (thirty four and 42/100 Dollars) per week, commencing on June 15, 2018 pursuant to the provisions of South Carolina Code Ann. Sections 19-1-150 (1976) and 42-9-240 (1976), as well as the decisions of the South Carolina Supreme Court in James v. Anne's Inc., 390 S.C.188, 701 S.E.2d 730 (2010), Utica-Mohawk Mills v. Orr, 277 S. C. 226, 87 S.E.2d 589 (1955) and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3<sup>rd</sup> Cir. 1988). The above attorney's fees provisions shall be subject to approval of the Form 61.*

#### **CONCLUSIONS OF LAW**

#### **IN VIEW OF THESE FINDINGS OF FACT, I CONCLUDE AS MATTERS OF LAW:**

1. *Consistent with § 42-1-130, the Claimant was an employee of Allendale County School District.*
2. *Consistent with § 42-1-140, Allendale County School District was the employer of the Claimant.*
3. *Consistent with § 42-1-160, the Claimant suffered compensable injury to her neck, with resulting left side radiculopathy.*
4. *Consistent with § 42-15-60, the Claimant has reached maximum medical improvement for her injuries.*
5. *Consistent with § 42-9-30 (21), the Claimant is presumed permanently and totally disabled.*

6. *Consistent with § 42-15-60(C), the Claimant is entitled to receive for the remainder of her lifetime, all causally-related reasonable and necessary treatment and care pursuant to Title 42 of the South Carolina Code Ann.*
7. *Consistent with Clemmons v. Lowe's, 420 S.C. 282, 803 S.E.2d 268 (2017), the Claimant is presumed permanently and totally disabled.*
8. *Consistent with § 42-9-30(21), Defendants have failed to rebut the presumption, and therefore I find Claimant is permanently and totally disabled in accordance with § 42-9-30(21).*
9. *Consistent with § 42-9-30(21), I find that the Claimant has sustained a greater than 50% loss of use to the back, pursuant to § 42-9-30(21). The Claimant is presumed to have suffered total and permanent disability under § 42-9-30(21).*
10. *Consistent with § 42-9-301, the Claimant is entitled to receive her indemnity award for permanent and total disability in a lump sum.*
11. *Consistent with James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010), attorneys' fees and the costs of prosecuting this claim (subject to the Commission's approval) are estimated at \$26,010.56 for fees and \$3,041.07 for costs, subject to approval of Claimant's attorney's Form 61.*
12. *Consistent with § 42-15-10, the South Carolina Workers' Compensation Commission has jurisdiction over this claim.*

### **STANDARD OF REVIEW**

The Full Commission may review an award of the Single Commissioner and make its own Findings of Fact and Conclusions of Law either consistent or inconsistent with those of the hearing

Commissioner. SC Code Ann § 42-17-50; Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E.2d 318 (1967).

As a result of a hearing held in the front of the Appellate Panel, the Appellate Panel has considered the matter and has **Affirmed the Order of the Single Commissioner with Amendments.** The Appellate Panel makes the following Amended Findings of Fact and Conclusions of Law:

1. The parties concede that the Claimant is at MMI.
2. We find that the Claimant suffered a compensable injury to her neck with resulting left side radiculopathy.
3. We find that Claimant has been rated at 23% impairment to the whole person by Dr. Peelle.
4. We find that Claimant was initially rated at 27% whole person impairment and 71% cervical spine impairment by Dr. Lamotta.
5. We find that pursuant to a questionnaire dated March 22, 2018, Dr. Lamotta opined that the Claimant sustained an 8% permanent physical impairment to her entire spine or "back."
6. We find that Dr. Lamotta issued permanent physical restrictions that provide that the Claimant is limited to sedentary work.
7. We find that there is a disconnect between Dr. Lamotta's 8% to the entire spine and the Claimant's restrictions. The restrictions substantially outweigh the permanent ratings assigned in this case and are more indicative of true loss of use and disability.

8. We find that the only vocational assessment in the record is presented by the Claimant and finds Claimant "totally vocationally disabled".
9. Defendants have failed to rebut the presumption, and therefore we find Claimant is permanently and totally disabled in accordance with § 42-9-30(21).
10. We find that the Claimant has sustained a greater than 50% loss of use to the back, pursuant to § 42-9-30(21). This Claimant is presumed to have suffered total and permanent disability under § 42-9-30(21).
11. Claimant is hereby entitled to lifetime causally related medical care.
12. Claimant is entitled to the award in a lump sum.
13. Defendant's request for credit is moot.
14. Based upon the submissions of the Claimant, and the absence of any submissions by the Defendant to the contrary, we find that the Claimant is permanently and totally disabled and is entitled to 500 weeks of benefits. This finding is based on the evidence as a whole, including all of the medical evidence, vocational evidence, and the testimony of the Claimant.
15. Claimant is entitled to lifetime casually-related medical care for Claimant's cervical spine. Claimant is also entitled to lifetime repair, maintenance, removal, or replacement of causally-related, retained hardware.
16. Defendants are responsible for payment of all outstanding and future, causally-related medical care.
17. Claimant's request for Utica-Mohawk allocation language pursuant to the James v. Anne's case is granted, which is noted in Finding of Fact #15 below.

18. It is hereby adopted as further Order of the Commission, that allocation language be included in this Order. The disability compensation she shall receive, which amounts to \$78,109.78 (seventy-eight thousand one hundred and nine and 78/100 Dollars) as of May 23, 2018, shall be allocated in the following fashion:

a) the sum of \$26,010.56 (twenty-six thousand and ten and 56/100 Dollars) to Mickle & Bass, LLC, as attorney fees pursuant to Commission Regulation 67-1205 (C);

b) the sum of \$3,041.07 (three thousand forty-one and 7/100 Dollars) to Mickle & Bass, LLC, as reimbursement for litigation expenses pursuant to Commission Regulation 67-1206; and

c) the sum of \$49,058.15 (forty nine thousand fifty eight and 15/100 Dollars) to the claimant, Debra Dunbar, as payment for permanent disability for a period of 1,425.32 weeks at the rate of \$34.42 (thirty four and 42/100 Dollars) per week, commencing on June 15, 2018 pursuant to the provisions of South Carolina Code Ann. Sections 19-1-150 (1976) and 42-9-240 (1976), as well as the decisions of the South Carolina Supreme Court in James v. Anne's Inc., 390 S.C.188, 701 S.E.2d 730 (2010), Utica-Mohawk Mills v. Orr, 277 S. C. 226, 87 S.E.2d 589 (1955) and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3<sup>rd</sup> Cir. 1988).

**The above attorney's fees provisions shall be subject to approval of the Form 61.**

### **CONCLUSIONS OF LAW**

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

1. Consistent with § 42-1-130, the Claimant was an employee of Allendale County School District.
2. Consistent with § 42-1-140, Allendale County School District was the employer of the Claimant.
3. Consistent with § 42-1-160, the Claimant suffered compensable injury to her neck, with resulting left side radiculopathy.
4. Consistent with § 42-15-60, the Claimant has reached maximum medical improvement for her injuries.
5. Consistent with § 42-9-30 (21), the Claimant is presumed permanently and totally disabled.
6. Consistent with § 42-15-60(C), the Claimant is entitled to receive for the remainder of her lifetime, all causally-related reasonable and necessary treatment and care pursuant to Title 42 of the South Carolina Code Ann.
7. Consistent with § 42-9-30(21), Defendants have failed to rebut the presumption, and therefore I find Claimant is permanently and totally disabled in accordance with § 42-9-30(21).
8. Consistent with § 42-9-30(21), I find that the Claimant has sustained a greater than 50% loss of use to the back, pursuant to § 42-9-30(21). The Claimant is presumed to have suffered total and permanent disability under § 42-9-30(21).
9. Consistent with § 42-9-301, the Claimant is entitled to receive her indemnity award for permanent and total disability in a lump sum.
10. Consistent with James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010), attorneys' fees and the costs of prosecuting this claim (subject to the Commission's

approval) are *estimated* at \$26,010.56 for fees and \$3,041.07 for costs, subject to approval of Claimant's attorney's Form 61.

11. Consistent with § 42-15-10, the South Carolina Workers' Compensation Commission has jurisdiction over this claim.

**IT IS THEREFORE ORDERED AS FOLLOWS:**

**THEREFORE, IT IS HEREBY ORDERED** that the Claimant is permanent and totally disabled pursuant to § 42-9-30(21) for a greater than 50% loss of use to her back;

**THEREFORE, IT IS HEREBY ORDERED** that the Defendants shall pay to the Claimant's permanent and totally disability benefits in a lump sum;


**AND IT IS FURTHER ORDERED** that the Claimant's attorneys' lump sum payment of indemnity benefits shall be allocated consistent with this Order as noted above;

**AND IT IS FURTHER ORDERED** that the Defendants shall, for the rest of the Claimant's life, provide her with all causally-related reasonable and necessary treatment and care pursuant to Title 42 of the South Carolina Code Ann.

**IT IS SO ORDERED**

**AFFRIMED WITH THE ABOVE NOTED AMENDMENTS**

  
Commissioner Avery B. Wilkerson

  
Commissioner Melody James

  
Commissioner Aisha G. Taylor, Chair

12-4, 2018  
Columbia, South Carolina

### 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 December 5, 2018***

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