

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1619735

Gloria Ellebry,)
)
 Claimant/Respondent,)
)
 vs.)
)
 Hilton Worldwide, Inc.,)
)
 Employer,)
)
 and)
)
 Indemnity Insurance Company of North)
 America,)
)
 Carrier,)
)
 Defendants/Appellants.)

**APPELLATE PANEL
DECISION AND ORDER**

RECEIVED
FEB 27 2019
SC Court of Appeals

HEARING: Appellate Panel Review held in Columbia, South Carolina on November 27, 2018, per notices timely and properly served on all parties of interest.

APPELLATE PANEL DECISION AND ORDER FILED: *January 29,* 2019

APPEARANCES: Claimant/Respondent represented by:

Jeff C. Chandler, Esq.
Chandler Law Firm
Post Office Drawer 1889
Myrtle Beach, SC 29578

Defendants/Appellants represented by:

Ashley R. Kirkham, Esquire
Collins & Lacy, P.C.
PO Box 12487
Columbia, SC 29211

STATEMENT OF THE CASE

This case was heard by the Single Commissioner on November 21, 2017 in Conway, South Carolina to determine the issues raised on the Forms 50 and 51. Notices were timely and properly served upon all parties of interest at which time all parties were present for the Hearing.

The issue presented at that Hearing was whether the Claimant/Respondent (hereinafter "Claimant") sustained a compensable injury to her neck and bilateral shoulders by accident during the course of her employment on December 11, 2016. The Defendants/Appellants (hereinafter "Defendants") alleged Claimant had a pre-existing injury which accounted for her injury and that she failed to provide timely notice of her injury. By way of Order filed May 17, 2018, the Single Commissioner found that the Claimant clearly met her burden of proving a compensable injury by accident during the course of her employment on December 11, 2016. The Single Commissioner entered the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT (SINGLE COMMISSIONER)

IT IS FOUND AS FACT:

1. I find Claimant sustained injuries to her neck and bilateral shoulders on December 11, 2016 while working for Hilton Worldwide, Inc.
2. I find a preponderance of the evidence supports a finding that Claimant informed her employer of her work related injury within 90 days as required by the Act. Specifically, I find Claimant reported a specific work injury to Leslie in HR within 2 weeks of her injury and was directed to Beach Urgent Care on December 27, 2016.
3. Additionally, I find there was confusion regarding Claimant's two supervisors named Mike and determining which "Mike" received the initial report of this injury.
4. I did review Claimant's medical record from December 12, 2016 that states "neck pain was episodic in the past 2 months"; however, I find the additional statement of "worse since yesterday"

supports a finding of a compensable injury on December 11, 2016. This finding is based on the preponderance of the evidence as a whole including the deposition testimony of Dr. Greer.

5. Claimant is not at maximum medical improvement for her work-related injuries.
6. Claimant is entitled to causally-related medical treatment for her work injuries including, but not limited to, physical therapy and a cervical MRI with a follow-up with Dr. Ellison, their neck specialist, following the MRI, as recommended by Dr. Greer. Claimant is to receive continued medical treatment until she is released at maximum medical improvement. All medical treatment is to be directed by Defendants pursuant to S.C. Code Ann. Section 42-15-60.
7. Claimant is entitled to a lump-sum back payment of temporary total disability benefits for all time missed from work due to her work injuries within requirements of the Act.
8. Defendants are liable for all previously-incurred, causally-related medical treatment to be paid pursuant to the SCWCC Medical Fee Schedule.
9. Claimant is entitled to reimbursement for all causally-related out of pocket expenses including mileage reimbursement, if any.
10. Claimant has an average weekly wage of \$431.19, which yields a compensation rate of \$287.48.

CONCLUSIONS OF LAW
(SINGLE COMMISSIONER)

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under §42-1-160, the Claimant sustained injuries to her neck and bilateral shoulders by accident arising out of and in the course and scope of employment with Defendants on December 11, 2016.
2. Under §42-15-60, Claimant is entitled to all causally related medical treatment at the direction

of the Defendants until she is placed at maximum medical improvement.

3. Under §42-15-60, Defendants are responsible for payment of all causally related medical treatment pursuant to the Fee Schedule, including but not limited to, payment and/or reimbursement of all past and outstanding medical treatment that Claimant has incurred to date, along with payment for additional medical care as recommended by the authorized treating physician designated by Defendants.

4. Under § 42-9-10, Claimant is entitled to a lump-sum back payment of temporary total disability benefits based on a compensation rate of \$287.48 for all time missed from work due to her work injuries within the requirements of the Act.

5. Pursuant to §67-1601, Claimant is entitled to any mileage reimbursement within the requirements of the Act.

6. Pursuant to §67-614 of the South Carolina Code of Regulations, no Hearing costs are assessed.

QUESTIONS PRESENTED

1. Did the Single Commissioner err in Finding as Fact and Concluding as Law that Claimant sustained injuries to her neck and bilateral shoulders by accident arising out of and in the scope of employment with Defendants on December 11, 2016?
2. Did the Single Commissioner err in Finding as Fact and Concluding as Law that Claimant is entitled to a lump-sum back payment of temporary total disability benefits for all time missed from work until Claimant reached MMI?
3. Did the Single Commissioner err in Finding as Fact and Concluding as Law that Defendants are responsible for all causally related medical treatment until Claimant is placed at maximum medical improvement?
4. Did the Single Commissioner err in Finding as Fact that the evidence as a whole supported a finding of compensability by the preponderance of the evidence standard?

5. Did the Single Commissioner err in failing to consider testimony of Defendant's witnesses in her analysis of the evidence as a whole?

APPELLATE PANEL DECISION AND ORDER

In an Appellate Review, the Panel, pursuant to S.C. Code §42-17-50, reviews the Decision and Order, weighs the evidence presented to the Single Commissioner, and, if good grounds are shown, makes its own Findings of Fact and reaches its own Conclusions of Law, consistent with or inconsistent with those of the Single Commissioner.

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel on November 27, 2018. After careful review and based on the greater weight of the evidence in the instant case, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, has determined that the Order of the Single Commissioner is hereby **AFFIRMED**. Accordingly, **WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT AND CONCLUSIONS OF LAW:**

FINDINGS OF FACT

IT IS FOUND AS FACT:

1. We find Claimant sustained injuries to her neck and bilateral shoulders on December 11, 2016 while working for Hilton Worldwide, Inc.
2. We find a preponderance of the evidence supports a finding that Claimant informed her employer of her work related injury within 90 days as required by the Act. Specifically, we find Claimant reported a specific work injury to Leslie in HR within 2 weeks of her injury and was directed to Beach Urgent Care on December 27, 2016.
3. Additionally, we find there was confusion regarding Claimant's two supervisors named Mike and determining which "Mike" received the initial report of this injury.

4. We did review Claimant's medical record from December 12, 2016 that states "neck pain was episodic in the past 2 months"; however, we find the additional statement of "worse since yesterday" supports a finding of a compensable injury on December 11, 2016. This finding is based on the preponderance of the evidence as a whole including the deposition testimony of Dr. Greer.
5. Claimant is not at maximum medical improvement for her work-related injuries.
6. Claimant is entitled to causally-related medical treatment for her work injuries including, but not limited to, physical therapy and a cervical MRI with a follow-up with Dr. Ellison, their neck specialist, following the MRI, as recommended by Dr. Greer. Claimant is to receive continued medical treatment until she is released at maximum medical improvement. All medical treatment is to be directed by Defendants pursuant to S.C. Code Ann. Section 42-15-60.
7. Claimant is entitled to a lump-sum back payment of temporary total disability benefits for all time missed from work due to her work injuries within requirements of the Act.
8. Defendants are liable for all previously-incurred, causally-related medical treatment to be paid pursuant to the SCWCC Medical Fee Schedule.
9. Claimant is entitled to reimbursement for all causally-related out of pocket expenses including mileage reimbursement, if any.
10. Claimant has an average weekly wage of \$431.19, which yields a compensation rate of \$287.48.
11. We AFFIRM and adopt all Findings of Fact and Conclusions of Law of the Single Commissioner.

CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-50, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under §42-1-160, the Claimant sustained injuries to her neck and bilateral shoulders by accident arising out of and in the course and scope of employment with Defendants on December 11, 2016.
2. Under §42-15-60, Claimant is entitled to all causally related medical treatment at the direction of the Defendants until she is placed at maximum medical improvement.
3. Under §42-15-60, Defendants are responsible for payment of all causally related medical treatment pursuant to the Fee Schedule, including but not limited to, payment and/or reimbursement of all past and outstanding medical treatment that Claimant has incurred to date, along with payment for additional medical care as recommended by the authorized treating physician designated by Defendants.
4. Under § 42-9-10, Claimant is entitled to a lump-sum back payment of temporary total disability benefits based on a compensation rate of \$287.48 for all time missed from work due to her work injuries within the requirements of the Act.
5. Pursuant to §67-1601, Claimant is entitled to any mileage reimbursement within the requirements of the Act.
6. Pursuant to §67-614 of the South Carolina Code of Regulations, no Hearing costs are assessed.
7. Pursuant to §42-17-50, the Full Commission considered the matter and **AFFIRMS** the Single Commissioner's Decision and Order.

ORDER/AWARD

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all Findings of Fact and Conclusions of Law of the Single Commissioner are **AFFIRMED**.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

AFFIRMED.

S.C. WORKERS' COMPENSATION COMMISSION

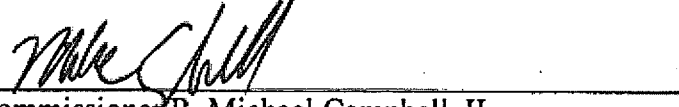


Commissioner Gene McCaskill

CONCURRING:



Commissioner Melody L. James



Commissioner R. Michael Campbell, II

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 January 29, 2019