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APPELATE PANEL
DECISION AND ORDER
OF THE FULL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBERS: 0725221 and 0921225

RECEIVED

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South Carolina Court of Appeals

DEBORAH G. DUGGANS, EMPLOYEE, CLAIMANT/RESPONDENT

VERSUS

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, EMPLOYER,

AND

STATE ACCIDENT FUND, CARRIER, DEFENDANTS/APPELLANTS.

Appellant Panel Review held in Columbia,
South Carolina on September 18, 2018 per notices
timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed

February 5, 2019

APPEARANCES:

Claimant/Respondent represented by
Andrew N. Safran, Esq. of Columbia, South Carolina

Employer/Defendants/Appellants represented by
David Hill Keller, Esq. of Greenville, South Carolina

STATEMENT OF THE CASE

This matter comes before the Full South Carolina Workers' Compensation Commission based on the petition of the Defendants appealing an Order of Commissioner Avery B. Wilkerson, Jr. dated April 25, 2018. It appears from the record the claimant suffered two injuries by accident while in the employ of the South Carolina Department of Mental Health.

Respondent initially alleged right carpal tunnel syndrome due to repetitive trauma on July 16, 2007. She also alleged cervical radiculopathy as a result of the July 2007 injury. Appellants provided medical care and treatment in accordance with Title 42, first with Dr. David B. Fulton and subsequently with Dr. Joseph P. Jackson, Jr. On October 1, 2008, Dr. Fulton placed the Respondent at maximum medical improvement for her right carpal tunnel syndrome and assigned a 1% impairment rating. Later, on September 8, 2009, Dr. Jackson recommended Respondent undergo an evaluation by Dr. John F. Johnson at Southeastern Spine for her continuing cervical spine complaints.

While the referral was pending, the Respondent alleged additional injuries to the cervical and lumbar spines as a result of a work-related injury on December 7, 2009. Appellants subsequently authorized the spine evaluation with Dr. Johnson who recommended physical therapy and medications. Thereafter the Appellants provided further treatment for both the cervical and lumbar spine with Dr. Ezra B. Rieber of Palmetto Pain Management with included intermittent injections and medication on an as needed/p.r.n. basis.

Ultimately on August 1, 2016, Dr. Rieber placed Respondent at maximum medical improvement assigning a 17% impairment rating to the whole person for the lumbar spine injury

and 6% impairment rating to the whole person for the cervical spine injury. At the hearing the parties agreed that Respondent was at maximum medical improvement on the date she was released by Dr. Rieber, August 1, 2016.

At the time the Appellants were providing medical care and treatment to the claimant, and they also paid the claimant temporary total disability in accordance with Title 42. First, the Appellants paid temporary total disability compensation from June 13, 2008 to October 13, 2008 totaling 17.5714 weeks of benefits as a result of the July 2007 injury. Appellant was also paid temporary total disability compensation from May 3, 2010 to July 9, 2018 totaling 427.1428 weeks of benefits as a result of the December 7, 2009 injury.

When combining the two claims, Appellants have paid the Respondent 444.7142 weeks of temporary total disability compensation totaling in excess of \$130,000.00.

Following Respondent's placement at maximum medical improvement, her attorney filed for a hearing alleging total and permanent disability under Section 42-9-10, or alternatively under Section 42-9-30. Respondent also requested any permanent benefits be paid in a lump sum pursuant to Section 42-9-301. Respondent also requested lifetime medical benefits for her injuries.

Appellants contended that Respondent should be limited to an award for partial disability to the spine and right arm under Section 42-9-30, the Respondent was not entitled to lifetime medical benefits, and any award should take into account a credit for the total weeks of temporary total disability compensation already paid claimant including the weeks paid since maximum medical improvement as of August 2016.

At the hearing on December 14, 2017, the parties agreed to consolidate the claimant's 2007 and 2009 claims into one hearing to address all issues. By Decision and Order dated April 25, 2018, Commissioner Wilkerson determined Respondent was permanently and totally disabled under Section 42-9-30(21) due to a loss of use of spine in excess of 50%. Commissioner Wilkerson further determined that Respondent was totally and permanently disabled under Section 42-9-10 due to a total loss of earning capacity and the combined results of her injuries from the December 7, 2009 accident including the fact that she suffered disability to multiple body parts. Commissioner Wilkerson ordered the Appellants to provide lifetime medical benefits to the claimant for her lumbar and cervical spine conditions. The Commissioner also awarded the claimant the remainder of disability compensation award be paid in a lump sum. He determined that the lump sum was in Respondent's best interest and therefore appropriate under Section 42-9-301.

Finally, Commissioner Wilkerson concluded Respondent would have received only 419 weeks of disability as of May 13, 2018, only considering the weeks paid following the 2009 date of injury. He did not include the period of temporary total disability compensation for the 2007 injury even though the 2007 and 2009 injuries both included the cervical spine and despite the fact claimant agreed to a consolidate the respective claims for hearing purposes. He also determined that no commutation was warranted of the lump sum payment on the primary basis that the award was less than 100 weeks and was therefore to be paid in an uncommuted/undiscounted lump sum award in the amount of \$23,840.73, representing 81 weeks of benefits undiscounted at Respondent's compensation rate of \$294.33.

Commissioner Wilkerson's Order made the following findings:

FINDINGS OF FACT

Based upon the testimony of Ms. Duggans, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, **I FIND AS FACTS:**

1. In 2007, Ms. Duggans developed "pain and numbness in both hands", which: (a) produced an admittedly compensable injury to her right arm; and (b) prompted her receipt of medical care, including referral to Dr. David B. Fulton of Moore Orthopaedics who "recommended surgery on the right wrist with right carpal tunnel release." Following this June 12, 2008 procedure, she: (a) continued to report "persistent weakness in her hand", soreness of the right palm and "pain in the right arm near the elbow region"; (b) was released to resume "work without restriction" effective October 1, 2008; and (c) received a 1% impairment rating to the right upper extremity from this physician.

2. When her symptoms persisted, Ms. Duggans underwent an authorized second opinion evaluation (March 13, 2009) by Dr. Joseph P. Jackson, Jr. of Camden Orthopaedic Associates, who: (a) was apprised "the numbness and tingling in her . . . [right] hand seems to run up and down her arm to the neck and then she has pain from the neck running up and down the left arm as well"; (b) noted she was "devoted to her work"; (c) felt that while her clinical presentation was partially due to "the median nerve recovering", her presentation was also concerning for radicular symptoms; and (d) recommended obtaining updated electrodiagnostic

studies, as well as an “MRI of her neck to rule out compression from a disc or cervical spondylosis stenosis or some other entity in the neck.”

3. After reexamining Ms. Duggans, in light of her diagnostic test results, Dr. Jackson determined “a lot of her symptoms, especially bilateral symptoms going down into the ulnar nerve, are more typical of an early cervical radiculopathy”; (b) she did not require further carpal tunnel surgery; and (c) assessment of her cervical symptoms by “Dr. Johnson down at Southeast Spine . . . in Charleston” was warranted.

4. Pending scheduling of this appointment, Ms. Duggans, who continued working without restriction, sustained a compensable accident on December 7, 2009. Specifically, while assisting a patient in the bathroom, she: (a) attempted to transfer him using a gait belt; (b) observed him become unsteady and begin to fall between the toilet and the wall; (c) injured herself while physically attempting to prevent his falling; and (d) reported the presence of spinal symptoms following this trauma.

5. At the time she sustained this compensable accident, Ms. Duggans was performing duties arising out of and within the course and scope of her employment as a certified nursing assistant for the South Carolina Department of Mental Health, where she had been working since 1979.

6. Approximately three weeks following this injury (December 31, 2009), she underwent an authorized evaluation by Dr. John F. Johnson of Southeastern Spine Institute, who: (a) focused his examination on her cervical symptoms; (b) noted they were “predominantly achy with a continuous sensation that runs into her shoulders and upper trapezius region. . . [with]

radiating achy pain down the volar lateral aspect of her right upper extremity with numbness and pins and – needles in both palms”; (c) indicated that at that point in time she had “missed about a month of work” (which corresponds with the occurrence/impact of her December 7, 2009 accident); (d) observed the presence of “decreased range of motion to the cervical spine virtually all planes secondary to pain . . . [,] tenderness to palpation throughout her cervical spine in the paraspinal region . . . [, diminished sensation and the presence of] worsening bilateral shoulder pain and radiating pain in the right arm” in response to Spurling’s maneuver; (e) felt it was “reasonable to proceed with a C6-7 CESI with cephalad flow”; and (f) concluded “the symptoms she is experiencing are likely most probably to a reasonable degree of medical certainty due to the nature of her job . . . [which had] caused or worsened her underlying condition to the extent that her body is manifesting these symptoms.”

7. Several months later (May 19, 2010), Ms. Duggans began receiving treatment through Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) referenced the presence of both lumbar and cervical symptoms; (b) found her cervical range of motion was “limited particularly with right lateral rotation, but also left lateral rotation to a lesser extent”; (c) discovered her low back pain was “clearly worse with Valsalva and increase[d] . . . with forward flexion”; (d) found “returning to the upright position and extension . . . [produced] significant pain . . . , greater on the right side”; (e) indicated straight leg testing generated “back and gluteal discomfort on the right at greater than 45 degrees”; (f) diagnosed both lumbar and cervical conditions (lumbar radicular and post traumatic facet syndrome, as well as cervical radiculopathy); and (g) recommended beginning with “transforaminal block . . . [at the] L4-5 and

L5-S1 . . . [levels] on the right”, while deferring “mov[ing] . . . on to the cervical region” until addressing her lumbar symptoms.

8. Inspection of treatment notes generated by Dr. Riber during the ensuing months confirms: (a) Ms. Duggans’ persistent reports of both lumbar and cervical symptoms; (b) performance of several injections aimed toward addressing her low back and radiating right leg pain; (c) her regular use of prescription medication; and (d) his acknowledgement the absence of certain medication per the results of a random drug screen was “consistent with Ms. Duggans’ acknowledgment that she does not take pain medication every day, but instead ingests them less frequently (in an attempt not to become dependent upon narcotic medication)” (See, Claimant’s APA Exhibit 5, p. 47).

9. Review of records from this facility also indicates: (a) an attempt to focus on Ms. Duggans’ complaint of neck pain on August 21, 2013 following her favorable response to a July 31, 2013 transforaminal epidural steroid injection; (b) her cervical symptoms remained a primary complaint until her lumbar pain became more problematic in February, 2014, at which time she underwent another transforaminal epidural steroid injection involving the L4-5 and L5-S1 levels; (c) after obtaining noticeable relief from this procedure, her chief complaints again included neck pain throughout the remainder of 2014; and (d) Dr. Riber’s treatment plan “continue[d] . . . to focus on medical management and interventional treatment for her chronic pain.”

10. The contents of treatment notes generated from the Fall of 2014 through 2015 similarly reveal verify Ms. Duggans: (a) continued to receive intermittent lumbar transforaminal steroid injections, which provided reasonable relief; (b) likewise reported not only lumbar

symptoms, but also cervical pain involving the neck and shoulders; (c) required medication adjustment, through addition of Mobic to the previous regimen (Norco and Zanaflex) to better address her symptoms; and (d) was approaching a medical plateau.

11. On November 13, 2015, Ms. Duggans completed a functional capacity evaluation, which confirmed she: (a) “put forth a consistent effort”, with no evidence of symptom magnification; (b) could only “tolerate . . . occasional walking, stairclimbing, kneeling, twisting, and reaching”; (c) did not “tolerate occasional squatting or bending”; (d) was incapable of lifting/carrying more than minimal weights (“7 to 12 pounds at various heights on an occasional basis”); (e) exhibited decreased lumbar and cervical range of motion; and (f) can only “meet the demands of limited sedentary to limited light work” activities.

12. Following completion of this testing, Ms. Duggans: (a) maintained her previous treatment routine through Palmetto Pain Management (undergoing another right transforaminal epidural steroid injection encompassing the L4-S1 levels on December 9, 2015); (b) likewise experienced consistent pain levels that reflected the benefit of these treatment modalities; (c) regularly reported both lumbar and cervical symptoms to her authorized treater; (d) received another L4-S1 injection (June 21, 2016) when the expiration of relief from the prior interventional treatment left her “counting down the days” until she could repeat the procedure; (e) was determined to have reached maximum medical improvement by Dr. Riber on August 1, 2016.

13. In this connection, pursuant to an August 1, 2016 report addendum, this treating physician verified: (a) Ms. Duggans “has typically responded well to a combination of medical

management and right sided transforaminal blocks at L4-5 and L5-S1”; (b) she had also been “followed . . . for cervicalgia and right cervical radicular pain radiating into the shoulder, previously evaluated by Dr. John Johnson . . . [, which] has not required interventional treatment and is reasonably well controlled with her current medications”; (c) the limitations identified by her functional capacity evaluation “are reasonable and therefore preclude her from returning to her previous work as a CNA”; (d) she has sustained a 17% whole person impairment due to her causally related lumbar injury component, as well as a 6% whole person impairment as a result of her cervical injury component in accordance with the applicable portions of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; (e) “Ms. Duggans will require continued medication management and interventional treatment for her lumbosacral radicular syndrome . . . [,while] her cervical injury . . . [,would continue to be treated] with medical management”; and (f) this treatment protocol would involved “monthly assessment to monitor her medications, which will likely require adjustments in the future”, as well as performance of a “transforaminal epidural steroid injections at L4-5 and L5-S1” intermittently.

14. After reaching this medical plateau, Ms. Duggans: (a) continued to experience spinal symptoms consistent with her well documented pattern; (b) received three medications in tablet form (Norco, Zanaflex and Mobic), as well as “Tps Cream”; (c) required another (January 11, 2017) injection; (d) reported (February 2, 2017) that this procedure afforded sufficient relief to allow reduction in her Norco (hydrocodone) intake (“she has been taking Norco twice a day for the first 2 weeks, once a day third week, and has not required any lately.”); (e) reiterated her “as needed” use of this narcotic medication on April 3, 2017 (which her medical provider noted

as an appropriate explanation for the fact “hydrocodone [was] not detected” in her prior urine drug screen; (f) similarly advised Dr. Riber’s physician’s assistant (September 5, 2017) that she had “not required taking medications [the] . . . last 4-5 days since her pain was tolerable and [she] . . . reserves medication for severe pain”; (g) produced a September 5, 2017 urine sample that, consistent with this acknowledgement, did not detect the presence of hydrocodone; and (h) was uniformly determined to be “compliant” with treatment throughout this period.

15. Despite her repeatedly advising Dr. Riber and his staff as to this “as needed” medication usage, Defendants attempted to question Ms. Duggans’ compliance with medical care. In addressing this issue, Dr. Riber, through questionnaire responses dated November 29, 2017, confirmed: (a) as Ms. Duggans “has been instructed to use each of [her] . . . medication ‘prn’ (as needed), . . . there is no . . . expectation any of these medications are being ingested on a daily basis”; (b) it is not “unexpected that these medications may not be detected through urine drug screening, which only measures ingestion during finite periods prior to the time a sample is obtained”; c) “Ms. Duggans’ ‘prn’(as needed) use of these medications is consistent, as opposed to noncompliant, with her established treatment regimen”; and (d) his prior long term treatment recommendations “remain . . . viable/in effect” at this time.

16. On August 21, 2017, Ms. Duggans was evaluated by Glen K. Adams, MRC, CRC, CEES of Adams & Wilkinson Associates, Inc. for the purpose of determining her vocational status/potential. Based upon this assessment, which included not only clinical interview, but also testing aimed toward verifying educational/vocational capacities, Mr. Adams determined/observed: (a) Ms. Duggans continues to experience low back pain that also involves

her right leg, as well as neck pain; (b) use of prescription medication causes her to sleep; (c) her diminished ability to perform household chores (nature and duration); (d) notwithstanding her graduation from high school, she performed below this level on educational testing; (e) her previous relevant work history was classified in the "Medium-Heavy" physical demand level; (f) this work history had also been restricted to "semi-skilled" jobs; (g) her vocational profile contained ". . . [n]o positive factors. . . that will benefit her in future employment."

17. Based upon these factors, in light of all pertinent medical and vocational data, Mr. Adams concluded: (a) ". . . [n]egative factors in her profile include her age of 60, indicating a reduced capacity to adapt to new work situations and environments[,] . . . her entire relevant work history as a CNA, with limited transferability to alternate occupations[,] . . . and an absence of skills relevant to 'sedentary' employment . . . and ongoing pain and dysfunction impacting the performance of her daily activities"; (b) she "is unable to resume her past work based on the FCE results"; (c) Ms. Duggans "is unable to resume any similar employment, such as work as a home companion, without being able to function in a full range of 'light' work activities"; (d) a "transferable skills analysis . . . [did not reveal any] transferable occupations compatible with Ms. Duggans' vocational profile"; (e) "[s]he does not possess the computer skills or work experience to successfully compete for any remaining clerical or customer service employment in a 'light' capacity"; (f) ". . . [n]o stable market remains that will enable Ms. Duggans to resume competitive employment"; (g) she "is classified as totally vocationally disabled as a result of injuries sustained on July 16, 2007 and December 7, 2009 while working for the SCDMH"; and (h) as "the majority of her limitations result from her second injury . . . [,] Ms. Duggans would

also be classified as totally vocationally disabled from the impact of her December 7, 2009 injury alone.”

18. As confirmed by her clear and honest hearing testimony, Ms. Duggans: (a) not only enjoyed, but also obtained great satisfaction from working with patients at the mental health facility; (b) despite the presence of ongoing cervical symptoms identified by Dr. Jackson, she had resumed/maintained performance of full duty work activity until experiencing the December 7, 2009 accident; (c) this trauma not only created lumbar symptoms, but also aggravated/increased the previously-diagnosed cervical symptoms; and (d) while her lumbar symptoms had been the focus of Dr. Riber’s treatment, she continued to encounter persistent cervical symptoms that favorably responded to ongoing medical pain management.

19. Additionally, Ms. Duggans explained the constellation of causally related symptoms remained materially problematic, to the extent she: (a) was only able to obtain intermittent sleep; (b) could no longer lift more than light weights, a deficiency which was wholly inconsistent with the basic demands (including lifting/moving patients) of her long time employment with the South Carolina Department of Mental Health; (c) although she continued to attempt certain household activities (mopping, sweeping, cooking, etc.), she has substantially decreased her performance of these activities (in terms of both frequency and duration); (d) has great difficulty washing her hair and maneuvering in/out of her tub; (e) likewise minimizes her pursuit of several recreational activities; (f) has difficulty with extended driving and standing/walking, as well as stairclimbing had become difficult; and (g) was obliged to

successfully pursue an award of Social Security disability benefits due to these injury consequences.

20. After thoroughly reviewing all evidence of record and observing Ms. Duggans during the course of the hearing, I specifically find: (a) her testimony was credible and wholly consistent with the medical evidence; (b) she continues to experience significant spinal symptoms, predominantly emanating from the lumbar injury component, which negatively impact upon her ability to engage in various activities of daily living; (c) these causally related symptoms have likewise prohibited continuance of her lengthy employment with the South Carolina Department of Mental Health; (d) both her physical presentation and description of the material consequences of her compensable injuries validate the results of her functional capacity evaluation, as well as Dr. Riber's opinion that she is most probably incapable of performing more than the limited sedentary/limited light work activities identified by this reliable testing; and (e) the un rebutted opinions of Dr. Riber, her long time authorized treater, warrant substantial weight.

21. I also find: (a) Dr. Riber's consistent references to Ms. Duggans' cervical symptoms conform with her testimony relative to the particular aspects of this injury component; (b) she has uniformly received medical pain management for these cervical symptoms, in tandem with medical care directed toward her lumbar injury component, through Dr. Riber since 2010; and (c) her receipt of this extended course of care reflects the State Accident Fund's acknowledgement these symptoms were the product of her admittedly compensable injuries.

22. I further find the vocational prognosis offered by Mr. Adams to be especially appropriate, as: (a) his opinions are founded upon uncontradicted medical findings (including the

physical/functional impact of Ms. Duggans' spinal pathology); (b) she is clearly physically incapable of sustaining more than limited sedentary to limited light work activities; (c) the nature/degree of her causally related symptoms (and resulting physical limitations) unquestionably prohibit a return to any previous forms of employment; (d) this inability to resume gainful employment results from not only the combination of her lumbar and cervical injury components, but also the impact of her lumbar injury component alone; and (e) Ms. Duggans will obviously be required to seek jobs for which a reasonably stable market does not exist.

23. I consequently find: (a) the consequences of Ms. Duggans' compensable injuries affect multiple parts of her body (back, right leg and neck); (b) the evidence establishes she has unquestionably been rendered permanently and totally disabled by the combined effects of these multiple injury components; (c) she has likewise experienced a 50%(+) permanent disability to (loss of use of) her back as a result of the consequences of her compensable injuries; (d) Ms. Duggans has been rendered permanently and totally disabled, through both a loss of earning capacity and 50%(+) permanent disability to the back, based upon the symptoms/pathology/limitations produced by her lumbar injury component alone, regardless of the documented dysfunction attributable to her cervical injury component; and (e) there is no realistic expectation that her causally related conditions will improve to the extent that she will ever be able to sustain meaningful work activities in the future.

24. The medical treatment, evaluations, medications, evaluative procedures, interventional treatment, imaging studies, etc. which Ms. Duggans has heretofore

received/undergone as a result of her compensable injury components have been reasonable, medically necessary and tended to lessen her ultimate period of disability. In this connection, I also find: (a) Ms. Duggans continues to require ongoing medical modalities of the nature identified by Dr. Riber as a result of her causally related symptoms/pathology; (b) her receipt of these various treatment modalities is reasonable and medically necessary given the nature/degree of her causally related pathology; and (c) assuming *arguendo*, the cervical symptoms were not attributable, in part to the consequences of Ms. Duggans' December 7, 2009 compensable accident, her receipt of causally related treatment modalities for this injury component are nonetheless reasonable, medically necessary and geared toward lessening the disability produced by her July 16, 2007 compensable injury.

25. I finally find: (a) Ms. Duggans has reasonably requested the lump sum payment of her permanent disability compensation award; (b) there is no indication that she cannot adequately manage or appropriately use these funds; and (c) the record is devoid of any evidence which indicates or implies a lump sum payment in this instance, which involves less than 100 weeks of compensation, would be contrary to Ms. Duggans' best interests.

CONCLUSIONS OF LAW

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

2. On July 16, 2007, Ms. Duggans, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2015), sustained compensable injuries to her right arm and back (neck) within the meaning of S.C. Code Ann. Section 42-1-160 (2015), while performing duties arising

out of and within the course and scope of her employment with the South Carolina Department of Mental Health, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). After resuming full duty work activities, Ms. Duggans sustained additional injuries to her back (lumbar and cervical) within the meaning of Section 42-1-160 on December 7, 2009 while performing duties arising out of and within the course and scope of her employment with the South Carolina Department of Mental Health.

3. As previously noted, the reliable evidence of record verifies that following her December 7, 2009 compensable trauma, Ms. Duggans: (a) developed lumbar symptoms that have necessitated her receipt of extended treatment through Dr. Riber, including multiple interventional procedures in conjunction with use of several prescription medications; (b) also consistently reported with cervical symptoms that were noticeably impacted by this trauma; (c) was forced to seek retirement status due to her physical incapacity to resume the duties incidental to her long time employment with the South Carolina Department of Mental Health; (d) has continued to experience symptoms that materially/negatively affect her ability to engage in various activities of daily living; and (e) has been appropriately/reasonably restricted, per a valid functional capacity evaluation endorsed by Dr. Riber, to the performance of limited sedentary to limited light demand activities.

4. "[W]here an injury is confined to a scheduled member of the body, the employee is limited to the scheduled compensation fixed in the statute." Moss v. Davey Tree Expert Company, 245 S.C. 127, 139 S.E. 2d 532, 535 (1964). "However, if the effects or the loss of the member extend to other parts of the body and interfere with their efficiency, the claimant. . .[has]

the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section.” Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E. 2d 457, 459 (Ct. App. 1996); See also, Simmons v. City of Charleston, 349 S.C. 64, 562 S.E. 2d 476, 482 (2002) (“All that is required . . . [to proceed under the general disability statutes] is that the injury to a scheduled member also affects another body part.”).

5. “Under Workers’ Compensation Law ‘total disability’ does not require complete, abject helplessness.” McCollum v. Singer Co., 300 S.C. 103, 386 S.E. 2d 471, 474 (Ct. App. 1999); Eaddy v. Smurfit-Stone Container Corporation, 355 S.C. 154, 584 S.E. 2d 390, 395 (Ct. App. 2003). Rather, this condition amounts to the “inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.” Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E. 2d 812, 817 (1961); Stephenson v. Rice Services, Inc., 323 S.C. 113, 473 S.E. 2d 699, 702 (1996).

6. “Disability is a relative term and must be related to the occupation of the claimant.” Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 88 S.E. 2d 581, 585 (1955). In view of this fact, the nature of Ms. Duggans’ prior employment is particularly relevant to the assessment of her degree of residual permanent disability under the general disability model.

7. In this instance, the relevant evidence confirms: (a) the consequences of Ms. Duggans’ December 7, 2009 compensable accident affect multiple body parts; (b) the combination of impairments/limitations stemming from her compensable injury components (especially the back and right leg) prohibit her from resuming the types of work activities she has performed throughout her adult life; (c) her functional limitations, as validated by Dr. Riber, are

wholly inconsistent with the physical demands of her relevant past employment; and (d) in view of these undisputed facts, as well as the uncontradicted opinions of Mr. Adams, no reasonably stable market exists (in terms of quality, dependability or quantity of employment options) for the types of services which Ms. Duggans is capable of providing/sustaining.

8. Based upon these facts, I conclude Mr. Duggans: (a) has sustained a 50%(+) permanent partial disability to (loss of use of) her back within the meaning of S.C. Code Ann. Section 42-9-30(21)(2015) as a result of her December 7, 2009 compensable accident; (b) this degree of residual disability to the back per Section 42-9-30 (21) exceeds 50% regardless of the presence of her neck injury component; (c) she has likewise been rendered permanently and totally disabled within the meaning of Section 42-9-10 by the combined consequences of her December 7, 2009 compensable injuries, particularly the back and right leg symptoms; and (d) the nature/degree of the back (lumbar) injury component resulting from this injury (affecting both her back and right leg) are sufficient to, in and of themselves, produce a total loss of earning capacity warranting an award of permanent and total disability compensation per Section 42-9-10.

9. Defendants are financially responsible for: (a) the medical treatment, evaluations, medications, evaluative procedures, surgical procedures, physical therapy, etc. which Ms. Duggans has heretofore received/undergone through any authorized medical providers due to the consequences of her July 16, 2007 compensable accident, as these modalities were reasonable, medically necessary and tended to lessen the period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (2015); and (b) the medical treatment, evaluations, medications,

evaluative procedures, interventional procedures, physical therapy, etc. which she has heretofore received/undergone through her authorized medical providers as a result of her December 7, 2009 compensable accident, as these modalities were likewise reasonable, medically necessary and continued to lessen her period of disability within the meaning of Section 42-15-60.

10. I also conclude: (a) Defendants shall remain financially responsible for the provision of lifetime medical benefits as to all causally related injury components stemming from the December 7, 2009 accident per this statute; (b) her receipt of these treatment modalities is reasonable and medically necessary; and (c) she is similarly entitled to continued/ongoing receipt of medical modalities for any residual cervical symptoms that are attributable to the consequences of her July 16, 2007 compensable accident per Section 42-15-60.

11. I further conclude inspection of this Commission's disability compensation payment record relative to Ms. Duggans' 2009 claim confirms: (a) she will have received 419 weeks of temporary total disability compensation through May 13, 2018; (b) as her permanent disability award involves less than 100 weeks, no commutation is warranted; and (c) Ms. Duggans is entitled to receive a lump sum payment in the amount of \$23,840.73.

12. Pursuant to Mr. Duggans' request, this lump sum payment shall be allocated in the following fashion: a) the sum of \$5,000.00 to Andrew N. Safran, Esquire as attorney fees pursuant to 8 S.C. Code Regs. 67-1205(C)(1); b) the sum of \$1,871.55 to this attorney as reimbursement for litigation expenses pursuant to 8 S.C. Code Regs. 67-1206; and (c) the sum of \$16,969.18 to Ms. Duggans as payment for permanent disability for a period of 1,182.48 weeks at the rate of \$14.35 per week, commencing on May 14, 2018, pursuant to the provisions of S.C.

Code Ann. Sections 19-1-150 (1976, as amended) and 42-9-240 (2015), as well as the decisions of the South Carolina Supreme Court in James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730 (2010); and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

Appellants subsequently filed a Form 30 for judicial review by the Full South Carolina Workers' Compensation Commission. This matter was set for review on September 18, 2018 before an appellate panel consisting of Commissioners McCaskill, Barden, and Taylor. Oral Argument was held as scheduled on September 18, 2018 with Mr. Safran appearing for the claimant/Respondent and Mr. Keller appearing for the employer and State Accident Fund. Since the time of Oral Argument this matter has been under consideration and review of the Full Commission Panel. The panel had before it for review, and since the date of the Oral Argument has reviewed the transcript of the hearing, all of the APA submissions including but not limited to all medical reports submitted by the parties and the prior Orders in this matter. The Panel, after consideration, has determined that the Order of Commissioner Wilkerson should be affirmed in part and reversed in part. Specifically it is the determination of the panel that the issue of the awarding of an uncommuted/undiscounted lump sum award to the claimant is not properly before the Commission because there was no exception properly raised pursuant to Section 42-17-60 and Regulation 67-701A(3)(a). It is further the determination of the Full Commission that under the facts and circumstances of this case, where the parties specifically agreed to proceed with a hearing encompassing each of the respective claims because the two cases involve multiple injuries to the cervical spine, and because Commissioner Wilkerson

found the claimant totally disabled under Section 42-9-10, it was error for Commissioner Wilkerson to fail to award a credit to the defendants of 17.5714 weeks of temporary total disability compensation paid to the claimant pursuant to the 2007 carpal tunnel case.

FINDINGS OF FACT

1. That the claimant, Deborah G. Duggans, suffered an injury by accident as aforesaid occurring on or about July 16, 2007 involving carpal tunnel syndrome due to repetitive trauma as well as cervical radiculopathy as a result of the July 2007 injury.
2. That the claimant was referred for medical care and treatment by the defendants for her cervical spine and before the appointment could be made by claimant she suffered a second injury by accident occurring on or about December 7, 2009 to her cervical and lumbar spine.
3. That the 2007 and 2009 injuries both involve and affect claimant's cervical spine.
4. That the parties agreed at the time of the hearing in this matter to consolidate the two cases for hearing purposes for a full and final determination of all issues.
5. That the claimant's cervical injuries each arise out of and in the course of the same employment.
6. That the claimant was not at maximum medical improvement from the 2007 injury of her cervical spine at the time of the 2009 injury in which she reinjured the cervical spine.
7. That the claimant received 17.5714 weeks of temporary total disability compensation between June 13 and October 13, 2008 as a result of the 2007 injury.

8. That for the combined injuries the claimant received 444.7142 weeks of temporary total disability compensation at the time of the hearing in this matter.
9. That under the facts of this case, as stated hereinabove, the defendants are entitled to a credit for 17.5714 weeks of temporary total disability compensation paid to the claimant prior to the re-injury of her cervical spine on or about December 7, 2009.
10. That the issue of whether Commissioner Wilkerson erred in awarding the remainder of the 500 weeks of benefits due claimant in an uncommuted lump sum payment is not properly before the Commission in that the defendants' failed to make an exception to the same in their Form 30/Appeal to the Full South Carolina Workers' Compensation Commission.
11. That therefore, all other issues other than the credit of 17.5714 weeks of temporary total disability compensation paid the claimant are affirmed.

CONCLUSIONS OF LAW

1. That pursuant to Section 42-9-10, the claimant can receive no more than 500 weeks of benefits for permanent and total disability.
2. That pursuant to Section 42-1-160 and Section 42-15-60, the claimant suffered a carpal tunnel syndrome and a cervical spine injury on or about July 16, 2007.
3. That pursuant to Section 42-1-160 and Section 42-15-60, the claimant never reached maximum medical improvement for the 2007 cervical injury.

4. That pursuant to Section 42-15-60, the claimant was provided with a medical appointment for her 2007 cervical injury which had yet to occur at the time she reinjured her cervical spine on or about December 7, 2009.
5. That pursuant to Section 42-9-10, the defendants paid the claimant 17.5714 weeks of temporary total disability compensation prior to the 2009 injury.
6. That pursuant to Section 42-9-10, Section 42-9-30 and Section 42-17-40, the parties agreed to consolidate the two cases for hearing purposes to obtain rulings on all issues involving the respective claims.
7. That pursuant to Section 42-9-10 and Section 42-17-40 and because the parties agreed that the respective claims were consolidated for consideration through one hearing, the defendants are entitled to a credit for 17.5714 weeks of temporary total disability compensation paid to the claimant for the 2007 injury.
8. That pursuant to Section 42-17-60, the defendants filed a South Carolina Workers' Compensation Commission Form 30/Appeal to the Full Commission.
9. That pursuant to Section 42-17-60, the defendants failed to properly raise the issue of whether the award of an uncommuted lump sum payment to the claimant was proper, and, therefore, the Commission lacks jurisdiction over the issue.
10. That pursuant to Section 42-17-60, the Order of Commissioner Wilkerson is reversed in so far as it failed to give a credit to the defendants for 17.5714 weeks of temporary total disability compensation previously paid and the Order is further, affirmed in all other aspects.

11. Pursuant to Ms. Duggans' request, her lump sum payment proceeds, which amount to \$16,273.50 as of July 10, 2018, shall be allocated in the following fashion: a) the sum of \$2,000.00 to Andrew N. Safran, Esquire as attorney fees pursuant to 8 S.C. Code Regs. 67-1205(C)(1); b) the sum of \$1,959.05 to this attorney as reimbursement for litigation expenses pursuant to 8 S.C. Code Regs. 67-1206; and (c) the sum of \$12,314.45 to Ms. Duggans as payment for permanent disability for a period of 1,174.48 weeks at the rate of \$10.51 per week, commencing on July 10, 2018, pursuant to the provisions of S.C. Code Ann. Sections 19-1-150 (1976, as amended) and 42-9-240 (2015), as well as the decisions of the South Carolina Supreme Court in James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730 (2010); and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

ORDER


IT IS THEREFORE ORDERED that the Order of Commissioner Wilkerson is reversed on the issue of a credit for temporary total disability compensation and defendants shall, therefore, receive a credit of 17.5714 weeks of temporary total disability compensation against the claimant's permanent and total disability award.

IT IS FURTHER ORDERED that the Order of Commissioner Wilkerson in all particulars should be and hereby is affirmed.


IT IS FURTHER ORDERED that defendants shall pay claimant an uncommuted lump sum payment of the remainder of 500 weeks of compensation taking a credit for 17.5714 weeks

paid on the 2007 claim, and further taking a credit for any other amounts paid claimant subsequent to the Order of Commissioner Wilkerson.

SO ORDERED.



Commissioner Aisha Taylor



Commissioner Susan S. Barden



Commissioner Gene McCaskill

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 February 5, 2019