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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

DeAndrea Gist Benjamin, Circuit Court Judge

---

Case No. 2010-CP-40-4071

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Carmen Morgan . . . . . Appellant

v.

South Carolina Bank and Trust,  
Employer and Cincinnati Insurance  
Company, Carrier. . . . . Respondent,

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RECORD ON APPEAL

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**RECEIVED**

FEB 19 2013

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Carmen Morgan, )

Employee, )

Claimant, )

-vs- )

South Carolina Bank and Trust, )

Employer, )

and Cincinnati Insurance Company, )

Carrier, )

Defendants. )

C.C. P. NO. 2010-CP-4004071

W.C.C. FILE NO. 0214040

ORDER

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2012 AUG - 7 AM 10: 20

RICHLAND COUNTY  
FILED

STATEMENT OF THE CASE

The circumstances giving rise to this case occurred on August 8, 2002. On that day, the Claimant was at work at the Assembly Street branch of South Carolina Bank and Trust when that branch was robbed. The Claimant claimed that she sustained a neck/back injury and suffers from post-traumatic stress disorder as a result of the robbery. Defendants accepted this claim and provided medical care and paid temporary total disability benefits. The Claimant's case subsequently followed through an extensive procedural history as described in detail in the Decision and Order of the Hearing Commissioner.

The Claimant retained her current attorney in this matter, Everett H. Garner, Esquire, in January of 2006. On September 28, 2006, the Claimant, through her new attorney, appealed to the Full Commission the September 28, 2005 Order issued by Hearing Commissioner Lyndon,

SCANNED

wherein the Commissioner ordered that the Claimant failed to prove any permanent impairment related to her neck, back and shoulder, and the Claimant failed to prove any permanent loss of earning capacity. The Commissioner further ordered that the Defendants were required to provide ongoing causally related medicals for the Claimant's psychological injuries. In her appeal, the Claimant submitted that the Commissioner erred in finding that she was not entitled to compensation for permanent and total disability or permanent partial disability due to her failure to demonstrate a permanent loss of earning capacity. After careful review, the Appellate Panel, by unanimous vote in an Order dated September 28, 2006, determined all of the Findings of Fact and Rulings of Law were correct as stated, and sustained the Order in its entirety. On November 17, 2006 the Claimant filed her Notice of Intent to Appeal to the Circuit Court on the same grounds as her previous appeal to the Full Commission. In a decision dated August 29, 2007 the Circuit Court Affirmed the Decision and Order of the Commission.

The Claimant, through her attorney, filed a change of condition Form 50 dated January 12, 2009 alleging that her condition had worsened at or near the time of her hospitalizations beginning on or about February 28, 2006 and continuing until May 16, 2006. The Defendants denied the Claimant had sustained a compensable change of condition and also asserted that any change of condition claim was barred by the statute of limitations and laches. They also asserted the claim was barred by res judicata and requested that the Commission assess costs against the Claimant for the filing of a frivolous claim. Furthermore, Defendants requested a finding that certain of Claimant's treatment was not causally connected to Claimant's claim, specifically Claimant's hospital stays at Palmetto Baptist from February 28, 2006 to May 16, 2006, and finally asserted that there had been intervening circumstances that had broken the causal connection in the Claimant's treatment with Dr. Boyd. Defendants also requested a

determination that they not be held responsible for payment to Dr. Boyd for treatment after February 2008. This hearing was then set for May 5, 2009 for the purpose of determining issues raised on Forms 50 and 51, specifically the change of condition alleged by the Claimant.

Following the hearing, the Hearing Commissioner requested that Defendants' counsel prepare a proposed Order. The proposed Order was forwarded to counsel for the Claimant on July 25, 2009. Counsel for the Claimant proposed changes to the proposed Order, and on July 15, 2009, counsel for the Defendants advised counsel for the Claimant that these objections would be noted in the letter to the Hearing Commissioner forwarding the Proposed Order. Counsel for the Defendants subsequently placed the Commissioner on notice of the Claimant's proposed changes in their letter filing the proposed Decision and Order on July 15, 2009.

On July 21, 2009, the Hearing Commissioner issued a Decision and Order wherein he ordered that the Claimant did not sustain a compensable change of condition as defined by § 42-17-90, and even if the Claimant sustained a compensable change of condition, the claim was not timely asserted and was barred by the statute of limitations as set forth in § 42-17-90. The Hearing Commissioner further ordered that the Defendants were to pay all causally related authorized medicals and mileage, excluding Claimant's hospitalization on or about February 28, 2006 through May 16, 2006 at Baptist Hospital, as those stays were not casually related to the work-related injury.

On July 31, 2009, counsel for the Claimant filed a Motion for Reconsideration with the Hearing Commissioner, wherein the Claimant asked the Hearing Commissioner to reconsider the Order, specifically issues with Findings of Fact number 13 and Conclusions of Law number 8. On September 15, 2009, that Motion was denied and dismissed by the Hearing Commissioner.

On October 1, 2009, the Claimant, through her attorney, filed a Form 30 Request for Commission Review. Defendants requested that the July 21, 2009 hearing Decision and Order be affirmed, and oral arguments were heard before the Appellate Panel on February 23, 2010. On May 18, 2010, the Appellate Panel issued a Full Affirmation of the Hearing Commissioner's July 21, 2009 Decision and Order, and simultaneously denied the Claimant's request for reconsideration.

The Claimant filed a Notice of Intent to Appeal with the Court of Common Pleas on June 16, 2010, and the case was heard by the undersigned on April 20, 2012.

#### **ISSUES ON APPEAL**

- I. Whether the Appellate Panel committed error in finding the Claimant failed to timely appeal the July 21, 2009 Order of the Hearing Commissioner.**
- II. Whether the Appellate Panel committed error in finding the Claimant's change of condition petition was barred by the statute of limitations.**
- III. Whether the Appellate Panel committed error in finding the Claimant's hospitalization at Baptist Hospital from February 28, 2006 to May 16, 2006 was unrelated to the August 8, 2002 work accident.**
- IV. Whether the Appellate Panel committed error in finding the Claimant did not establish a compensable change of condition causally related to the admitted claim.**

#### **STANDARD OF REVIEW**

The Administrative Procedures Act establishes the standard of review for decisions by the South Carolina Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-135, 276 S.E.2d 304, 306 (1981). "In workers' compensation cases, the Full Commission is the ultimate fact finder." *Shealy v. Aiken County*, 341, S.C. 448, 455, 535 S.E.2d 438, 442 (2000). "The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission." *Id.*

In an appeal from the commission, the Circuit Court may not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. S.C. Code Ann. § 1-23-380(A)(6) (Supp. 2004). The appellate court can reverse or modify the Full Commission's decision only if the Claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Id.* "Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion the Full Commission reached." *Shealy*, 341 S.C. at 455, 535 S.E.2d at 442.

## LAW/DISCUSSION

### **I. Claimant's request for Commission Review**

S.C. Code Ann. § 42-17-50 and Regulation 67-701 set forth the method for requesting Commission review of the Hearing Commissioner's Decision and Order in a workers' compensation claim. The statute sets forth a fourteen (14) day time limit in which the appealing party may request review by filing a Form 30. In this case, a Form 30 was filed on October 1, 2009. Counsel for the Claimant filed a "Motion for Reconsideration" on July 31, 2009, the Court concurs in the Commission's finding that the Claimant's Form 30 was not timely. The Claimant's motion was also dismissed and denied by the Hearing Commissioner on September 15, 2009.

The Claimant's Motion for Reconsideration was not a proper motion before the Workers' Compensation Commission in accordance with Regulation 67-215. Specifically, Regulation 67-215(B) states that the Commission will not address a motion involving the merits of the claim, including but not limited to motions for dismissal or summary judgment. As this was not a

proper motion before the Workers' Compensation Commission, it also follows that it would be improper to allow it to in any way toll the fourteen (14) day time limit for seeking review of a Commissioner's decision. For these reasons, the Commission properly denied Claimant's appeal.

## **II. Statute of limitations**

The Appellate Panel properly affirmed the Decision of the Hearing Commissioner denying the change of condition claim based on the grounds that it was not timely filed. The South Carolina Workers' Compensation Act sets forth the framework in which a claimant is allowed to file for a review of an award based on a change of condition. South Carolina Code Ann. § 42-17-90(A) states that the Commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. The code section goes on to limit this review, stating that the review does not affect the award with regard to any monies paid and the *review must not be made after twelve months from the date of the last payment of compensation.* §42-17-90(A).

The Claimant argues that the Appellate Panel and Hearing Commissioner erred in denying the Claimant's change of condition petition because not more than one year had elapsed following the payment of compensation as defined by the statute. The Workers Compensation Act defines compensation as "the money allowance payable to an employee or his dependants as provided for in this Title and includes funeral benefits provided in this Title." §42-1-100. Absent from this definition is any mention of medical benefits provided to a claimant.

In this case, the Claimant argues that the term "compensation" includes both compensatory benefits and medical benefits in accordance with Gattis v. Murrels Inlet VFW #10420, 353 S.C. 100, 576 S.E.2d 191 (Ct. App. 2003). In Gattis, the Appellant argued that the previously awarded "compensation" the Commission has authority to end, diminish, or increase was limited to a compensatory award and Commission did not have the authority to order payment of medical bills. The Court of Appeals disagreed and ordered that the term "compensation" was not limited to a compensatory award and did not preclude the Commission from awarding benefits to a Claimant under §47-17-90. Id. at 111.

The immediate case involves a different situation. In this case, the issue is whether the receipt of medical treatment constitutes "compensation" as used in §42-17-90(A) to start the one-year clock from the date of last payment of compensation. Claimant argues that the one-year period should be allowed to start from the last date in which any medical treatment was received by the Claimant. In this case, the Appellate Panel and the Hearing Commissioner ordered the Defendants to continue to provide causally related medicals for psychological problems as long as causally-related and medically necessary under Dodge v. Brucoli Clark, Layman, Inc. 514 S.E.2d.593 (S.C. 1999). To allow a claimant to file for change of condition one year from the date of the last medical treatment received would essentially eliminate the one year restriction set forth in § 42-17-90(A) for all cases in which future medical treatment has been ordered by the Commission or agreed to by the parties. Therefore, in cases involving the award of future medical treatment, there would be no end to the period of time in which the claimant could file for change of condition as long as he or she continues to receive any form of ongoing maintenance treatment. Consequently, the Hearing Commissioner properly denied the Claimant's change of condition petition on the basis that it was barred by the one-year statute of

limitations set forth in S.C. Code Ann. § 42-17-90, and the Appellate Panel properly affirmed that denial.

### **III. Claimant's hospitalization: February 28, 2006 – May 16, 2006**

The Appellate Panel properly affirmed the Decision of the Hearing Commissioner finding that Claimant's hospitalization at Baptist hospital from February 28, 2006 to May 16, 2006 was not related to the August 2, 2002 work-related injury based on a review of the medical records and reports. Dr. Carol O. Kinard's May 16, 2006 record specifically states "the original admission was after she had been ejected from her mother's residence after a disagreement in which the patient says she 'got physical' with her mother." Dr. Kinard's report went on to state that "she seemed content to remain in the hospital for long periods of time; in fact this admission was over 30 days." Based on his review of the Claimant's medical records surrounding her hospitalization and the deposition testimony of Dr. Boyd, the Hearing Commissioner properly found that this period of treatment was not related to the Claimant's work-related accident and defendants should be not responsible, and the Appellate Panel properly affirmed that decision.

### **IV. Change of condition**

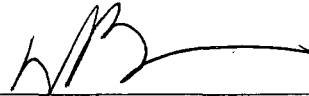
The Claimant argued that her work-related psychological condition most probably severely worsened at or shortly preceding her hospitalizations extending from February 28, 2006 until May 16, 2006, based on a letter from Dr. Stephanie Boyd. After considering the testimony and the depositions of both the Claimant and Dr. Boyd, the Hearing Commissioner found that the Claimant did not sustain a compensable change of condition causally related to the admitted claim. The Hearing Commissioner noted in his Decision and Order that although Dr. Boyd stated in her letter that the Claimant's condition worsened shortly before her hospitalization, she later went on to clarify in her deposition that the Claimant had not been hospitalized for her

workers' compensation claim injuries since her April 11, 2006 discharge. The Hearing Commissioner's Order further notes that Dr. Boyd went on to describe several unrelated issues that affected the Claimant's condition, and Dr. Boyd was not able to separate the Claimant's treatment for work-related injuries and non-work-related injuries. For these reasons, substantial evidence exists to support the Hearing Commissioner's finding that the Claimant did not sustain a change of condition causally related to her original injury, and the Appellate Panel properly affirmed that finding.

### CONCLUSION

When the evidence is reviewed as a whole, it is clear that there is substantial evidence supporting all of the Appellate Panel's Findings and Conclusions of Law.

THEREFORE, IT IS ORDERED that the Decision and Order of the Appellate Panel of the South Carolina Workers' Compensation Commission filed May 18, 2010 is affirmed in its entirety.



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Honorable DeAndrea Gist Benjamin  
Circuit Court Judge

Date: 7-24, 2012

APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NOS.: 0214040

Carmen Morgan  
Employee/Claimant

versus

SC Bank and Trust  
Employer/Carrier/Defendant,

and

Cincinnati Insurance Company, Carrier/Defendant

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Appellate Panel Review held in Columbia,  
South Carolina on February 23, 2010 per  
Notices timely and properly served on all  
parties of interest.

Appellate Panel Decision and Order filed  
5-18-10, 2009.

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Appearances: Claimant/Appellant represented by Everett H. Gardner, Esquire,  
Holler, Dennis, Corbett, Ormond, Plante & Gardner, 1777 Bull St.,  
Columbia, South Carolina, 29201.

Defendants/Respondent SC Bank and Trust and Cincinnati  
Insurance Company represented by Shannon T. Poteat, Esquire,  
Willson, Jones, Carter & Baxley, 4500 Ft. Jackson Blvd., Columbia,  
SC 29209

## STATEMENT OF THE CASE

The parties were heard by Commissioner G. Bryan Lyndon on May 5, 2009, in Columbia, South Carolina. On July 21, 2009, Commissioner Lyndon issued the following Order:

Therefore, it is ordered that, Claimant did not sustain a compensable change of condition as defined by §42-17-90. Further more, even if Claimant had sustained a compensable change of condition, the claim was not timely asserted and is barred by the statute of limitations as set forth in §42-17-90.

It is further ordered that defendants are to pay all causally related authorized medicals and mileage excluding claimant's hospitalization on or about February 28, 2006 through May 16, 2006 at Baptist Hospital as those stays were not causally related to the work-related injury. No costs are assessed.

On July 31, 2009, counsel for the Claimant filed a Motion for Reconsideration, asking that Finding of Fact number 13 and Conclusion of Law number 8 related to Claimant's hospitalization from February 28, 2006 to May 16, 2006 be deleted from the July 21, 2009 Decision and Order. On August 19, 2009, counsel for the Claimant filed an untimely Request for Commission Review in the case, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on February 23, 2010. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, the Claimant respectfully submits the following:

1. Whether the Hearing Commissioner erred in finding that the Claimant's change of condition petition was barred by the statute of limitations; the error being that more than one (1) year had not elapsed following the

payment of compensation as defined by statute?

2. Whether the Hearing Commissioner erred in finding that the Claimant's hospitalization at Baptist Hospital from February 28, 2006 to May 16, 2006 was unrelated to the August 8, 2002 work related injury; the error being that a review of the relevant medical records and reports indicate a proximate relationship between this hospitalization and the work related injury? (Form 30 and Motion for Reconsideration)
3. Whether the Hearing Commissioner erred in finding that Claimant did not establish a compensable change of condition casually connected to the admitted claim; the error being that the preponderance of the evidence and the specific medical findings of Claimant's treating doctor, Dr. Boyd, established such a connection?

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Commission has determined that the Claimant did not file a timely appeal to the July 21, 2009 Decision and Order, and accordingly, the Order is sustained in its entirety and the only issue before the Commission Panel is the Motion to Reconsider. The Commission Panel has further determined that the Claimant's Motion to Reconsider is denied.

## FINDINGS OF FACT

### IT IS FOUND AS FACT:

1. On July 21, 2009, The Hearing Commissioner issued a Decision and Order, wherein the Commissioner ordered that the Claimant failed to establish a compensable change of condition, Claimant failed to timely file for a change of condition, and Defendants were to pay all authorized causally related medical expenses, excluding Claimant's February 28, 2006 though May 16, 2006 stay at Baptist Hospital.
2. On July 31, 2009, Claimant filed a motion with the Hearing Commissioner for reconsideration of the Order filed July 21, 2009. Specifically, the motion pertained to Findings of Fact number 13 and Conclusion of Law number 8, and Claimant requested that these be removed from the Decision and Order. The grounds for Claimant's motion were set forth in an attached letter dated July 21, 2009.
3. On August 19, 2009, Claimant filed a Request for Commission Review, setting forth issues related to Claimant's change of condition claim and Claimant's February 28, 2006 through May 16, 2006 stay at Baptist Hospital.
4. Claimant's August 19, 2009 appeal to the July 21, 2009 Decision and Order was not timely; therefore, the only issue before the Commission Panel is the Motion to Reconsider. Any attempts to reinstate the appeal would be barred by res judicata.

6. Claimant's hospitalization at Baptist Hospital in February 28, 2006 to May 16, 2006 was unrelated to the August 8, 2002 work-related injury. This Finding is based upon a review of the medical records and reports.
7. On September 15, 2009, the Hearing Commissioner dismissed and denied Claimant's Motion for Reconsideration.

### CONCLUSIONS OF LAW

1. Pursuant to §42-17-50, the Claimant failed to file a timely appeal to the July 21, 2009 Order; therefore, the only issue before the Commission Panel is Claimant's July 31, 2009 Motion to Reconsider.
2. Pursuant to Regulation 67-215 and other applicable law, the Commission will not address a motion involving the merits of the claim.
3. Pursuant to §42-1-130, the claimant was a covered employee at the time in question, and §42-1-140 the Defendant/Employer was a covered employer.
4. Pursuant to §42-1-160, Claimant sustained an admitted work-related accident on August 8, 2002.
5. Pursuant to §42-15-60, Defendants provided the Claimant with competent medical care for her emotional problems and neck/back complaints.
6. Pursuant to §42-15-60, the Defendants are responsible for all causally related authorized medical treatment and mileage.
7. Pursuant to §42-15-60, the Defendants are to continue to provide causally related medicals for psychological problems as long as medically

necessary under Dodge v. Bruccoli Clark, Layman, Inc. 514 S.E.2d 593 (S.C. 1999).

8. Pursuant to § 42-15-60, the Defendants are not responsible for Claimant's hospitalization from February 28, 2006 through May 16, 2006 at Baptist Hospital.

**ORDER**

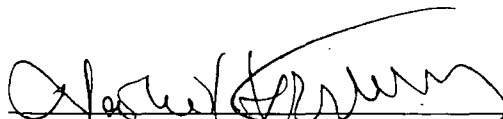
**It is, therefore, ordered** the Order of the Single Commissioner filed in the above-captioned matter on July 21, 2009 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

**It is further ordered** that the Claimant's motion to reconsider is hereby denied.

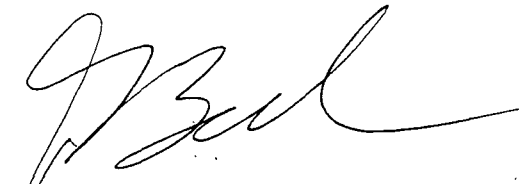
**AND IT IS SO ORDERED.**

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

"I would note that the Claimant did not file a timely appeal to the underlying order; therefore, the only issue before the Panel is the motion to reconsider."

  
\_\_\_\_\_  
David W. Huffstetter, Commissioner

FULL AFFIRMATION

  
\_\_\_\_\_  
T. Scott Beck, Commissioner

CONCUR:

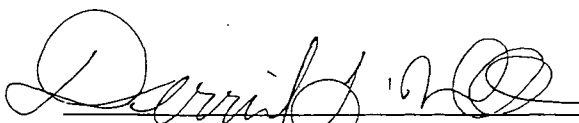
CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 18 day of May, 2010  
By Valene D. Deller

Administrative Assistant to the Commissioner

Everett H. Gardner  
Shanna T. Poteat

  
\_\_\_\_\_  
Derrick L. Williams, Commissioner

Carmen Morgan 249-73-7119  
Claimant's Name SSN  
P.O. Box 8662, Columbia, SC 29202  
Address City State Zip  
(803) (803)  
Home Phone # Work Phone #  
Everett Hope Garner  
Preparer's Name

South Carolina Bank & Trust  
Employer's Name  
P.O. Box 1287, Orangeburg, SC 29115  
Address City State Zip  
Cincinnati Insurance Company  
Insurance Carrier  
803-765-2968  
Phone#

Complete each information blank. To request a hearing, check box 13b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, 8 and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

- 1a. The claimant sustained an accidental injury to psychological/emotional (PTSD) on 8/8/02 in Richland County State of South Carolina  
1b. Describe briefly how the accident occurred Claimant was the victim of an armed bank robbery

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.  
3. The relationship of employer and employee existed at the time of injury.  
4. At the time of injury the claimant was performing services arising out of and in the course of employment.  
5. Notice of the accidental injury was given to the employer on 8/8/02 in the following manner:  
Leslie Dunn, Human Resources

6. Due to the injury, the claimant is in need of (check one):  
 (a) medical examination and treatment for \_\_\_\_\_  
 (b) additional medical examination and treatment for psychological/emotional (PTSD)

7. Due to the injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: Continuing from date of accident

8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)  
 (1) General Disability:  Total \_\_\_\_\_ (2) Specific Disability:  Total \_\_\_\_\_  
 Partial \_\_\_\_\_ Partial \_\_\_\_\_

Body part(s) affected are: psyche

9. Due to the injury, the claimant has a serious bodily disfigurement consisting of N/A

10a. At the time of the injury, the claimant was paid weekly wages of \$ request form 20 and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. None

11a. Further grounds of claim: Any and all remedies available under the Act - lump sum payment and Utica Mohawk language

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Stephanie Boyd, Ph.D., Harbison Psychological Services, One Harbison Way, Columbia, SC 29210; Elin B. Berg, M Ph.D., 1116 Blanding St., Columbia, SC 29201; Doctor's Care, 511 Beltline Blvd., Columbia, SC 29205; First Care, 2406 Decl Blvd., Columbia, SC 29206; Harold Morgan, M.D., 1116 Blanding St, Columbia, SC 29211, William Felmiy, M.D., Moore Orthopaedic Clinic, 14 Medical Park, Columbia, SC 29203; Dr. Roger Deal, 1811 Bull St., Columbia, SC 29201; SC Vocation Rehabilitation Department, 1330 Boston Ave., West Columbia, SC 29170;

11c. To the best of your knowledge, did you have any prior permanent disability? No  
If yes, describe: \_\_\_\_\_

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

13a. I am filing a claim. I am not requesting a hearing at this time.

13b. I am requesting a hearing.

Everett H. Garner  
Signature of Claimant/Representative

10/17/07  
Date

Refer to R.67-205, R.67-206, R.67-207 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission Judicial Department.

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0214040
Carrier File # WC8985142
Carrier Code #
Employer FEIN

Carmen Morgan 249-73-7119
Claimant's Name SSN
P.O. Box 8662, Columbia, SC 29202
Address City State Zip
(803) 553-7292
Home Phone Work Phone
Shannon Till Poteat
Preparer's Name

South Carolina Bank and Trust
Employer's Name
P.O. Box 1287, Orangeburg, SC 29115
Address City State Zip
Cincinnati Insurance Company
Insurance Carrier
(803) 227-2883
Phone #

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.
The employer-insurance carrier in answer to the claim, respectfully shows:

- 1. It is (admitted) (denied) that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Original psychological/emotional (PTSD) injury admitted. Defendants deny Claimant has sustained a compensable change of condition. Defendants believe Claimant's current problems are personal and not related to the work accident and there has been no compensable change of condition. Per the Workers' Compensation Commission Order dated June 11, 2003, Defendants have continued to provide medical treatment, so Defendants assert this "change" is not a valid ground for a Form 50. Claimant appealed from the Workers' Compensation Commission Order of June 11, 2003, denying her PPD/PTD benefits and lost that appeal. She cannot use the "change of condition" Form 50 to attempt to get TTD/PPD benefits when these issues have been ruled upon. Res judicata applies to the claim for PPD/TTD, and Defendants are providing continued medical treatment, so there is no claim. Defendant request attorney's fees for a frivolous claim. Claimant's claim even if valid, which is denied, is not timely pursuant to §42-17-90 statute of limitations.
2. It is (admitted) (denied) that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: The original claim was admitted. See No. 1 and No. 11.
3. It is (admitted) (denied) that the relationship of employer and employee existed at the time in question. The reasons for denial are: See No. 1 and No. 11.
4. It is (admitted) (denied) that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: See No. 1 and No. 11.
5. It is (admitted) (denied) that notice of injury was given the employer. The reasons for denial are: See No. 1 and No. 11.
6. It is (admitted) (denied) that the employee needs or is entitled to additional medical care as a result of injury. The reasons for denial are: See No. 1 and No. 11. Defendants are currently providing medical treatment per the Order of the Workers' Compensation Commission dated June 11, 2003. Defendants reserve to right to move to stop providing medical treatment if/when Claimant is released from care as to the WCC claims.
7. It is (admitted) (denied) that the employee is entitled to temporary total disability for the period(s) of: See No. 1 and No. 11. Res judicata applies. Claimant lost her claim for TTD.
8. It is (admitted) (denied) that the employee is permanently disabled. The reasons for denial are: See No. 1 and No. 11. Res judicata applies. Claimant lost her claim for PPD/PTD.
9. It is (admitted) (denied) that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$ Form 20 applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: See Nos. 1-11. Defendants request costs be assessed against the Claimant.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to Everett Hope Garner, Esquire,
Name
1777 Bull Street, P.O. Box 11006, Columbia, SC 29211 and Virginia Crocker, Judicial Director, SC WCC, P.O. Box 1715,
Columbia, SC 29202
Address

on the 12th day of Febru, 2009 by [X] first class mail; [ ] personal service; [ ] certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge

Preparer's Signature, Attorney for Defendants

Kristie L. Tolleson, Certifier

February 12, 2009
Date



Claimant's Name: Carmen Morgan Employer's Name: South Carolina Bank and Trust  
Address: P.O. Box 8662 Address: P.O. Box 1287  
City: Columbia State: SC Zip: 29202 City: Orangeburg State: SC Zip: 29115  
Home Phone: (803) 553-7292 Work Phone: \_\_\_\_\_ Carrier: Cincinnati Insurance Company  
Preparer's Name: Shannon Till Poteat, Attorney for Defendants Preparer's Phone #: (803) 227-2883

**A claim for workers' compensation benefits is made based on the following grounds:**

Injury  Illness  Repetitive Trauma

1. Compensation Rate: \$220.01 2. AWW: \$359.05 Date of Injury: August 8, 2002
3. Type of injury and body part(s): Emotional problems.
4. Facts in controversy: Alleged change of condition claim (denied). Defendants assert that not only is change not timely or proper but that it is barred by the Statute of Limitations, res judica and not supported by medical evidence. Defendants have requested that costs be assessed against Claimant for frivolous filing and pursuant of this change of condition. Defendants assert any alleged "change" is the result of Claimant's actions and non-related events. Defendants also request a determination that portions of Claimant's treatment with Dr. Boyd are NOT related to this claim and that they not be held responsible for payment. Defendants further request a finding that Claimant is no longer entitled to medical care due to intervening events.
5. Legal issues involved: See above; §42-17-90; §42-17-60
6. Unusual aspects: Defendants reserve the right to and may move to either postpone or adjourn the scheduled hearing to exercise due process rights afforded by law to cross examine, respond to, and otherwise oppose evidence presented by the claimant.
7. Witnesses (designate if expert):\* Claimant
8. Exhibits: Defendants may utilize the deposition of Claimant in cross-examination.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): SEE APA SUBMISSION
10. Name, address, and specialty, if any, of the treating physician: Dr. Stephanie Boyd, Harbison Psychological Services, LLC, One Harbison Way, Suite 109, Columbia, SC 29212
11. Impairment rating(s); body part(s); physician and date of opinion: N/A This is a change of condition.
12. I am amending my Form 50/51 in the following manner: N/A

**I verify the contents of this form are accurate and true to the best of my knowledge.**

Signature: *Shannon Till Poteat* Email: stpoteat@wjlaw.net  
Shannon Till Poteat, Willson Jones Carter & Baxley, P.A.

Date of hearing: May 5, 2009 Time needed for hearing: 2 hours  
On behalf of  Claimant  Employer

I certify that I have served this document pursuant to R.67-212 by delivering a copy to EVERETT HOPE GARNER, Esquire,  
Name

1777 Bull Street, P.O. Box 11006, Columbia, SC 29211  
Address

on the 20th day of April 2009 by  first class mail;  personal service;  certified mail.  
*Kristie L. Tolleson* Date: April 20, 2009  
Kristie L. Tolleson, Certifier

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.  
\* Commissioners reserve the right to admit expert witnesses at hearings.



C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 MS. POTEAT: Your Honor, we based it on briefs, and  
2 then I attached the full commission order. I don't know  
3 what you had in your file.

4 THE COURT: I didn't have much.

5 MS. POTEAT: I figured.

6 THE COURT: I just have Notice of Intent to Appeal.  
7 That's it.

8 MS. POTEAT: Well, here is the full commission order  
9 on file.

10 THE COURT: Okay.

11 MS. POTEAT: And then I attached a brief in front of  
12 it.

13 MR. GARNER: I have another copy somewhere else.

14 MS. POTEAT: Do you have that with you? I was going  
15 to say because I didn't bring one.

16 MR. GARNER: I've highlighted it, but if you don't  
17 care if --

18 MS. POTEAT: No, that's great, okay.

19 THE COURT: Thank you.

20 MS. POTEAT: I have one back at the office I can send  
21 to you if that's your only one.

22 MR. GARNER: All right.

23 THE COURT: All right. If you all --- if someone can  
24 just give me some background on the case.

25 MR. GARNER: I will.

1 THE COURT: Is this your appeal, Mr. Garner?

2 MR. GARNER: Yes, ma'am.

3 THE COURT: All right.

4 MR. GARNER: Shannon has been involved in it a lot  
5 longer than I have, but to say this case has a long and  
6 lurid history, I think, would be an understatement.

7 It goes back to a workers' comp. accident and injury.  
8 Actually, it was a bank robbery which occurred on  
9 August 8th, 2002.

10 In my brief, I did like a chronology of when it  
11 happened, what happened, and the treatments on down, but  
12 the claimant filed this claim, has several, actually  
13 three, I think three attorneys before me or maybe more,  
14 and I came along a little bit late in the game.

15 From our perspective, at least, this case got on the  
16 wrong track to start with and stayed on it, and we're here  
17 based ultimately on a change of condition petition which  
18 we filed and was denied by the single commissioner on  
19 several bases.

20 One of them being a failure to file timely based on  
21 how it corresponded to the last payment of compensation,  
22 which is what the statute says. We feel that's a matter  
23 of law, which I'll get into in a minute.

24 The procedural background, what's happened  
25 procedurally at this point, is the commission essentially

1 adopted the full commissioner's order, which we just --  
2 which I just handed up there from Mr. Linden (phonetic)  
3 and denied the change of condition petition, said that  
4 even if it had been filed -- I think I would be quoting  
5 this accurately but even if it had been filed timely, that  
6 it would have been denied any way because substantial --  
7 there was evidence to support the commissioner.

8 So that's where we are at this point. Do you want me  
9 to go ahead with my argument now?

10 THE COURT: That's fine, yes.

11 MR. GARNER: Okay.

12 Well, on the first -- the first point I'd like to  
13 argue is the medical expenses, which were incurred at  
14 Baptist hospital, I believe in 2000--- 2006, I believe or  
15 it may have been...

16 In any event, it was January to May. It was a long  
17 continuum medical care that we contend was related to --  
18 to the accident that Baptist hospital had originally  
19 billed it to Workers' Comp. and still are trying to do so,  
20 I think.

21 But the commission found, without the defendant even  
22 raising the issue, in either a Form 51 or a Form 58, which  
23 is a pleading in the workers' comp. case asking for that  
24 relief; that it found not to be compensable.

25 So we figured that's one factor that would be an

1 error of law, and any substantial evidence that was -- any  
2 evidence supporting the commissions' position that it was  
3 not related, they just kind of cherry picked.

4         What we have -- and I don't remember, probably 1,000  
5 pages of medical records from that hospitalization -- they  
6 kind of cherry picked a couple little statements that the  
7 claimant, Ms. Morgan, made to her -- one of the treating  
8 doctors or a nurse or whoever and just kind of said,  
9 "Well, she said something about having a conflict with her  
10 mother."

11         So the commission extrapolated that into saying,  
12 "Well, this whole hospitalization, which that was only --  
13 if that had anything do with it, it was only a very  
14 miniscule part of it. This whole hospitalization was not  
15 related to her the accident now."

16         Just to be honest, I'm kind of arguing for Medicare  
17 right here and Baptist hospital because that doesn't  
18 directly benefit Ms. Morgan, but we feel that's just  
19 emblematic of how this case has been handled, and it is  
20 not correct.

21         As far as the change of condition petition, we  
22 submitted evidence from Dr. Stephanie Boyd, who is a  
23 treating psychologist, that the affidavit and her -- she  
24 did her deposition, which she pointed to several  
25 corresponding events that would establish a change of

1 condition and the defendant there -- other than  
2 cross-examining Dr. Boyd, did not have any medical  
3 evidence to the contrary, we don't feel.

4 So in essence, Your Honor, we feel that this is --  
5 like I said, this -- this claim has gone awry from the  
6 start. It's just another example of the commission  
7 mishandling a claim, misconstruing a claim.

8 Ms. Morgan has suffered over all of these years with  
9 post-traumatic stress disorder, hypervigilance. It's been  
10 a very difficult case for everybody involved, and from our  
11 perspective, we feel that the commission got it wrong. We  
12 would ask the Court to make it right.

13 THE COURT: All right. Thank you.

14 Yes, ma'am, Ms. Poteat.

15 MS. POTEAT: Thank you, Your Honor. We would  
16 respectfully request that you affirm the full commission's  
17 order.

18 This case has been going on for ten years, and Hope  
19 has done a great job getting into it late in the game, but  
20 I think if you have a chance to look at the brief and the  
21 full commission, as well as the underlying hearing  
22 commissioner's order, you'll see that there is extensive  
23 evidence to support the findings that they made regarding  
24 the change of condition application.

25 I will say that the change of condition hearing was

1 based primarily upon the records in the -- that were  
2 submitted by the parties because the claimant failed to  
3 even appear for the hearing.

4 So the commissioner had the opportunity to review all  
5 of the records, listen to arguments for both sides,  
6 clearly found evidence that supported both the denial of  
7 that hospital stay. There have been significant  
8 intervening events since the original accident that  
9 supported the finding that that statement was not at all  
10 related to the original work accident, and the defendants  
11 have continued to pay for authorized medical treatment  
12 throughout this.

13 It wasn't like they came to the hearing and had not  
14 been paying, but as far as the change of condition, again,  
15 there is evidence procedurally that it was not filed  
16 properly on that ground, but then the hearing commissioner  
17 found that even had it been that the evidence in the  
18 record, it did not support a change of condition.

19 So we have both the evidence from the medical side  
20 supporting that finding, and then the full commission  
21 didn't even reach that. They found procedurally that it  
22 wasn't properly in front of them, and all of that is set  
23 forth in the full commission order, as well.

24 So we believe there is evidence in the record to  
25 support the findings of the full commission and request

1 you affirm that.

2 THE COURT: All right.

3 Anything else, Mr. Garner?

4 MR. GARNER: Nothing, Your Honor, except that -- as  
5 far as the procedural situation about the delayed payment  
6 of compensation, I did cite a case, two cases in my brief  
7 that I handed up, Davis vs. South Carolina Department of  
8 Corrections and Geddis vs. Murrells Inlet, which I  
9 happened to be involved in for the proposition of payment  
10 of last compensation and the timeframe beyond that for --  
11 is what you had filed, change of condition petition.

12 That's all I have, Your Honor.

13 THE COURT: I'm going to take a look at it. I'll  
14 have to take this under advisement, take a look at it.

15 I don't -- I don't know what I need to do to get --  
16 they don't send us the files from workers' comp.

17 MS. POTEAT: I may have the transcript. I might have  
18 a full commission transcript, as well as the hearing  
19 transcript. I don't know what else. What else would you  
20 like?

21 THE COURT: That's probably it.

22 MS. POTEAT: Okay, okay.

23 THE COURT: If you have it.

24 MS. POTEAT: I'm sure I do, because we had to use it  
25 for the orders.

1 MR. GARNER: Yeah.

2 MS. POTEAT: So I would think -- so I'll just get it  
3 over to you then.

4 THE COURT: Okay. Okay.

5 MS. POTEAT: Both transcripts.

6 THE COURT: Okay. That's fine.

7 MR. GARNER: That would be fine. The affidavit of  
8 Dr. Boyd had been admitted. It's in APA.

9 MS. POTEAT: Oh, from the hearing.

10 MR. GARNER: The APA.

11 MS. POTEAT: From the hearing commission, okay.  
12 Because there was -- like I said, the transcript will just  
13 be our oral arguments because there were no witnesses at  
14 the hearing.

15 MR. GARNER: Yes.

16 MS. POTEAT: So the APAs --

17 THE COURT: That will be good. All right. Thank  
18 you.

19 MS. POTEAT: Thank you.

20 MR. GARNER: Good seeing you.

21

22 (Whereupon, the proceedings were concluded.)

23

24

25



SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
COLUMBIA, SOUTH CAROLINA  
WCC FILE NO. 0214040

**COPY**

EMPLOYEE/CLAIMANT: CARMEN MORGAN

EMPLOYER: SOUTH CAROLINA BANK AND TRUST

CARRIER: CINCINNATI CASUALTY INSURANCE COMPANY

---

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

---

PURSUANT TO NOTICE OF WORKERS' COMPENSATION HEARING, THE WITHIN HEARING WAS TAKEN ON THE 5TH DAY OF MAY, 2009, COMMENCING AT THE HOUR OF 10:01 A.M., IN COLUMBIA, SOUTH CAROLINA, BEFORE THE HONORABLE G. BRYAN LYNDON, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH  
VERBATIM REPORTER

---

**TIMMI A. PARRISH**  
**COURT REPORTING SERVICES**  
POST OFFICE BOX 551  
ROEBUCK, SC 29376  
864-576-7834

APPEARANCES

EVERETT H. GARNER, ESQUIRE, OF THE FIRM  
HOLLER, DENNIS, CORBETT, ORMOND, PLANTE & GARNER  
POST OFFICE BOX 11006  
COLUMBIA, SOUTH CAROLINA 29211

ATTORNEY FOR THE CLAIMANT,

SHANNON TILL POTEAT, ESQUIRE, OF THE FIRM  
WILLSON, JONES, CARTER & BAXLEY  
4500 FORT JACKSON BOULEVARD  
COLUMBIA, SOUTH CAROLINA 29209

ATTORNEY FOR THE EMPLOYER/CARRIER.

1           PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING  
 2           WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY  
 3           PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN COLUMBIA,  
 4           SOUTH CAROLINA.

5                           \* \* \* \* \*           \* \* \* \* \*           \* \* \* \* \*

6           BY COMMISSIONER LYNDON:

7                           TODAY'S DATE IS MAY 5TH, 2009. THIS IS SOUTH  
 8           CAROLINA WORKERS' COMPENSATION CASE FILE NUMBER  
 9           0214040. THE CLAIMANT IS CARMEN MORGAN, REPRESENTED  
 10          BY ATTORNEY HOPE GARNER, VERSUS EMPLOYER SOUTH  
 11          CAROLINA BANK AND TRUST. CINCINNATI CASUALTY IS THE  
 12          CARRIER. SHANNON POTEAT IS THE ATTORNEY FOR THE  
 13          DEFENDANT. THE PURPOSE OF THIS HEARING IS TO  
 14          DETERMINE ISSUES RAISED ON FORMS 50 AND 51. THE  
 15          CLAIMANT'S AVERAGE WEEKLY WAGE IS 359.05, COMP RATE  
 16          220.01, AND THE DATE OF ACCIDENT IS 8/8/02. ARE  
 17          THERE ANY OBJECTIONS TO APAs, JURISDICTION, VENUE OR  
 18          ANY OTHER ITEMS?

19          BY MR. GARNER:

20                           NO, SIR.

21          BY MS. POTEAT:

22                           I HAD AN OBJECTION TO THE INCLUSION OF SOCIAL  
 23          SECURITY RECORDS IN THE APA JUST BECAUSE THAT'S A  
 24          DIFFERENT STANDARD, COMMISSIONER, SO I DON'T KNOW  
 25          THAT IT HAS ANY RELEVANCE TO THE CLAIM. BUT THAT

1 MAY GO TO THE WEIGHT OF WHAT YOU -- HOW YOU CONSIDER  
2 IT. ALSO, THE VOCATIONAL EVALUATION, I WOULD JUST  
3 OBJECT TO IT ON THE GROUNDS THAT DR. STEWART DIDN'T  
4 ACTUALLY MEET WITH THE CLAIMANT BEFORE DOING THAT  
5 EVALUATION, SO I DON'T THINK THE INFORMATION  
6 CONTAINED WITHIN IT WOULD BE RELIABLE. BUT, AGAIN,  
7 I OBJECT TO IT COMING IN, BUT THAT MAY GO TO THE  
8 WEIGHT OF IT.

9 BY THE COMMISSIONER:

10 AND, CERTAINLY, MR. GARNER CAN SPEAK FOR  
11 HIMSELF. ROUTINELY SOCIAL SECURITY INFORMATION IS  
12 -- IT USED TO NOT, BUT NOW IT FILTERS ITS WAY INTO  
13 APAs, AND IT'S FOR A FINANCIAL REASON MORE THAN  
14 ANYTHING ELSE. CERTAINLY, I REALIZE IT'S A  
15 DIFFERENT STANDARD, AS IS STATE RETIREMENT. SO,  
16 I'LL NOTE YOUR OBJECTION, BUT I WILL ALLOW THAT IN.  
17 AND VOCATIONAL REPORTS ROUTINELY COME IN WITH PEOPLE  
18 HAVING REVIEWED MEDICAL RECORDS AND NOT HAVING  
19 SEEING THE CLIENT, ON BOTH SIDES, FROM THE DEFENDANT  
20 AND FROM THE CLAIMANT, SO I WILL ALLOW THAT IN.

21 BY MS. POTEAT:

22 THANK YOU.

23 BY THE COMMISSIONER:

24 IF THERE ARE NO OTHER OBJECTIONS, THE  
25 COMMISSION FILE BECOMES A PART OF THE RECORD WITH

1 THE EXCEPTION OF SELF-SERVING DECLARATIONS AND  
2 UNSTIPULATED MEDICAL REPORTS. PRIOR TO GOING ON THE  
3 RECORD, WE'VE HAD A REAL LENGTHY PREHEARING  
4 CONFERENCE, AND WHILE I ORDINARILY TRY TO PUT THE  
5 POSITIONS ON THE RECORD, THIS INVOLVES, I THINK,  
6 MORE THAN ANYTHING ELSE A LEGAL ISSUE, OR SEVERAL  
7 LEGAL ISSUES. AND IT IS A CHANGE OF CONDITION FOR  
8 THE WORSE ON AN ACCIDENT THAT HAPPENED ON 8/8/02,  
9 AND I WILL LET EACH PARTY PUT A BRIEF STATEMENT,  
10 OPENING STATEMENT AND POSITION ON THE RECORD,  
11 STARTING WITH THE MOVING PARTY, FOR THE CLAIMANT,  
12 MR. GARNER.

13 **BY MR. GARNER:**

14 THANK YOU, COMMISSIONER. AS YOU STATED  
15 EARLIER, THIS IS BASED ON AN ORDER WHICH YOU ISSUED  
16 AS THE HEARING COMMISSIONER ON SEPTEMBER 28, 2005,  
17 AND FOUND IN PERTINENT PART AT THAT TIME THAT MS.  
18 MORGAN DID NOT PRESENT SUFFICIENT EVIDENCE TO PROVE  
19 THAT SHE HAD SUFFERED ANY PERMANENT LOSS OF EARNING  
20 CAPACITY AND WAS NOT ENTITLED TO ANY COMPENSATION  
21 FOR TOTAL PERMANENT DISABILITY. AT THAT TIME, BASED  
22 ON THE EVIDENCE YOU HAD IN FRONT OF YOU, YOU CITED A  
23 VOCATIONAL REPORT THAT WAS SUBMITTED BY THE  
24 DEFENDANT BY MR. TODD MURPHY, A VOCATIONAL EXPERT,  
25 WHICH STATED SOMETHING TO THE EFFECT THAT MS. MORGAN

1 MAY BE ABLE TO WORK IN THE FUTURE IF HER PHYSICIAN  
2 SO NOTED THAT SHE COULD RETURN TO WORK. THERE WOULD  
3 BE JOBS AVAILABLE FOR HER. IT'S OUR POSITION IN  
4 THIS CHANGE OF CONDITION FOR THE WORSE THAT WE HAVE  
5 PRESENTED MEDICAL EVIDENCE IN THE FORM OF A LETTER  
6 FROM DR. BOYD WHICH INDICATES TO A REASONABLE DEGREE  
7 OF MEDICAL CERTAINTY AFTER STUDYING -- AFTER  
8 TREATING MS. MORGAN OVER A LONG CONTINUUM OF TIME  
9 AND EVALUATING HER VARIOUS CONDITIONS, THAT HER  
10 CONDITION HAD, IN FACT, WORSENERD AND ALIGNING THAT  
11 WITH A LENGTHY HOSPITALIZATION WHICH OCCURRED IN  
12 EARLY 2006, FEBRUARY 28TH, 2006, THROUGH HER RELEASE  
13 ON MAY 16TH, 2006. AND WE BELIEVE THAT A REVIEW OF  
14 DR. BOYD'S LETTER, IN CONJUNCTION WITH DR. BOYD'S  
15 TREATMENT RECORDS, IN CONJUNCTION WITH THE HOSPITAL  
16 RECORDS, IN CONJUNCTION WITH THE PREVIOUS ORDER  
17 WOULD PRESENT EVIDENCE TO THE COMMISSION BY WHICH IT  
18 COULD FIND THAT THERE WAS A WORSENERD OF CONDITION,  
19 OF MS. MORGAN'S CONDITION. WE POINT OUT THERE'S NO  
20 I.M.E. OR ANYTHING REQUESTED BY THE DEFENDANT TO  
21 ESTABLISH OTHERWISE. IN OTHER WORDS, DR. BOYD'S  
22 OPINION IS THE ONLY RELIABLE EVIDENCE WITH REGARD TO  
23 THIS ISSUE.

24 WITH REGARD TO THE ISSUE OF RES JUDICATA, IT'S  
25 TRUE THAT THE EARLIER DECISION BY YOU WAS TAKEN TO

1 THE FULL COMMISSION AND TAKEN TO THE CIRCUIT COURT,  
2 AND SUBSEQUENT TO THAT THERE WAS THIS FILING OF  
3 CHANGE OF CONDITION. IT'S OUR POSITION THAT THERE  
4 ARE OTHER ISSUES THAT NEED TO BE LOOKED IT. THE  
5 WORSENING OF A CONDITION IS THE WORSENING OF A  
6 CONDITION, AND IF'S A BACK OR WHATEVER, IF YOU HAVE  
7 A BACK INJURY AND IT WORSENS, THEN THERE'S SOMETHING  
8 TO BE RULED ON. OR IF YOU'VE GOT MEDICAL EVIDENCE  
9 THAT IT'S WORSENERED, IT'S SOMETHING FOR THE  
10 COMMISSION TO CONSIDER AND RULE WHETHER OR NOT  
11 THERE'S BEEN A CHANGE OF CONDITION. WHAT WE HAVE  
12 HERE IS THERE WAS A -- THERE IS NO QUESTION THAT MS.  
13 MORGAN HAD THIS PROBLEM TO START WITH, AND IT'S BEEN  
14 AN ONGOING DIAGNOSIS OF POSTTRAUMATIC STRESS  
15 DISORDER, BUT IT'S OUR POSITION THAT WE HAVE  
16 PRESENTED NEW EVIDENCE IN THE FORM OF THE SOCIAL  
17 SECURITY EVALUATION, WHICH UNDERSTANDABLY IS A  
18 DIFFERENT STANDARD, IN OUR OPINION A MORE STRINGENT  
19 STANDARD, THAT WOULD JUSTIFY -- THAT WOULD PRESENT  
20 THE ISSUE TO THE COMMISSION LEGITIMATELY THAT IN THE  
21 ABSENCE OF CONTRADICTORY TESTIMONY, WE BELIEVE, OR  
22 EVIDENCE, THAT WOULD ALLOW YOU TO CONSIDER THE  
23 EVENTS THAT HAVE HAPPENED, BOTH MEDICALLY AND  
24 OTHERWISE, TO DETERMINE WHETHER OR NOT THERE HAS  
25 BEEN A CHANGE OF CONDITION AND WHETHER OR NOT SHE,

1 SINCE NO DOCTOR HAS OPINED AT ANY TIME SINCE MR.  
2 MURPHY'S SEVERAL YEARS AGO THAT SHE IS ABLE TO WORK,  
3 THAT IT'S AN INVERSE PROPOSITION NOW THAT SAYS SHE'S  
4 NOT ABLE TO WORK, THAT THAT'S A CHANGE OF CONDITION.  
5 THE ANTICIPATED SITUATION HAS NOT OCCURRED, AND  
6 THEREFORE SHE NOW HAS EVIDENCE IN THE FORM OF  
7 CONTINUED MEDICAL TREATMENT, CONTINUED MEDICAL  
8 OPINIONS SHE'S NOT ABLE TO WORK, AND NOW A  
9 VOCATIONAL EVALUATION BASED ON A REVIEW BY DR.  
10 STEWART OF ALL OF HER RECORDS. AND WE'VE  
11 ESTABLISHED BY A GREATER WEIGHT OF THE EVIDENCE THAT  
12 THAT HAS HAD A PERMANENT EFFECT ON HER EARNING  
13 CAPACITY. THEREFORE, A CONDITION WHICH EXISTED AT  
14 THE TIME YOU MADE YOUR ORIGINAL RULING HAS NOW  
15 CHANGED TO THE POINT TO JUSTIFY A FINDING OF  
16 PERMANENT AND TOTAL DISABILITY.

17 BY THE COMMISSIONER:

18 YOU MAY HAVE ADDRESSED IT. I WAS GLANCING AT  
19 HER DEPOSITION. WERE YOU GOING TO MENTION THE FACT  
20 THAT THERE WERE SOME INTERVENING INCIDENTS AND  
21 CAUSALLY-RELATED MEDICALS, THAT THE CLAIMANT WOULD  
22 NOT EXPECT TO BE PAID ON ANYTHING THAT WAS NOT  
23 CASUALLY RELATED TO THIS?

24 BY MR. GARNER:

25 YES, SIR. I DON'T THINK I ADDRESSED THAT

1 DIRECTLY. I KIND OF CIRCLED MY WAY AROUND IT. IT'S  
2 OUR POSITION THAT ANY INTERVENING INCIDENTS WHICH  
3 ARE RECORDED IN ANY OF THE MEDICAL RECORDS ARE  
4 MINOR, INSIGNIFICANT, AND THAT YOU WOULD NOT HAVE  
5 HAD A RESPONSE TO THOSE CONDITIONS SUBSTANTIAL  
6 ENOUGH TO REQUIRE ANY MEDICAL TREATMENT, MUCH LESS  
7 THE MEDICAL TREATMENT THAT SHE HAD TO GO, WHICH IS  
8 REFLECTED IN ALL THE HOSPITALIZATION RECORDS AND  
9 EVERYTHING. SO, IT WOULD BE OUR POSITION THAT WE  
10 AGREE THAT THE CARRIER SHOULD NOT HAVE TO PAY FOR  
11 ANYTHING INTERVENING THAT WAS NOT RELATED, BUT IT'S  
12 JUST A -- WE ALL HAVE STRESSORS IN OUR LIFE THAT  
13 DON'T AFFECT OUR CONDITION. BUT THE UNDERLYING  
14 POSTTRAUMATIC STRESS DISORDER AND THE ACCOMPANYING  
15 DEPRESSION IS WHAT'S CAUSED HER TO HAVE TO SEEK  
16 MEDICAL ATTENTION, I.E. IF SHE HAD NOT HAD THAT, SHE  
17 WOULD NOT HAVE NEEDED THIS ATTENTION.

18 BY THE COMMISSIONER:

19 ALL RIGHT, SIR. AND MS. POTEAT, FOR THE  
20 DEFENDANT.

21 BY MS. POTEAT:

22 YES. THANK YOU, COMMISSIONER. WE WOULD  
23 INITIALLY ASSERT THAT THE CHANGE OF CONDITION IS NOT  
24 PROPER. YOUR ORDER FROM THE HEARING THAT YOU HELD  
25 JUNE 27TH, 2005, AND THE ORDER WAS THEN ISSUED IN

1           SEPTEMBER OF 2005, WOULD BE THE LATEST POINT WE  
2           WOULD ASSERT THAT THE CHANGE SHOULD BE FILED FROM.  
3           ACTUALLY, SHE, PER A FULL COMMISSION ORDER, HAS NOT  
4           BEEN RECEIVING WHAT WE DEFINE COMPENSATION TO BE,  
5           WHICH IS INDEMNITY OR IN THE FORM OF TEMPORARY OR  
6           PERMANENT DISABILITY, SINCE 2004. SO, WE WOULD  
7           INITIALLY ASSERT THAT THE CHANGE OF CONDITION IS NOT  
8           TIMELY AS THE MEDICAL WASN'T FILED TIMELY, NOR WAS  
9           THE MEDICAL THAT IS USED TO SUPPORT THE CHANGE  
10          OBTAINED WITHIN A YEAR AFTER THE LATEST DATE IF YOU  
11          USE THE SEPTEMBER OF 2005. SO, WE WOULD INITIALLY  
12          ASSERT THAT IT'S NOT PROPER.

13                 I ALSO THINK IN THIS SITUATION THE CLAIMANT IS  
14                 TRYING TO USE A CHANGE OF CONDITION TO GET AROUND  
15                 RES JUDICATA, WHICH I BELIEVE APPLIES BECAUSE THE  
16                 ISSUE OF PERMANENT DISABILITY WAS HEARD BY YOU IN  
17                 2005, IT WAS RULED UPON BY YOU, AND I DON'T THINK  
18                 THIS CHANGE IS REALLY AN APPROPRIATE WAY TO BACKDOOR  
19                 IN AND GET PERMANENT DISABILITY. YOU FOUND IN YOUR  
20                 ORDER OF 2005 INITIALLY, AND IMPORTANTLY I THINK,  
21                 THAT THE CLAIMANT WAS NOT A CREDIBLE WITNESS IN YOUR  
22                 FINDING OF FACT NUMBER 15. YOU ALSO FOUND, IN  
23                 FINDING OF FACT NUMBER 16, THAT SHE SHARED IN THE  
24                 RESPONSIBILITY FOR HER EMOTIONAL PROBLEMS AND LACK  
25                 OF PROGRESS. SO I THINK THIS IS AN UNUSUAL CASE

1 BECAUSE SHE HAS CONSISTENTLY ASSERTED SHE CANNOT  
2 WORK SINCE THE ACCIDENT, AND THAT WAS WAY BEFORE MR.  
3 GARNER WAS INVOLVED, BUT SHE HAS CONSISTENTLY SAID  
4 SHE COULDN'T WORK. AND DR. BOYD HAS GIVEN THAT  
5 OPINION IN HER DEPOSITION, THAT THE CLAIMANT HAS  
6 ASSERTED SHE CAN'T WORK, AND YOU CAN'T MAKE SOMEONE  
7 RETURN TO WORK IF THEY ARE UNWILLING TO DO SO, AND  
8 THAT IS IN YOUR ORDER. AND SO, I THINK THAT IS AN  
9 UNUSUAL THING AS IT RELATES TO THIS CLAIM, AND  
10 THAT'S WHY RES JUDICATA, I BELIEVE, ALSO APPLIES,  
11 BECAUSE YOU BASED YOUR ORDER, A SMALL PART, ON THE  
12 FINDING OF THE VOCATIONAL EXPERT, BUT WHAT HE  
13 ACTUALLY SAID WAS JUST THAT HE FELT LIKE SHE HAD  
14 TRANSFERRABLE SKILLS, BUT AT THE TIME HE SAW HER SHE  
15 DIDN'T BELIEVE SHE WAS ABLE TO WORK, AND BECAUSE OF  
16 THAT HER DOCTORS HADN'T RELEASED HER TO WORK, AND  
17 THAT HAS NEVER CHANGED. DR. STEWART DIDN'T SEE HER  
18 BUT REVIEWED ALL THE RECORDS, AND THAT'S REALLY NOT  
19 A DIFFERENT REPORT THAN WE HAD. I THINK WHAT OUR  
20 VOCATIONAL EXPERT WAS SAYING WAS JUST THAT SHE HAD  
21 THE ABILITY TO WORK. SHE'S A SMART LADY. SHE HAS A  
22 COLLEGE EDUCATION, OR AT LEAST COLLEGE CLASSES. SO,  
23 THAT'S WHY WE BELIEVE THE RES JUDICATA ALSO APPLIES.

24 AND GOING TO THE UNDERLYING CHANGE OF  
25 CONDITION, I THINK IF YOU LOOK AT THE DEPOSITION OF

1 DR. BOYD AS IT COMPARES TO THE REPORT THAT SHE  
2 ISSUED, SHE IS USING THE TERM CHANGE TO BE A  
3 TRANSITORY TERM. SHE WAS TALKING ABOUT THE  
4 CLAIMANT'S CONDITION HAD WORSENERD DURING THE TIME  
5 SHE WAS HOSPITALIZED. WELL, I THINK THAT'S PROBABLY  
6 A PRETTY EVIDENT FACT, THAT SHE WAS WORSE, SO SHE  
7 WENT IN THE HOSPITAL. BUT WE WERE ORDERED TO PAY  
8 FOR DODGE MEDS, SO THAT COVERS THAT. THAT'S NOT A  
9 CHANGE OF CONDITION. THAT JUST MEANS HER CONDITION  
10 CONSISTENTLY SINCE THE ACCIDENT HAS FLUCTUATED. SO,  
11 TO ME THAT'S WHAT DR. BOYD IS USING AS THE TERM  
12 CHANGE. I AGREE HER CONDITION HAS GOTTEN BETTER,  
13 IT'S GOTTEN WORSE, IT'S FLUCTUATED BACK AND FORTH.  
14 IN FACT, I THINK IF YOU LOOK AT DR. BOYD'S  
15 DEPOSITION SHE'LL NOTE THAT THE LATEST CHANGE, I  
16 THINK, HAS BEEN THE BIRTH OF A HEALTHY BABY, WHICH  
17 BOTH MS. MORGAN AND DR. BOYD SAID SEEMS TO GROUND  
18 HER. IT ALSO SEEMS TO REMOVE HER -- WHEN DR. BOYD  
19 CLASSIFIES HER AS HAVING A TRAUMATIC LIFESTYLE AND  
20 THAT SHE HAS TAKEN THIS ONE ACCIDENT AND MADE HER  
21 WHOLE LIFE REVOLVE AROUND IT, AND HAVING A BABY HAS  
22 KIND OF SEEMED TO REMOVE HER FROM THAT. SO, I THINK  
23 THAT IT'S NOT A PROPER CHANGE AS DEFINED BY 42-17-  
24 90. ALSO, SHE'S HAD INTERVENING EVENTS, WHICH TO ME  
25 TAKE IT OUTSIDE OF 42-17-90, THAT ANY CHANGE HAS TO

1 BE CAUSALLY CONNECTED TO THE WORK ACCIDENT. I WOULD  
2 SAY THAT THE CHANGE FOR THE WORSE THAT DR. BOYD IS  
3 REFERENCING IN HER REPORT IS HER HOSPITALIZATION IN  
4 2006, WHICH I ASSERT IS THE RESULT OF AN INTERVENING  
5 EVENT. YES, SHE HAD UNDERLYING STRESS, BUT THAT  
6 HOSPITAL RECORD NOTES THAT SHE WAS INITIALLY  
7 ADMITTED FOLLOWING AN ALTERCATION WITH HER MOTHER,  
8 WITH WHOM SHE WAS LIVING, THAT GOT PHYSICAL. SO, I  
9 WOULD ASSERT THAT THAT HOSPITAL VISIT WAS NOT  
10 CAUSALLY CONNECTED TO THE DEGREE THAT THE DEFENDANT  
11 SHOULD BE RESPONSIBLE FOR IT. WE'D ALSO ASK THAT  
12 THE TREATMENT FROM DR. BOYD SINCE FEBRUARY 20TH OF  
13 '08 BE FOUND TO NOT BE CAUSALLY CONNECTED TO THE  
14 ACCIDENT IN THAT IT IS THE RESULT OF INTERVENING  
15 EVENTS, WHICH IF YOU'LL LOOK AT THE DEPOSITION OF  
16 THE CLAIMANT, SHE UNFORTUNATELY HAD A STILLBORN BABY  
17 IN DECEMBER OF 2007. SHE THEN HAD A HEALTHY BABY,  
18 LIKE I SAID, AND THE CHANGE, I THINK SHE HASN'T  
19 GOTTEN -- OR INTERVENING EVENT -- SHE HASN'T GOTTEN  
20 SUPPORT FINANCIALLY FROM THE BABY'S FATHER. SHE  
21 WENT OFF HER MEDICATIONS WHILE SHE WAS PREGNANT BOTH  
22 TIMES, WHICH WAS GOOD FOR THE BABY, BUT AFFECTED  
23 HER. AND THAT THE MEDICAL EVIDENCE SHOWS SHE'S  
24 CONSISTENTLY JUST MOTORED ALONG GOING UP AND DOWN,  
25 AND AT THIS POINT DR. BOYD HAS RELEASED HER BECAUSE

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SHE BELIEVES THAT SHE HAS NOTHING FURTHER SHE CAN OFFER HER. SHE DID THINK THAT THE CLAIMANT CONTINUES TO NEED COUNSELING AND MEDICATION. IT'S MY UNDERSTANDING FROM DR. BOYD'S DEPOSITION THAT THE CLAIMANT AT THIS POINT HAS SAID SHE DOES NOT CHOOSE TO SEEK THE COUNSELING. SHE'S GOING TO DEAL WITH THINGS ON HER OWN THROUGH CHURCH AND JUST HANDLE IT ON HER OWN, AND I THINK THAT ALSO AFFECTS OUR REQUEST THAT WE BE ALLOWED UNDER DODGE TO STOP THE COUNSELING BECAUSE THE CLAIMANT HAS HAD THESE INTERVENING EVENTS.

AND LASTLY, I WOULD LIKE TO ASK, UNDER 42-17-80, THAT YOU CONSIDER ASSESSING COSTS AGAINST THE CLAIMANT IN THIS CASE. I THINK -- I KNOW THE COMMISSION IS RELUCTANT TO DO THAT. COMMISSIONER, THIS IS, ACCORDING TO MY COUNT, ABOUT THE EIGHTH TIME WE'VE BEEN IN FRONT OF EITHER THE COMMISSION OR THE CIRCUIT COURT. SHE'S VERY UNHAPPY WITH THE DECISIONS THAT HAVE BEEN RENDERED BY THE COMMISSION, AS YOU'LL SEE IN HER DEPOSITION, AND I THINK THAT THIS CASE IS NEVER GOING TO END IF WE DON'T DO SOMETHING THAT SENDS A MESSAGE ABOUT THAT. SO, THAT'S ALL I HAVE.

BY THE COMMISSIONER:

OKAY. ANYTHING YOU WANT TO REPLY BRIEFLY TO?

1 BY MR. GARNER:

2 JUST BRIEFLY, COMMISSIONER. SHANNON KEEPS  
3 TALKING ABOUT INTERVENING EVENTS, AND OBVIOUSLY  
4 THERE IS SOME EVIDENCE IN THE RECORD, LIKE YOU SAID.  
5 HER DIAGNOSIS HAS BEEN P.T.S.D. THE WHOLE TIME, WITH  
6 DEPRESSION. YOUR RULING BACK IN '05 WAS THAT AT  
7 THAT TIME SHE WAS UNABLE TO WORK BUT SHE HAD NOT  
8 PROVEN ANY PERMANENT LOSS OF EARNING CAPACITY. WHAT  
9 WE'VE BEEN OPERATING ON SINCE THEN IS A CONTINUUM,  
10 AS EVALUATED BY SOCIAL SECURITY, TOO, THAT SHE HAS  
11 NOT AT ANY TIME BEEN UNABLE TO WORK, AND I THINK FOR  
12 LACK OF A BETTER TERM IT'S OUR POSITION THAT UPON  
13 THE HOSPITALIZATION OR SURROUNDING EVENTS ABOUT THAT  
14 TIME, AS BEST DR. BOYD, WHO IS THE TREATING  
15 PHYSICIAN AND THE BEST PHYSICIAN TO EVALUATE HER,  
16 EVALUATED THAT SHE DID WORSEN, HER CONDITION DID  
17 WORSEN, AND I THINK WHAT WE'RE SAYING, FOR LACK OF A  
18 BETTER TERM, IS SHE BECAME MORE UNABLE TO WORK, AND  
19 THEREFORE AS A RESULT HAS SHOWN NOW A PERMANENT LOSS  
20 OF EARNING CAPACITY. AS FAR AS SANCTIONS FOR A  
21 FRIVOLOUS CLAIM, COMMISSIONER, OBVIOUSLY I'M THE ONE  
22 THAT BROUGHT THIS BASED ON THE BEST EVIDENCE THAT I  
23 HAD, AND I THINK YOU KNOW I DON'T BRING FRIVOLOUS  
24 CLAIMS. IT'S JUST A MATTER OF TRYING TO ADVOCATE  
25 CONSCIENTIOUSLY FOR MY CLIENT AND GET ANY RELIEF

1                    THAT I THINK IS FEASIBLY AVAILABLE.

2                    BY THE COMMISSIONER:

3                    MA'AM?

4                    BY MS. POTEAT:

5                    NO, I THINK I'VE SET FORTH MY POSITION.

6                    BY THE COMMISSIONER:

7                    OKAY. LET'S GO OFF THE RECORD JUST ONE MINUTE.

8                    (OFF-THE-RECORD DISCUSSION)

9                    BY THE COMMISSIONER:

10                   WE'RE BACK ON THE RECORD. WE HAD AN OFF-THE-  
11                   RECORD DISCUSSION. I DID ASK ABOUT ONE POINT THAT  
12                   DID NOT SURFACE, AT LEAST I DIDN'T REMEMBER IT  
13                   SURFACING, IN THE PREHEARING CONFERENCE, AND THAT'S  
14                   BEEN CLEARED UP TO MY SATISFACTION. IS THERE  
15                   ANYTHING ELSE?

16                   BY MR. GARNER:

17                   NOTHING FROM US, COMMISSIONER.

18                   BY MS. POTEAT:

19                   NO, SIR.

20                   BY THE COMMISSIONER:

21                   OKAY. IF THERE'S NOTHING ELSE, THAT CONCLUDES  
22                   THE HEARING.

23                   (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS  
24                   CONCLUDED AT THE HOUR OF 10:20 A.M.)

CERTIFICATE OF NOTARY PUBLIC  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
COLUMBIA, SOUTH CAROLINA  
WCC FILE NO. 0214040

EMPLOYEE/CLAIMANT: CARMEN MORGAN

EMPLOYER: SOUTH CAROLINA BANK AND TRUST

CARRIER: CINCINNATI CASUALTY INSURANCE COMPANY

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 16 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING, TAKEN ON THE 5TH DAY OF MAY, 2009.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 14TH DAY OF MAY, 2009.

\_\_\_\_\_  
TIMMI A. PARRISH  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 11-20-2018

\* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

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State of South Carolina  
Before the  
South Carolina Workers' Compensation Commission  
WCC File No.: 0214040

Carmen Morgan, )  
Employee, )  
Claimant, )  
vs. ) Deposition of  
South Carolina Bank and Trust, ) Dr. Stephanie Boyd  
Employer, ) March 16, 2009  
and )  
Cincinnati Insurance Company, )  
Carrier, )  
Defendants. )

**COPY**

Deposition on oral examination of  
DR. STEPHANIE BOYD, reported by Cheryl A.  
Wisowaty, Court Reporter and Notary Public in and  
for the State of South Carolina; said deposition  
taken pursuant to notice of deposition and in  
accordance with the South Carolina Rules of Civil  
Procedure, at Harbison Psychiatry Associates, 1  
Harbison Way, Columbia, South Carolina, commencing  
on Monday, March 16, 2009, at the hour of 9:05  
a.m.

DR. STEPHANIE BOYD 3-16-09

1 our conversation about the change of condition  
2 between me and Mr. Garner was about this term and  
3 explaining that -- it was explained to me that --  
4 let's see. How can I put this.

5 My understanding is that or the  
6 question was, was there a period of time when  
7 Carmen's condition changed for better or for  
8 worse, and then the question was, well, around  
9 what period was that, and my response to that,  
10 which is what the letter is, is that it seems to  
11 have at least exacerbated or climaxed around these  
12 hospitalizations around sometime in October.

13 Q. I think August?

14 A. August.

15 Q. I'm sorry. March of 2006?

16 A. Yeah.

17 Q. And then again in April.

18 A. Right.

19 Q. Well, I guess they both occurred end  
20 of February and then in April of 2006. Okay. So  
21 this time period between February of 2006 and May  
22 2006 when she was admitted and discharged from the  
23 hospital, you felt like that was representative of  
24 the fact that during that time period she was  
25 worse.

ABC REPORTING SERVICE (803) 532-5255

DR. STEPHANIE BOYD 3-16-09.

1 improve that or how are you trying to get her to  
2 improve that?

3 A. Part of what I use, and this is  
4 typical, is using the therapeutic relationship in  
5 here to say, okay, you and I both have boundaries,  
6 both you and I have feelings, both you and I can  
7 have empathy, and so I try to use the therapeutic  
8 relationship as a model for, one, dealing with  
9 difficult situations resolving conflicts and being  
10 able to do some perspective taking, and that has  
11 been challenging in and of itself in a very safe  
12 environment.

13 You know, she will say even though  
14 there has been conflict therapeutically in the  
15 therapeutic alliance, that I would have been that  
16 consistent relationship in her life in the last --  
17 since 2002, so part of it is done in here in  
18 modeling and problem-solving in clinic and then  
19 helping her to resolve, hopefully, more effective  
20 the conflicts that she reports to me from her  
21 world, from her world outside of this setting.

22 Q. Well, speaking of those conflicts, I  
23 guess since 2007, maybe, I know there have been a  
24 few things that have occurred in her life that  
25 have been upsetting. She had a stillborn baby.

ABC REPORTING SERVICE (803) 532-5255

DR. STEPHANIE BOYD 3-16-09

1 Was that in 2007?

2 A. I don't --

3 Q. Okay. I know that was -- I think it  
4 was after her hospitalization in 2006.

5 A. I think somewhere in that area, yes.

6 Q. Now, so obviously that upset her, as  
7 it would anybody, and how did that affect her  
8 treatment functioning?

9 A. Well, Carmen is -- was already  
10 psychologically vulnerable and, as you said, that  
11 would be upsetting to anyone. With Carmen,  
12 stressors, whether they're fairly minor or larger  
13 stressors, just are destabilizing to her.

14 To her credit, she was able to regain  
15 some equilibrium after that. Maybe not in the way  
16 that you and I may have. She went back, maybe, to  
17 her prior level of disfunction is probably a  
18 better way to say that.

19 Q. Okay. That's a fair way to say it.

20 And then after that, I guess she had  
21 a baby, which I think you said was a positive  
22 influence and she is -- seems to be a positive  
23 influence, but related to that, and I don't know  
24 how much she goes into it with you, that's what  
25 I'm trying to find out --

Carmen Morgan v. South Carolina Bank & Trust  
W.C.C. File No: 0214040

## INDEX TO APA SUBMISSIONS

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020506200093352

Emergency Dept

MORGAN, CARMEN SHERIECE - B000716071

Result Type: Emergency Dept  
Result Date: 23 April 2006 9:36  
Result Status: Auth (Verified)  
Result title: Emergency Dept  
Performed By: King MD, Terry A on 23 April 2006 9:36  
Verified By: King MD, Terry A on 23 April 2006 10:07  
Encounter info: B0611200089, Baptist, ERB-Emergency Room, 4/22/2006 - 4/22/2006

Emergency Dept

DATE: 04/22/2006

DATE OF BIRTH: 8/18/79.

CHIEF COMPLAINT: Feels suicidal.

HISTORY OF PRESENT ILLNESS: This is a 26-year-old female who left the psychiatric floor at Palmetto Baptist Medical Center yesterday afternoon against medical advise. She did not receive any of her medications. Was also diagnosed with elevated blood pressure there. She was in the hospital just over 30 days this time and had been admitted the month before for a lengthy hospitalization as well. She says that she has no pills now but has thought about getting pills from someone else. There is no fever or chills. Says she has post-traumatic stress disorder due to being in a bank robbery in 2002. She says she now desires to be readmitted but only to the fifth floor. She has some rambling conversations regarding the opening and closing of a refrigerator on the floor. She also sustained some abrasions on her right leg when she got in an altercation with security there. She says she left against medical advise because she had got some scrapes on her legs and not because of her mental health issues.

REVIEW OF SYSTEMS: Has some abrasions to right leg but says they are doing okay. The patient denies any chest pain, cough, shortness of breath, etcetera. No nausea, vomiting. All others are negative.

PAST MEDICAL HISTORY: Significant for post-traumatic stress disorder and depression.

MEDICATIONS: Current medications are none, but she had been medications in the hospital.

ALLERGIES: None.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: Negative alcohol. Negative cigarettes. She is currently homeless. Had her home foreclosed on in 2003.

Printed by: Hamlin, Brenda F  
Printed on: 6/5/2006 14:31

Page 1 of 3  
(Continued)

## Discharge Summary

MORGAN, CARMEN SHERIECE - B000716071

Result Type: Discharge Summary  
 Result Date: 10 April 2006 16:09  
 Result Status: Auth (Verified)  
 Result title: Discharge Summary  
 Performed By: Kinard MD, Carl O on 10 April 2006 16:09  
 Verified By: Kinard MD, Carl O on 11 April 2006 8:53  
 Encounter info: B0605802454, Bap Behavioral, PYB-Mental Health Inpatient, 2/28/2006 - 3/7/2006

**Discharge Summary**

**HISTORY OF PRESENT ILLNESS:** This 26-year-old, black, single female has a history of depression and possible post-traumatic stress disorder secondary to an armed robbery when she was a bank teller. She describes problems with panic disorder, major depression, and alcohol abuse (using approximately 1 pint a day). She dates all of these conditions to after the robbery. She states the alcohol use was mostly in 2003 and 2004. She is controlling it much better now, drinking perhaps 1 day per week. She states that she has been approximately 80% better on Paxil CR, Seroquel, and trazodone but was off of these medications. She states that she has been homeless and has recently been ejected from her mother's resident after a disagreement where she "got physical" with her mother. She is currently involved in a lawsuit having to do with workman's comp and has no current income or insurance. It will be difficult for her to consistently afford medication. At the time of admission, the patient reported depression with suicidal ideation involving cutting her wrists.

**LABORATORY DATA:** Included a CBC, which was within normal limits. Chemistry profile was within normal limits with the exception of a glucose of 107 and carbon dioxide a little bit low at 25. Thyroid stimulating hormone was normal at 3.83. Free T4 was 1.18. Drug screen was negative. Rapid plasma reagin was nonreactive.

**PHYSICAL EXAMINATION:** Completed by Jean Massey, RN, PhD. **VITAL SIGNS:** Temperature 98.3, pulse 90, respirations 20, blood pressure 125/76. The remainder of the physical examination was generally unremarkable.

**TREATMENT PLAN HOSPITAL COURSE:** We initially tried to use Effexor but elected to change back to Paxil CR with a history of good response to this and continued Remeron. We did add Provigil in the morning because she tended to sleep excessively and was relatively anergic on the unit. It did turn out that despite our initial assessment and the history of the present illness that she thought she would be able to get the medication through workman's comp in the reliable fashion, making it a little bit easier to use medication based on optimum efficacy rather than affordability. By 03/07, the patient appeared much brighter and was asking for discharge. She estimated her improvement at 75%. She was sleeping well. The post-traumatic stress disorder symptoms were also reported to be at least modestly better, and she was discharged.

**DISCHARGE MEDICATIONS:** Provigil 200 mg 1 in the morning and 1 at noon. Paxil CR 25 mg every morning. Remeron 30 mg h.s. She was given a 2-weeks supply from the hospital and a 30-day supply by prescription.

Printed by: Hamlin, Brenda F  
 Printed on: 6/5/2006 14:31

Page 1 of 2  
 (Continued)

Emergency Dept

MORGAN, CARMEN SHERIECE - BU00716071

Result Type: Emergency Dept  
 Result Date: 15 March 2006 12:03  
 Result Status: Auth (Verified)  
 Result title: Emergency Dept  
 Performed By: Mercier MD, Mark P on 15 March 2006 12:03  
 Verified By: Mercier MD, Mark P on 16 March 2006 8:30  
 Encounter info: B0607301923, Bap Behavioral, PYB-Mental Health Inpatient, 3/14/2006 - 4/21/2006

Emergency Dept

DATE: 03/14/2006

CHIEF COMPLAINT: Depression.

HISTORY OF PRESENT ILLNESS: Patient is a 26-year-old female who comes in because of depression. She states that she is thinking about hurting herself or plans to shoot herself with a gun. Apparently, she has one but it is at her aunt's house. She denies any ingestion. She denies homicidal ideation. She has not had any specific social stressors. From a medical standpoint, she has not had any fevers, cough, URI symptoms, headaches. She has otherwise been unremarkable.

PAST MEDICAL HISTORY: Chronic pain, depression, post-traumatic stress disorder.

MEDICATIONS: Provigil, Paxil, Remeron.

ALLERGIES: None.

SOCIAL HISTORY: She is currently homeless. Occasional tobacco. Denies alcohol or drug use.

PHYSICAL EXAMINATION: Vital signs are unremarkable. She is sitting upright, does not appear to be in distress. Answers questions appropriately and makes good eye contact, is not tearful. Skin is warm and dry. HEENT: She does have acne. Sclerae anicteric. Pupils reactive. Pharynx moist. Neck: No lymphadenopathy or thyroid masses. Lungs: Equal, clear. Heart: Regular. Neurologic exam reveals an awake, alert female who has a grossly normal neurologic examination.

EMERGENCY DEPARTMENT COURSE : Screening medical exam is unrevealing. The psychiatric evaluation team has seen the patient, and she is being admitted to the hospital for further inpatient treatment.

PROVISIONAL DIAGNOSIS : Depression.

D: 03/14/2006 6:52 P T: 03/15/2006 12:03 P  
 Job#: 000584742 HS Job#: HS\_Job\_ID Doc #: 627241  
 cc:

Printed by: Hamlin, Brenda F  
 Printed on: 6/5/2006 14:34

Page 1 of 2  
 (Continued)

R. ←

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

DeAndrea Gist Benjamin, Circuit Court Judge

---

Case No. 2010-CP-40-4071

---

Carmen Morgan . . . . . Appellant

v.

South Carolina Bank and Trust,  
Employer and Cincinnati Insurance  
Company, Carrier. . . . . Respondent,


---

NOTICE OF APPEAL

---

Carmen Morgan appeals the Order of the Honorable DeAndrea Gist Benjamin, dated July 24, 2012 and filed August 7, 2012. Appellant received written notice of entry of this Order on August 10, 2012.

September 6, 2012

  
Everett Hope Garner  
Holler, Garner, Corbett, Ormond,  
Plante & Dunn  
P.O. Box 11006  
Columbia, SC 29211  
(803) 765-2968  
Attorney for Appellant

Other counsel of record is:

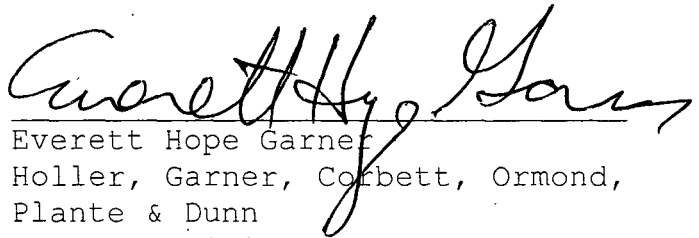
Shannon T. Poteat, Esquire  
Willson, Jones, Carter & Baxley  
4500 Fort Jackson Blvd.  
Columbia, SC 29209

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: \_\_\_\_\_

2/15/13



Everett Hope Garner  
Holler, Garner, Corbett, Ormond,  
Plante & Dunn  
P.O. Box 11006  
Columbia, SC 29211  
(803) 765-2968  
Attorney for Appellant

**RECEIVED**

FEB 19 2013

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

FEB 19 2013

APPEAL FROM RICHLAND COUNTY  
COURT OF COMMON PLEAS

SC Court of Appeals

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2010-CP-40-4071

Carmen Morgan . . . . . Appellant

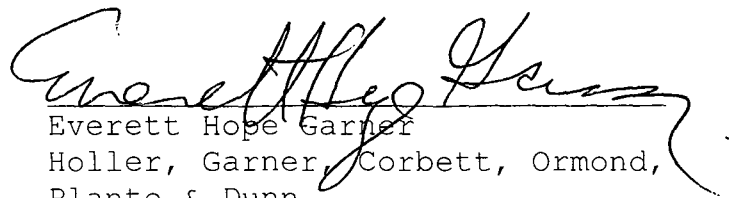
v.

South Carolina Bank and Trust,  
Employer and Cincinnati Insurance  
Company, Carrier. . . . . Respondent,

PROOF OF SERVICE

I certify that I have served the Record on Appeal on South Carolina Bank and Trust and Cincinnati Insurance Company by depositing a copy of it in the United States mail, postage prepaid, on February 19, 2013, addressed to their attorney of record, Shannon T. Poteat, Esquire, Willson, Jones, Carter, & Baxley, 4500 Fort Jackson Boulevard, Columbia, South Carolina 29209.

February 19, 2013



Everett Hope Garner  
Holler, Garner, Corbett, Ormond,  
Plante & Dunn  
P.O. Box 11006  
Columbia, SC 29211  
(803) 765-2968  
Attorney for Appellant