

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Case No. 2013-002076

Zeena Fletcher, Employee, Respondent,

v.

Dick's Sporting Goods, Employer, and Federal Insurance Co., Carrier, Appellants.

APPENDIX

Andrew D. Smith, Esquire
Andrew D. Smith, LLC
147 Wappoo Creek Dr. STE 104
Charleston, South Carolina 29412
(843) 737- 4619
Attorney for Appellants

Kathryn Williams, Esquire
Kathryn Williams, P.A.
619 North Main Street
P.O. Box 10693
Greenville, South Carolina 29603
(864)235-6254
Attorney for Respondent

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South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

W File # 1003122
Carrier File #
Carrier Code #
Employer FEIN


CHANGE OF CONDITION

<u>Keena L. Fletcher</u>	<u>224-04-2218</u>	<u>Dick's Sporting Goods, Inc.</u>
Claimant's Name	SSN	Employer's Name
<u>06 Lewis Road</u>	<u>Williamston, SC 29697</u>	<u>140 Fritz Drive</u> <u>Anderson, SC 29621</u>
Address	City State Zip	Address City State Zip
<u>64-634-0965</u>	<u>864-328-9961</u>	<u>Federal Ins. Co./Chubb Group of Ins. Companies</u>
Home Phone #	Work Phone #	Insurance Carrier
<u>Kathryn Williams</u>	<u>Kathryn Williams, P.A.</u>	<u>(864) 235-6254</u>
Preparer's Name	Law Firm	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 file this form in duplicate. A claim for worker's compensation benefits is made based on the following grounds:

Claim for workers compensation benefits is made based on the following grounds: Date of Injury or Illness: on or about 03/13/10
[] Injury [] Illness [X] Repetitive Trauma

- 1a. That Claimant sustained an accidental injury to right knee, left knee, right elbow, back, head, psyche on or about 03/13/10 in Anderson County, State of South Carolina.
- 1b. Body part(s) affected are: right knee, left knee, right elbow, back, head and psyche
Describe briefly how the accident occurred Claimant slipped on signage on floor and twisted right knee and fell. Pursuant to a Form 16A approved on 2/8/12, Claimant was paid permanent partial disability in the amount of 7% to the right lower extremity and 18% to the spine. Claimant has sustained a change of condition for the worse.
2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
3. The relationship of employer and employee existed at the time of the injury.
4. At the time of the 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 or about 3/13/10 in the following manner: reported to supervisor.
6. Due to the injury, the claimant is in need of (check one):
[] (a) medical examination and treatment for
[X] (b) additional medical examination and treatment for right knee, left knee, right elbow, back, head and psyche
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: 2/27/12 to the present and continuing
8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
[X] (1) General Disability [X] Total [X] (2) Specific Disability [X] Total
[] (3) Wage Loss [] Partial [] Partial
Body part(s) affected are: Premature at this time.
9. Due to the injury, the claimant has a serious bodily disfigurement consisting of .
- 10a. At the time of injury the claimant was paid weekly wages of \$ to be determined ; 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. Dicks.
- 11a. Further grounds of claim: See # 12. Claimant makes claim to any and all rights she is entitled to under the Workers' Compensation laws of South Carolina. Claimant requests payment of any award in lump sum with lifetime allocation. Claimant reserves the right to amend the Form 50.
- 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. AnMed Urgent Care, 2000 E. Greenville St, Anderson 29621; Med Central, 3424 Clemson Blvd, Anderson 29621; Upstate PT, 1823 E. Greenville St., Ste. A, Anderson 29621; Blue Ridge Ortho Assoc, 10630 Clemson Blvd, Ste 100, Seneca 29678; Anderson Radiology, 2110 N. Hwy 81, Anderson 29621; Alan G. Posta, Jr., M.D., 209 Patewood Dr, Ste 200, Greenville SC 29615; Mark Foster, M.D., 112 John St, Easley, 29642; SSI PT; Robert A. Moss, Ph.D., 9 Maple Tree Ct, Ste B, Greenville 29615; George R. Bruce, 10630 Clemson Blvd, Ste 100, Seneca 29678; John R. Satterthwaite, M.D., David Tollison, Ph.D., 220 Roper Mtn Rd Ext., Greenville 29615; Hands On PT, 220 Roper Mtn Rd Ext., Greenville, 29615
- 11c. To the best of your knowledge, did you have any prior permanent disability? to be determined.
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.
14. Estimated time needed for hearing: 45 minutes

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

Signature of Claimant/Representative Attorney Title kwilliamslaw@bellsouth.net Email 11/13/12 Date

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1003122**

Dick's Sporting Goods,)
)
Employer, and)
)
Federal Insurance Company,)
)
Defendants/Appellants,)
)
v.)
)
Zeena Fletcher)
Employee/Respondent)
)
_____)

APPELLANTS' BRIEF

Statement of the Case

Initially, this matter was scheduled to be heard before Commissioner Barden on December 22, 2011 at 9:30 am in Greenville, SC. Prior to the hearing, the Parties agreed to enter into a Form 16 settlement. Whereby, the Claimant received 7% permanent loss of use to her right lower extremity and 18% permanent loss of use to her spine. Per the Form 14B of Dr. Satterthwaite, dated October 14, 2011, the Claimant sustained 10% impairment to her spine and was unable to bend, twist, stoop or squat continuously but was able to walk and stand as tolerated and carry upwards of (25-30) twenty-five to thirty pounds. It was further indicated the Claimant would need medications, injections and intermittent physical therapy in the future. Dr. Tollison submitted a Form 14B, dated December 12, 2011, indicating the Claimant had a 5% impairment to the psyche and would need treatment for her adjustment disorder associated with pain and lifestyle

change related to her on-the-job injury. He recommended psychological treatment (5-6) five to six times per year. Of note, Dr. Posta submitted a Form 14B, on October 1, 2010, indicating the Claimant had a 4% impairment to the right lower extremity and was unable to kneel, bend or crawl. He specified the Claimant was not in need of any future medical treatment or care. Dr. Foster, a board certified orthopaedic spine specialist, submitted a Form 14B, on November 10, 2010, indicating the Claimant had a 0% percent impairment and was able to return to work without restriction.

The Claimant then filed a Form 50, alleging a change of condition to her spine and right lower extremity. This matter came before Commissioner Beck pursuant to the Claimant's Form 50, alleging a change of condition for the worse to her right lower extremity and spine, as a result of her injury on March 13, 2010. The Claimant alleged she was not at maximum medical improvement and sought additional medical treatment and care as well as temporary total disability benefits from February 27, 2012 and continuing. Also, the Claimant specifically requested a MRI of the right knee as a result of a change of condition.

The Defendants denied the Claimant sustained a change of condition for the worse due to her spine. Rather, the Defendants argued the Claimant clearly sustained an intervening accident that broke the causal connection from her initial work-related injury, on March 13, 2010. The Defendants also deny the Claimant sustained a change of condition for the worse to her right lower extremity; therefore, she was not entitled to any additional treatment not specified on Forms 14B or 16A.

Commissioner Beck held as follows: 1) Claimant suffered a change of condition to her spine, but this finding does not preclude a later finding that the Claimant has returned to baseline status; 2) Claimant is entitled to causally related medical care; 3) Claimant is entitled to temporary total disability benefits from February 27, 2012 and continuing; 4) Claimant is not at maximum medical improvement; and 5) Claimant's request for an MRI to the right knee is denied as that was not contemplated in the prior settlement agreement. From Commissioner Beck's Order, dated October 12, 2012, the Defendants appealed.

On February 19, 2013, an Appellant Panel Review was held in Columbia, South Carolina. A proposed Full Commission Order affirming Commissioner Beck's Decision and Order was submitted on May 1, 2013 by the Claimant. This matter is still pending, since the Full Commission has yet to approve the proposed Decision and Order.

While the matter was pending for review before the Full Commission, the Claimant filed another Form 50 alleging a change of condition to the right lower extremity. A hearing was held on February 5, 2013 before Commissioner Barden. An extensive Pre-Hearing conference was held.

The Defendants argued the Claimant could not prevail on a change of condition for the worse based upon the medical evidence. Commissioner Barden indicated the Claimant's testimony may be compelling enough to meet the Claimant's burden of proof. However, she stressed, after having listened to arguments by both Parties, and reviewing the medical evidence, that the Claimant had not made a compelling argument for finding she had sustained a change of condition for the worse. Then, as the Single

Commissioner's Order, dated March 12, 2013, indicates, the Commissioner suggested the Claimant withdraw her Form 50, not move forward with the hearing, and obtain additional diagnostic evidence. The Single Commissioner did not retain jurisdiction over the matter despite the Claimant's request.

The Defendants argued the Claimant needed to move forward with the hearing, since the Claimants one year filing for a change of condition for the worse would expire on February 21, 2013. Nonetheless, the Claimant withdrew her Form 50. The Order specifically states, "The undersigned discussed postponement in the case Claimant's attorney wanted to obtain additional diagnostic evidence. At that point, Defense Counsel objected to the case being postponed. Claimant's counsel then withdrew the hearing request." (Emphasis added) From the Single Commissioner's Order, dated March 13, 2013, the Defendants appeal. Per the Form 30, dated March 13, 2013, the Defendants requested a review based on the following grounds:

1. Whether the Single Commissioner can, by Order, extend the time limits as set forth by S.C. Code Ann. Section 42-17-90?
2. Whether the Single Commissioner erred in failing to find that in the event the Claimant withdrew her Form 50 that the claim would be barred by S.C. Code Ann. Section 42-17-90?
3. Whether the Claimant has failed to prove she sustained a change of condition for the worse within one year of the last date of payment of compensation to the Claimant?
4. Whether the Single Commissioner erred in failing to find in accordance with S.C. Code Ann. Section 42-17-90 that "the review must not be made

after (12) twelve months from the date of the last payment of compensation pursuant to an award provided by this title."?

Statement of Facts

On March 13, 2010, the Claimant slipped and fell at work. Per the Claimant's Form 50, she alleged injuring her right knee, left knee, right elbow, back, head, and requested treatment for psychological overlay. Following the incident, the Claimant was seen at AnMed, where x-rays were conducted of her right knee, cervical spine and lumbar spine.

The Claimant reported injuring her right knee and informed the physician that she did not strike her head or pass out. She was provided with Vicodin and an ACE bandage for her right knee. She was also provided with physical therapy at Upstate Physical Therapy. The Claimant continued to complain of pain in her right knee, so she was referred to Dr. Clemow at Blue Ridge Orthopedics. An MRI was conducted on May 10, 2010 that did not reveal a PCL or meniscal tear, although the visual acuity of the ACL was suspect. The Claimant was referred for a second opinion with Dr. Posta on July 21, 2010.

Dr. Posta recommended an MRI of the right knee be re-conducted to rule out the possibility of a torn ACL. The subsequent MRI revealed osteoarthritic changes, and no tears of the ACL were present. Dr. Posta indicated the Claimant has a (4%) four percent permanent impairment to the right lower extremity and should not be performing

kneeling, bending or crawling. He also did indicate on the Form 14B that the Claimant was not in need of any further medical treatment or care.

The Claimant was also seen by Dr. Foster for her lower back complaints. Dr. Foster reviewed the x-rays of the Claimant's lumbar spine as well as the MRI that was conducted, which he opined demonstrated degenerative disc disease at L2-the sacrum, and the MRI was negative for any acute injuries. Dr. Foster referred the Claimant to Sports Spine Industrial, where a Functional Capacity Evaluation was conducted. The Claimant's job demand summary was reviewed, and her position was placed in the light-duty category. The Functional Capacity Evaluation indicated the Claimant could perform sedentary to light-duty.

The Defendants did refer the Claimant to Dr. Satterthwaite, based on recommendations by Dr. Posta, following a questionnaire submitted by the Claimant. The Claimant was referred to Dr. Satterthwaite on February 17, 2011. At that time, the Claimant was complaining of constant pain, which she would rate as a "6" in her lumbar spine and her right knee that becomes aggravated by bending, twisting, lifting, carrying, standing, stooping or crawling. Dr. Satterthwaite placed the Claimant on Ultram for the pain/spasms she was experiencing in the lumbar spine. He also indicated the Claimant should begin physical therapy, due to her de-conditioning, and facet injections should be conducted at L3-L4, L4-L5 and L5-S1, a possible need to repeat the injection into the Claimant's right knee and referred the Claimant to Dr. Tollison for possible situational depression. The Claimant underwent the facet injection on March 9, 2011 at L3-L4, L4-L5 and L5-S1. The Claimant has also undergone physical therapy on March 14, 2011,

March 16, 2011, March 21, 2011, March 28, 2011, March 31, 2011, April 4, 2011, April 7, 2011 and April 15, 2011.

On March 28, 2011, the Claimant reported having improvement in her back pain following the injections and the physical therapy. It was noted the Claimant continues to work full-duty at her regular employ. Dr. Satterthwaite, due to the success of the facet injections, was planning to perform a medial branch injection, possibly to be followed by a radiofrequency rhizotomy. The Claimant returned to Dr. Satterthwaite's office on April 25, 2011. She indicated the Ultram was upsetting her stomach, so she was switched to Lortab. It was also recommended the Claimant undergo medial branch blocks at L3-L4 through L5-S1. The Claimant was seen by Dr. Satterthwaite on May 27, 2011. She indicated improvement in her lower back pain following the injections. In fact, since the injections, she has had decreased pain, increased range of motion, improved sleeping patterns and self-reported improved quality of life. The Claimant was scheduled to return in (2) two months. The Claimant's medications were refilled, and she was instructed to continue physical therapy. On September 22, 2011, Dr. Satterthwaite placed the Claimant at maximum medical improvement.

The Claimant was seen by Dr. Tollison on March 16, 2011 and was diagnosed with situational depression. Dr. Tollison prescribed Pristiq. Dr. Tollison's note of April 4, 2011 indicates the Claimant is feeling "much better" and noted that her family members as well as her co-workers have noticed a difference in her attitude. The Claimant was scheduled to follow-up in one month's time.

The Claimant was seen by Dr. Tollison on May 17, 2011. The Claimant noted she did receive benefit from the bi-lateral L3, L4, L5 and S1 medial nerve facet blocks. The Claimant was still being prescribed Pristiq that was helping her mood. Dr. Tollison noted she was cognitively intact. Dr. Tollison noted at the July 29, 2011 appointment that the Claimant was continuing to do well on Prestiq and was to follow up in (6) six weeks. On November 28, 2011, Dr. Tollison placed the Claimant at maximum medical improvement.

As stated previously, the Parties entered into a Form 16A settlement on February 8, 2012. During the hearing held on September 5, 2012, the Claimant testified she is currently (53) fifty-three years old, has a twelfth grade education and has worked for Dick's Sporting Goods for (4) four years. She admittedly had an injury to her lower back and right knee on March 13, 2010.

The Claimant returned to work on a permanent basis on August 14, 2010. She continued to work at Dick's Sporting Goods, under Dr. Satterthwaite's work restrictions, from August of 2010 until February of 2011. Upon returning to work, the Claimant indicated she was physically able to perform all functions of her position with some exception. The Claimant alleged she was incapable of bending below the waist to stock merchandise, lift more than (15-20) fifteen to twenty pounds, would experience pain upon lifting objects more than (10-15) ten to fifteen pounds, and experienced lower back pain upon sweeping. Otherwise, the Claimant indicated she was physically able to perform all aspects of her position, and she intended on continuing to work, until her episode in February of 2012.

On a Wednesday, in February of 2012, the Claimant was admittedly off work and was shopping with her daughter. She started feeling sick and vomited on a retail counter. She remained home on bed rest for (4) four days before going to the hospital. She admittedly was experiencing numerous episodes of vomiting and dry heaving before her hospitalization. On the day she called EMS, February 17, 2012, she reported vomiting on at least 12 episodes over approximately (20) twenty hour period. She was hospitalized until February 21, 2012. On February 27, 2012, the Claimant reported to Dr. Satterthwaite, "vomited so hard felt a pop in her back. . . .Some immediate leg numbness Now with significant spasms and back pain. . . . Off of work this week due to spasms." Also, Dr. Satterthwaite noted, on June 13, 2012, that the Claimant "is having an exacerbation of her symptoms from the original injury." Since that time, the Claimant has not worked and continues to treat with Dr. Satterthwaite and Dr. Tollison.

ISSUE

- I. **Whether a Single Commissioner can allow a Claimant to withdraw their Form 50 Change of Condition for the worse, and then by Order toll the statute of limitations as set forth in S.C. Code Ann. §42-17-90?**

LAW/ANALYSIS

- I. **The Single Commissioner erred in allowing the Claimant to withdraw their Form 50, Change of Condition for the Worse, since by Order the statute of limitations cannot be tolled as set forth in S.C. Code Ann. §42-17-90.**

A Claimant has the burden of proving facts sufficient to allow recovery under the Workers' Compensation Act. Hall v. Desert Aire, Inc., 376 S.C. 388 (S.C. App. 2007). The burden lies with the claimant to demonstrate causation by a preponderance of the evidence. South Carolina Second Injury Fund v. Liberty Mut. Ins. Co., 353 S.C. 117

(S.C. App. 2003). The Claimant has the burden of proving facts that will bring the injury within the Workers' Compensation Law. Bartley v. Allendale County School Dist., 381 S.C. 262 (S.C. App. 2009). The Appellate Panel of the Workers' Compensation Commission is the ultimate fact finder and is not bound by the Single Commissioner's Findings of Fact. Crisp v. Southco, Inc., 390 S.C. 340 (Ct. App. 2010).

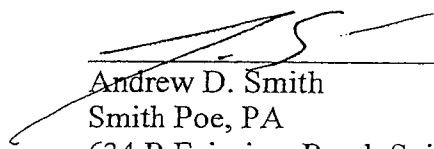
The Workers' Compensation Commission does not have jurisdiction to hear a claim for a change of condition for the worse in the event an application for review has not been made within a one-year period since the date of last payment of compensation. Allen v. Benson Outdoor Co., 236 S.C. 22, (1960). The conclusiveness of this provision is inescapable. Wallace v. Campbell Limestone Co., 198 S.C. 196, (1941). The statute states, "the review must not be made after twelve months from the date of last payment of compensation pursuant to an award provided by this title." The Workers' Compensation Commission has continuing jurisdiction over its awards, but its awards are final except for review to circumvent the twelve month limitation period by undertaking to retain or reserve jurisdiction for a specified time pending future development. Keeter v. Clifton Mfg. Co., 225 S.C. (1954), *see also* Creech v. Ducane Co., 320 S.C. 559 (Ct. App. 1995). The Court held in Creech, the Commission could not on its own motion re-open a final award due to a change of condition more than twelve months from the date of last payment of compensation pursuant to an award. The Court in Wallace v. Campbell Limestone Co., 198 S.C. 196 (1941), held that the "limitations written in the Act and the wisdom of them is manifest when reflection is had on the difficulties which would be faced by Employers and Insurance Carriers in resisting long delay demands." The Court cited Hamilton v. Little, 197 S.C. 434 (1941) holding, "the ostensible purpose or rational

underlying the statute of limitations is to prevent the obvious difficulties that would be faced by the Employers and their Insurance Carriers if it were not enforced.”

The Claimant signed the Form 16 agreement, and the Form 19 that was approved by the Commission on February 21, 2012. The one year period in order for the Claimant to file an application for review, based upon the change of condition for the worse, expired on February 21, 2013. After the Claimant withdrew her Form 50 at the hearing on February 5, 2013, she has yet to re-file. Therefore, the Claimant’s claim for a change of condition for the worse in regard to her right lower extremity is barred by the statute of limitations as set forth in S.C. Code Ann. §42-17-90.

CONCLUSION

For this and the other forgoing reasons, the Appellants respectfully request the Single Commissioners’ Order, dated March 12, 2013, be reversed, and the Full Commission issue an Order finding the Single Commissioner does not have the authority to toll the Statute of Limitations as set forth in S.C. Code Ann. §42-17-90.


Andrew D. Smith
Smith Poe, PA
634 B Fairview Road, Suite 2
Simpsonville, South Carolina 29680
(864) 963-0310
Facsimile (864) 228-7845

This 17th day of May 2013
Simpsonville, South Carolina

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. File No.: 1003122


Zeena L. Fletcher,)
 Claimant,)
))
 v.)
Dick's Sporting Goods,)
 Employer,)
))
 and)
Gallagher Bassett Services,)
Federal Ins. Co.)
Chubb Group of Ins. Companies,)
 Defendants.)
_____)

CERTIFICATE OF SERVICE

I, Andrew D. Smith, do hereby certify that I have served the Appellant's Brief, via
United States Mail First Class, postage prepaid, to the following address:

Ms. Eugenia Hollimon
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Kathryn Williams, Esquire
Kathryn Williams, P.A.
P.O. Box 10693
Greenville, South Carolina 29603



Andrew D. Smith

Simpsonville, South Carolina
May 17, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Case No. 2013-002076

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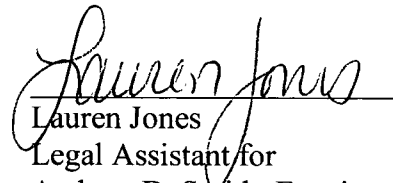
Zeena Fletcher, Employee, Respondent,

v.

Dick's Sporting Goods, Employer, and Federal Insurance Co., Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal Appendix on Kathryn Williams, Esq. by depositing a copy of this document in the United States mail, first class postage prepaid, on June 27, 2014 to Zeena Fletcher's Counsel of record Kathryn Williams, Esquire, Kathryn Williams, P.A., P.O. Box 10693, Greenville, South Carolina 29603.


Lauren Jones

Legal Assistant for
Andrew D. Smith, Esquire
Andrew D. Smith, LLC
147 Wappoo Creek Dr. STE 104
Charleston, South Carolina 29412
(843) 737- 4619
Attorney for Defendants

This 27th day of June, 2014