

**APPELLANT PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1517220**

Janice McCutcheon)
)
 Employee/Claimant,)
)
 vs.)
)
 Greenwood Mills, Inc. ,)
)
 and)
)
 Greenwood Mills/Self Insured,)
)
 Employer/Carrier.)

DECISION AND ORDER

RECEIVED
SEP 19 2019
SC Court of Appeals

Appellant Panel Review held in Columbia South Carolina on July 15, 2019, per notices timely and properly served on all parties of interest.

Appellant Panel Decision and Order filed August 20, 2019

APPEARANCES:

Employee/Claimant was represented by Jimmy R. King of KING LAW FIRM, PC, 2203 North Main Street, Anderson, SC 29621

Employer/Carrier was represented by Roy R. Hemphill, MCDONALD PATRICK POSTON HEMPHILL POSTON, 414 North Main Street, Greenwood, South Carolina 29646

STATEMENT OF CASE

This matter came before the Commissioner Mike Campbell on March 20, 2019 pursuant to issues raised by the Form 50 and Form 51. Claimant alleged that she is permanently and totally disabled as a result of the injuries to her left hand, left arm and left shoulder along with an aggravation of her underlying emotional state.

The Employer/Carrier admitted Claimant's left wrist injury but alleged that the left wrist is the only injured body part. They are denying the shoulder injury pointing out that the Claimant's first report of shoulder problems was twenty-two (22) months after the injury. The Employer/Carrier also denied that Claimant had an aggravation to her psychological condition. The Employer/Carrier contended that Claimant is entitled to an award for the injury to the left wrist only and that Claimant is not permanently and totally disabled due to her work-related injury nor that she entitled to wage loss. The Employer/Carrier's position in that they should only pay an award for her left wrist injury.

This claim was heard before the Single Commissioner on March 20, 2019 in Ninety Six, South Carolina. All parties were present, medical evidence was presented and testimony was given. The parties stipulated that jurisdiction and venue were proper in the case.

The Single Commissioner issued an Order dated April 22, 2019 which found Claimant to be permanently and totally disabled (with casually related injury to her left arm, left shoulder, and aggravation of her psyche) and entitled to five hundred (500) weeks of compensation pursuant to §42-9-10.

The Employer/Carrier requested a Full Commission review and requested that the Single Commissioner's order be reversed and an award be made only to the hand/arm.

The Claimant contends the preponderance of the evidence supports the findings of the Single Commissioner and requested that the Order of the Single Commissioner be affirmed in its entirety.

FINDINGS OF FACT

1. We find that Claimant sustained an admitted injury to her left wrist/hand/arm arising out of and in the course and scope of her employment.

2. We find that Claimant alleges additional causally-related injuries to her left shoulder and psyche which we find compensable based on the uncontradicted record from authorized treating doctor, Dr. Eric Loudermilk, Dr. Robert Brabham and the Claimant's testimony.
3. We find that Claimant underwent various evaluations and treatments for her admitted and alleged work-related injuries.
4. We find that on October 20, 2016, on a Form 14B, authorized treating physician, Dr. Carol Burnette of Piedmont Comprehensive Pain Management Group, LLC, placed Claimant at MMI as of June 22, 2016 and assigned a five percent (5%) medical impairment to the left upper extremity. In addition, Dr. Burnette assigned work restrictions of no repetitive flexion or extension or extension of the left wrist, no lifting greater than five (5) lbs. with the left hand and will initially need to limit work hours to six (6) hour days, with gradual transition to full days over the first month. Dr. Burnette also opined to a reasonable degree of medical certainty that Claimant will not need future medical care, but noted will remain on pain medication by Dr. Loudermilk. (Claimant's APA Submissions, Pg. 41)
5. We find that on January 11, 2017, on a Form 14B, authorized treating physician, Dr. Anthony Timms of Orthopaedic Associates of the Lakelands, placed Claimant at MMI as of August 31, 2016 and assigned a five percent (5%) medical impairment to the left upper extremity. In addition, Dr. Timms assigned work restrictions of no lifting more than fifteen (15) lbs. and no repetitive actions. Dr. Timms also opined to a reasonable degree of medical certainty that Claimant will not need future medical care. (Claimant's APA Submissions, Pg. 16)
6. We find that on March 2, 2017, on a Form 14B, authorized treating physician, Dr. Eric Loudermilk of Piedmont Comprehensive Pain Management Group, LLC, opined to a reasonable degree of medical certainty that Claimant was at MMI as of June 22, 2106, assigned a five percent (5%) medical impairment to the left upper extremity based on Dr. Burnette's rating and referred to Dr. Burnette's restrictions on her

Form 14B. In addition, Dr. Loudermilk opined Claimant would need future medical treatment as she may require Hydrocodone as needed to help with residual pain. (Claimant APA Submissions, Pg. 42)

7. We find that on March 7, 2018 on questionnaires for the Claimant, Dr. Loudermilk opined to a reasonable degree of medical certainty regarding Claimant's left hand, left arm, left shoulder, left upper extremity and RSD as a result of her work injury of November 5, 2015. In addition, Dr. Loudermilk opined and that it is more likely than not that Claimant will be unable to do any other substantial gainful activity as a result of her injuries suffered in her work-related accident on November 5, 2015. (Claimant's APA Submissions, Pgs. 54-59, 61-62)
8. We find that on March 17, 2018, on a questionnaire for the Claimant, Dr. Loudermilk opined to a reasonable degree of medical certainty that it is more likely than not that Claimant will be unable to return to her work as a nurse as a result of her injuries suffered in her work-related accident on November 5, 2015. (Claimant's APA Submissions, Pg. 60) Dr. Loudermilk also opined that the Claimant would not be able to return to any work activity. (Claimant's APA, Pg. 61)
9. We find that on March 19, 2018, on a questionnaire for the Claimant, Dr. Loudermilk opined to a reasonable degree of medical certainty it is more likely than not the Claimant has permanent severe nerve damage to her left hand. (Claimant's APA Submissions, Pg. 63)
10. We find that on April 10, 2018, in a psychological and vocational evaluation for the Claimant, Robert E. Brabham, Ph.D opined that to a reasonable degree of psychological certainty, Claimant would be unable to effectively perform the essential duties in any gainful work activity. (Claimant's APA Submissions, Pg. 85) This is the only vocational assessment submitted for Commission consideration.
11. We find that on November 28, 2018, in deposition testimony, Dr. Loudermilk testified that Claimant's constant pain is causing a worsening of her anxiety and depression. In addition, Dr. Loudermilk testified if there are no records of a prior left shoulder condition then it is more likely than not that Claimant's injury has aggravated her shoulder. Furthermore, Dr. Loudermilk testified based on Claimant's chronic

pain and age, he thinks Claimant is a liability to go back to any type of work and didn't see her going back to gainful employment or anyone wanting to hire her.

12. We find that on March 20, 2019, at the hearing before the undersigned Commissioner, Claimant testified regarding her job duties, her admitted and alleged work-related injuries, the medical treatment she has received, her ability to return to work and her current condition. In addition, witness for the Defendants testified regarding the type of work Claimant did and the job duties associated.
13. We find that Claimant was returned to work with restrictions by Dr. Timms in December, 2016. Dr. Burnette allowed the Claimant to return to work with restrictions and limited hours (impairment evaluation dated July 21, 2106) with the goal for Claimant to be able to return to eight (8) hours per day with restrictions. Claimant's return to full time restricted duty was not successful causing her to resign her employment after several months of attempting to work eight (8) hours a day with restrictions. (Claimant's APA Submissions, Pgs. 73-76)
14. We give great weight to the uncontradicted opinions of authorized treating physician Dr. Eric Loudermilk who opines that Claimant suffered a work injury to her left hand, left arm and left shoulder with an aggravation of her underlying psyche/anxiety. I also give great weight to Dr. Loudermilk's uncontradicted opinion that Claimant is unable to do any type of work activity.
15. We also give great weight to the uncontradicted opinion of Dr. Robert Brabham concerning Claimant's psyche and disability.
16. We find that Claimant is permanently and totally disabled and entitled to Utica Mohawk language.

CONCLUSIONS OF LAW

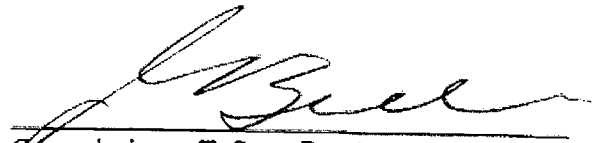
1. The Findings of Fact set forth above are construed to be conclusions of law if applicable.
2. Absent of any documentation in the record reflecting that the Claimant had a pre-existing left shoulder condition and based on the unrefuted opinions of the authorized treating physician, Dr. Eric Loudermilk, Claimant did sustained a compensable casually related injury to her left hand, left arm and left shoulder as a result of her admitted work-related injury of November 5, 2015.

3. Based on a preponderance of the evidence, including the unrefuted opinions of authorized treating physician, Dr. Eric Loudermilk, Claimant did sustain a compensable aggravation to her pre-existing psyche/anxiety as a result of her admitted work-related injury November 5, 2015.
4. Claimant is at MMI, as stipulated to by the parties at the hearing before the Single Commissioner.
5. Based on a preponderance of the evidence, including the unrefuted opinion of the authorized treating physician, Dr. Eric Loudermilk, and Dr. Robert Brabham, a vocational expert, and given the Claimant's age and the issues she continues to have, Claimant is permanently and totally disabled.
6. Claimant is entitled to lifetime casually-related medical treatment, pursuant to 42-15-60, as recommended by authorized treating physician, Dr. Eric Loudermilk.
7. Claimant is entitled to a lump-sum award.
8. The Order is to include Utica Mohawk language.


ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED** that the finding of the Single Commissioner is affirmed and Employer/Carrier shall pay Claimant compensation for permanent and total disability in the amount of \$216,265.47 and we further order the allocation of the aforementioned settlement sum as follows: \$72,088.49 as attorney's fees; \$3,386.09 as costs and expenses: \$140,790.89 in compromised settlement of future disability benefits at a rate of \$118.91 per week commencing commencing December 27, 2015 and continuing thereafter for 1210.04 weeks, which is the Claimant's life expectancy pursuant to § 19-1-150 of the South Carolina Code of Laws, as interpreted by South Carolina Supreme court in the decision of Utica Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955) The Employer/Carrier shall pay for all authorized causally related medical expenses incurred to date; shall pay for all future medical care and treatment as recommended by an authorized treating physician pursuant to SC Code Ann. §42-15-60.

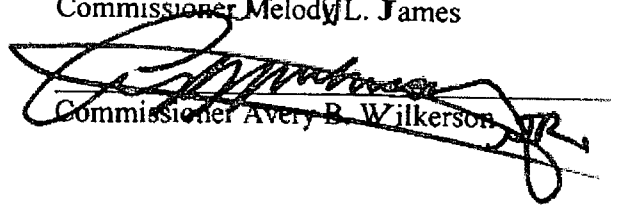
AND IT IS SO ORDERED.



Commissioner T. Scott Beck



Commissioner Melody L. James



Commissioner Avery B. Wilkerson

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 August 20, 2019