

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
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))
Cathy Hager,)
Employee,)
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Claimant/)
Respondent,)
))
-vs-)
))
Velocity Power Sports,)
Employer,)
))
and)
))
S.C. State Accident Fund,)
Company, Carrier,)
))
Defendants/)
Appellants.)
_____)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1805448

APPELLATE PANEL AFFIRMATION

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SC Court of Appeals

The parties were heard in Columbia, South Carolina on July 15, 2019. As a result of said hearing, the Single Commissioner issued a Hearing Order dated December 18, 2018 from which the Defendants appealed. The Single Commissioner's Decision and Order set forth the following Findings of Fact:

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act as amended to date with Velocity Powersports, LLC, as the employer and Berkshire Hathaway direct insurance company as the carrier.
2. Cathy Hager was an employee of the employer on January 2, 2018 and April 10, 2018.

3. The average weekly wage is Four Hundred Eighty (\$480.00) Dollars, and the compensation rate is Three Hundred Twenty (\$320.00) Dollars.

4. Cathy was taking inventory for defendants on January 2, 2018 under the supervision of Joseph Nuncio even though he was not her normal supervisor.

5. Cathy reported to Joseph Nuncio that her arm was hurting on January 2, 2018 and he made accommodation for her injury.

6. Joseph Nuncio was a representative of the employer and was in a supervisory capacity over Cathy on January 2, 2018.

7. Even though Cathy did not clearly articulate her injury according to Mr. Nuncio, she gave sufficient notice to defendants of her injury.

8. Henry Crocker testified that he saw the claimant wearing a sling after January 2, 2018 and before March 12, 2018.

9. Claimant did not seek medical treatment for her injury of January 2, 2018 until after the wreck of March 12, 2018.

10. The automobile accident did not cause damage to claimant's right shoulder according to Dr. Fleischli's deposition testimony, nor was it sufficient to break the chain of causation.

11. According to Dr. Fleischli's deposition testimony, the Cathy's shoulder following the automobile accident was an acute injury on top of a chronic condition due to the atrophy and retraction revealed by the MRI, which indicated the damage to the Cathy's shoulder was done

prior to March 12, 2018.

12. The damage to the claimant's right shoulder was more than one month old and, therefore, was not caused by the March 12, 2018 automobile accident.

13. Cathy is entitled to temporary total compensation from May 28, 2018 to the present and continuing.

14. Dr. Hamid of OrthoCarolina is the authorized treating physician.

15. Cathy is not at maximum medical improvement.

16. Cathy did not meet her burden of proof on the April 10, 2018 accident and it is, therefore, not compensable.

The Single Commissioner's Decision and Order also set forth the following Conclusions of Law:

1. Under Section 42-1-130, claimant is a covered employee at the times in question.

2. Under Section 42-1-140, the defendant employer was a covered employer under the Act.

3. Under Section 42-1-160, claimant did sustain injuries by accident arising out of and in the course of her employment.

4. Under Section 42-15-20, claimant gave notice to her employer of her injury on January 2, 2018.

5. Under Section 42-15-60, claimant is not at maximum medical improvement.

Within the statutory period, counsel for the Defendants filed an Application for Review setting forth the following assignments of error:

- 1) Did the Hearing Commissioner err in his Finding of Fact #7 that Claimant "gave sufficient notice" of her alleged work injury to the Employer, when such finding is controlled by an error of law, specifically, that notice of mere pain and provision of an accommodation by an employer constitutes actual or constructive notice of an alleged injury by accident arising out of and in the course of employment for purposes of S.C. Code §42-15-20?
- 2) Did the Hearing Commissioner err in his Finding of Fact #10 that Claimant's intervening motor vehicle accident "did not cause any damage to claimant's shoulder" when such finding mischaracterizes the expert testimony of Dr. Fleischli and is otherwise against the greater weight of the credible evidence on the Record as a whole?
- 3) Did the Hearing Commissioner err in his Finding of Fact #11 regarding the testimony of Dr. Fleischli, when such finding mischaracterizes the doctor's actual testimony and is otherwise against the greater weight of the credible evidence on the Record as whole?
- 4) Did the Hearing Commissioner err in his Finding of Fact

#12 when such finding is against the preponderance of the evidence in the Record and is controlled by an error of law?

- 5) Did the Hearing Commissioner err by failing to find that Claimant failed to prove she sustained a compensable injury by accident arising out of an in the course of her employment on or about January 2, 2018, when such conclusion is the only one supported by the preponderance of the evidence in the Record as a whole and applicable law?
- 6) Did the Hearing Commissioner err by failing to find that, even if Claimant sustained a compensable injury to her shoulder by accident as alleged on or about January 2, 2018, any causal link between such accident and Claimant's subsequent need for medical treatment and/or disability was severed by an intervening motor vehicle accident Claimant was involved in on or about March 10, 2018, when the undisputed evidence in the Record establishes that a) Claimant did not seek medical evaluation and/or treatment for her shoulder injury until after intervening MVA; b) the initial medical histories from all providers reference the car wreck as the precipitating cause for such evaluation/treatment with NO mention of any alleged work related accident; and c) when such conclusion is the only

reasonable outcome based on the preponderance of the evidence in the Record as a whole and applicable law?

- 7) Did the Hearing Commissioner err by failing to find that, even if Claimant sustained a work-related injury to her shoulder as alleged, such injury was substantially aggravated by the intervening MVA, when such conclusion is the only reasonable outcome based on the preponderance of the evidence in the Record and applicable law?
- 8) Did the Hearing Commissioner err in failing to find that Claimant did not meet her burden or proving that medical treatment and disability due to her shoulder condition was caused by a work related injury on January 2, 2018 as opposed to the intervening motor vehicle accident on March 10, 2018, when Dr. Fleischli unequivocally testified to that effect?
- 9) Did the Hearing Commissioner err in all Conclusions of Law and award of benefits based on the aforementioned errors?

Copies of the above assignments of error were furnished to all interested parties prior to oral argument presented before the Appellate Panel on July 15, 2019.

Pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel reviewed the Single Commissioner's Order and weighed the evidence in the record as presented at the initial hearing. The Panel also considered

all issues raised in the brief of the Appellant and Respondents. The Panel makes the following Findings of Facts and Conclusions of Law:

- 1) The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act as amended to date with Velocity Powersports, LLC, as the employer and Berkshire Hathaway direct insurance company as the carrier.
- 2) Cathy Hager was an employee of the employer January 2, 2018 and April 10, 2018.
- 3) The average weekly wage is Four Hundred Eighty (\$480.00) Dollars, and the compensation rate is Three Hundred Twenty (\$320.00) Dollars.
- 4) Cathy was taking inventory for defendants on January 2, 2018 under the supervision of Joseph Nuncio even though he was not her normal supervisor.
- 5) Cathy reported to Joseph Nuncio that her arm was hurting on January 2, 2018 and he made accommodation for her injury.
- 6) Joseph Nuncio was a representative of the employer and was in a supervisory capacity over Cathy on January 2, 2018.
- 7) Even though Cathy did not clearly articulate her injury according to Mr. Nuncio, she gave sufficient notice to

defendants of her injury.

- 8) Henry Crocker testified that he saw the claimant wearing a sling after January 2, 2018 and before March 12, 2018.
- 9) Claimant did not seek medical treatment for her injury of January 2, 2018 until after the wreck of March 12, 2018.
- 10) The automobile accident did not cause damage to claimant's right shoulder according to Dr. Fleischli's deposition testimony, not was it sufficient to break the chain of causation.
- 11) According to Dr. Fleischli's deposition testimony, Cathy's shoulder following the automobile accident was an acute injury on top of a chronic condition due to the atrophy and retraction revealed by the MRI, which indicated the damage to the claimant's shoulder was done prior to March 12, 2018.
- 12) The damage to the claimant's right shoulder was more than one month old and, therefore, was not caused by the March 12, 2018 automobile accident.
- 13) Cathy is entitled to temporary total compensation from May 28, 2018 to the present and continuing.
- 14) Dr. Hamid of OrthoCarolina is the authorized treating physician.
- 15) Cathy is not at maximum medical improvement.
- 16) Cathy did not meet her burden of proof on the April 10,

2018 accident and it is, therefore, not compensable.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

- 1) Under Section 42-1-130, claimant is a covered employee at the times in question.
- 2) Under Section 42-1-140, the defendant employer was a covered employer under the Act.
- 3) Under Section 42-1-160, claimant did sustain injuries by accident arising out of and in the course of her employment.
- 4) Under Section 42-15-20, claimant gave notice to her employer of her injury on January 2, 2018.
- 5) Under Section 42-15-60, claimant is not at maximum medical improvement.

ORDER

1. Appellants shall be responsible for causally related medical treatment for claimant for her injury of January 2, 2018 including but not limited to OrthoCarolina, and Dr. Hamid is the authorized treating physician.

2. Appellants shall pay claimant through the Law Firm of

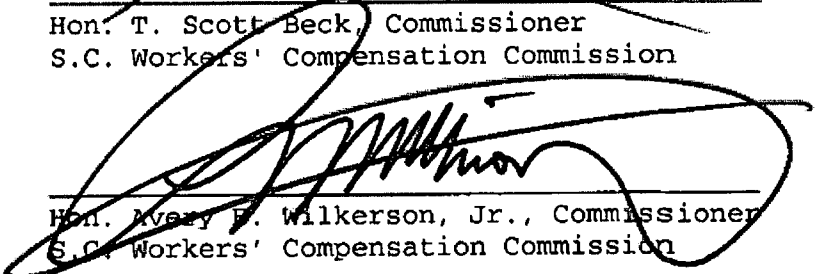
Elrod Pope temporary total compensation from May 28, 2018 to the present and continuing until either agreement of the parties or further order of this commission.

3. Appellants shall continue to provide medical treatment for claimant's right shoulder under the direction of Dr. Hamid of OrthoCarolina; and claimant is not at maximum medical improvement.

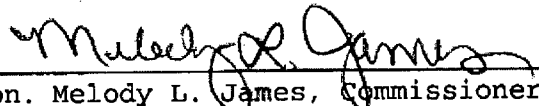
AND IT IS SO ORDERED.



Hon. T. Scott Beck, Commissioner
S.C. Workers' Compensation Commission



Hon. Avery F. Wilkerson, Jr., Commissioner
S.C. Workers' Compensation Commission



Hon. Melody L. James, Commissioner
S.C. 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 October 3, 2019