

BEFORE THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO. 1010658

Lenora S. Howard, )  
Employee, )

Claimant/Appellant, )

vs. )

Savannah River Nuclear Solutions, LLC, )  
Employer, )

APPELLATE PANEL ORDER

and )

Employers Insurance of Wausau, )  
Carrier, )

Defendants/Respondents. )

**RECEIVED**

AUG 14 2019

**SC Court of Appeals**

Appeal Hearing: April 29, 2019

Appearances: Claimant represented by John D. Clark of the Clark Law Firm, Sumter, South Carolina

Defendants represented by Paul B. Rodgers, III, Attorney at Law, Columbia, South Carolina

Purpose of the Appeal Hearing: Rule on the claimant's appeal of the Hearing Commissioner's Order denying further benefits to the claimant in this matter.

Order: The Full Commission affirms the Decision and Order of the Hearing Commissioner with the amendments set forth herein.

Filed: July 11, 2019

## STATEMENT OF THE CASE

The claimant in this matter alleged/reported an injury to various body parts including her back, neck and upper extremities from a reported fall at work on April 26, 2010. The above injury was accepted by the defendants and appropriate medical care was provided by the defendants as well as disability payments directed by the Commission.

The Commission issued an Order in this matter on November 6, 2013 for an award of all disability benefits owing to the claimant. The Order also provided for possible pain management treatment of the claimant. That Order was not appealed by either party. Payment was made pursuant to the above Order on December 17, 2013 and appropriate pain management/evaluation/treatment has been provided to the claimant since then.

The claimant filed a Form 50 on May 23, 2018 asserting the need for additional medical care to her back (neck). The defendants filed a Form 51 on June 2, 2018 asserting the claimant had not given proper notice of the claim(s) asserted. The defendants also denied that there was any basis for a claim for additional medical treatment or additional disability.

In the most recent claim, the claimant seeks additional disability benefits and medical treatment based on the claimant's assertion of a worsening of her condition.

The defendants have denied any additional benefits are owed to the claimant by the defendants, as appropriate benefits have been paid pursuant to Commission Order and applicable statutory requirements. The defendants further assert the statutory deadline for this claim long ago expired and no further benefits to the claimant are warranted based on statutory requirements or a preponderance of the substantial, reliable and probative evidence in the record.

The above matter was heard by the Hearing Commissioner on August 31, 2018 in Aiken,

South Carolina. The Hearing Commissioner ruled, "Based on the evidence submitted, including the parties' APA submissions and the previous Commission Order and application of the provisions for a claim for a change of condition claim under § 42-17-90 of the South Carolina Workers' Compensation Act, the claims in this matter are denied and dismissed with prejudice.

The question for resolution by this Panel is whether the claimant has properly asserted a claim for additional benefits/a claim for a change of condition for the worse warranting additional benefits, and if so, is that claim barred under the statutory directives of the South Carolina Workers' Compensation Act and/or an insufficiency of the substantial, reliable or probative evidence in the record to support a claim for a change of condition for the worse or an award of additional benefits.

Evidence in this case includes the Commission file and the Commission Order entered on November 6, 2013 that awarded the claimant permanent partial disability benefits and possible additional pain management treatment. That Order was not appealed by either party. Medical submissions in this case include pain management treatment of the claimant and reports of evaluating physicians regarding the claimant's medical condition. While receiving pain management treatment at Brooks Rehabilitation in Jacksonville, Florida in April and May of 2016, the claimant reported chest pains. She was evaluated and released as a result of that reported incident. The claimant has waived that claim in this matter.

In the deposition of Dr. Troyer, an evaluating/treating physician of the claimant, he stated he could not give an opinion the claimant had a change of condition. That evidence is obviously contrary to the claimant's currently asserted claim of a change of condition for the worse. Further, the above doctor's deposition was noticed by the claimant's attorney and submitted as evidence in support of the claimant's position.

In the claimant's presentation of the claimant's case for Full Commission Review, the claimant's attorney noted that there is no specific box to check for a "change of condition" claim on a Form 50. The claimant's attorney correctly states the above, but it must be recognized that § 67-602 of the Commission Regulations requires that a medical report supporting a change of condition claim be attached to such a claim asserted before the Commission. No such report was submitted in this matter.

The following findings of fact were made by the Hearing Commissioner and are affirmed by the Full Commission Appellate Panel:

1. By Order of the Commission, these two claims (W.C.C. File Nos. 1010658 and 1616197) have been joined by agreement of the parties given that the matters involve the same claim and the same employer. There were erroneously two different carriers on the two alleged dates of accident.
2. By agreement of the parties, it is conceded that if the second date of accident is found to be compensable, which is denied in the entirety by the defendants, it would be an injury that has a nexus to the first date of injury, and as such, Employers Insurance of Wausau would be the responsible carrier. In view of the above and by agreement of the parties, the Insurance Company of the State of Pennsylvania is hereby dismissed from this claim.
3. The questions for resolution at this hearing are whether the Claimant has had a change of condition for the worse and has the Claimant appropriately pled the above pursuant to the South Carolina Workers' Compensation Act.
4. Claimant set forth in her APAs a chronological record which would support the conclusion that her condition is worse today than it was at the time of the previous Commission Order dated 11/07/13.

5. Payment was made to the Claimant pursuant to the above Order on December 17, 2013.
6. The Claimant was provided pain management by the Defendants pursuant to the above Order.
7. The Claimant filed a Form 50 which is date-stamped by the Commission on December 13, 2014 which is within one year of the final payment of compensation.
8. On that filing, the Claimant only asks for additional medical treatment.
9. Claimant asserts that this filing is sufficient to plead a medical change of condition for the worse.
10. Defendants contend that the specific requirements of Section 42-17-90 of the South Carolina Workers' Compensation Act have not been met in this case. They assert the Claimant did not allege a change of condition for the worse in the claimant's Form 50 filed on December 13, 2014. As such, the defendants contend since no claim of a change of condition was pled, none can be pursued.
11. Claimant asserts that since she is not at maximum medical improvement, inclusion of change in condition would be premature.
12. Claimant testified that she is worse today than she was at the time of the 2013 Order.

**ADDITIONAL FINDINGS OF FACTS BY THE FULL COMMISSION**

The Full Commission affirms the above findings of the Hearing Commissioner and supplements those findings with the following additional findings.

13. When the lay and medical evidence is considered, a request for additional medical treatment is not a request for an award of additional compensation under a theory of a change of condition as set forth in Section 42-17-90.
14. The language of the above section is clear and unambiguous, and the requirements set

forth therein have not been met in this case.

15. The Claimant requested on her pleadings additional medical treatment. Under previous Commission Order, pain management treatment was provided to the claimant by the defendants, and the claimant reached maximum medical improvement from that treatment.
16. The claimant's counsel is correct that there is no box to check on a Form 50 asserting a "change of condition."
17. Notwithstanding the above, the claimant is required to file a medical report in support of a change of condition claim under Reg. 67-602. None was filed in this case.
18. The Claimant did not file a document asserting a change of condition until the Form 58/Pre-Hearing Brief was filed on July 11, 2018. That filing is not the proper procedural filing; nor is it timely under the Act.
19. Section 42-17-90 provides for a request for additional compensation in a change of condition claim.
20. Such a request was not made in this case.
21. The substantial, reliable, and probative evidence in this matter does not support an award of additional benefits to the claimant.
22. In view of the above, this matter is dismissed with prejudice.

#### CONCLUSIONS OF LAW


Based on the evidence submitted, including the parties' APA submissions, and the previous Commission Orders and application of the appropriate provisions of the South Carolina Workers' Compensation Act, the Hearing Commissioner's ruling that the claims in this matter are denied and dismissed with prejudice are hereby affirmed. No further benefits are awarded in this

matter.

**ORDER**


It is hereby ordered that the denial of additional benefits to the claimant is affirmed.

IT IS SO ORDERED.



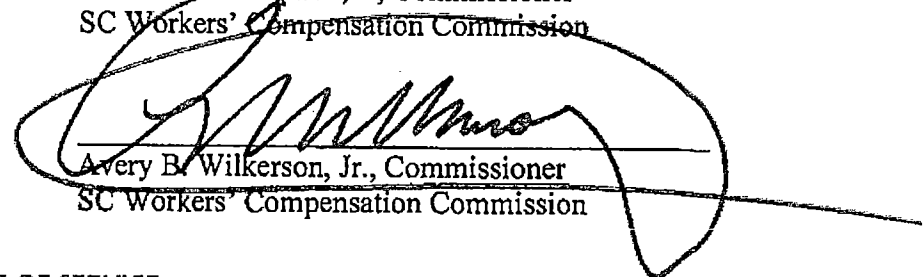
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Susan S. Barden, Commissioner  
SC Workers' Compensation Commission



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R. Michael Campbell, II, Commissioner  
SC Workers' Compensation Commission



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Avery B. Wilkerson, Jr., Commissioner  
SC Workers' Compensation Commission

**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 July 11, 2019***