THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision
SCWCC No. 1102937

Related Appellate Case No. 2019-001141

Barry Adickes, Claimant, Respondent,

v.

Philips Healthcare, Employer, and Fidelity & Guarantee Insurance Company, Carrier, Appellants.

MOTION TO CONSOLIDATE

Pursuant to Rules 214 and 240, SCACR, Appellants herein move this Honorable Court for an Order consolidating this matter with Appellate Case No. 2019-001141. This Motion is based on the following:

Appellate Case No. 2016-000514 (closed):

The instant matter was commenced before the South Carolina Workers' Compensation Commission by Respondent's filing of a Form 50 in September of 2014, seeking a permanent wage loss award under S.C. Code Ann. § 42-9-20. (Appellate Case No. 2016-000514, R. p. 36). The Single Commissioner awarded Respondent 340 weeks of permanent partial disability benefits, and this decision was affirmed by the Appellate Division. (Id. at R. pp. 1- 34). Appellants appealed this Decision and Order to this Court and properly commenced weekly disability benefits in March

2016 during the appeal, pursuant to S.C. Code Ann. § 42-17-60. (Id. at R. p. 113). This Court issued an Opinion on January 17, 2018, explicitly reversing the Appellate Panel's award of 340 weeks' compensation and remanded to the Workers' Compensation Commission for a new calculation of benefits consistent with the plain language of S.C. Code Ann. § 42-9-20. [Adickes v. Philips Healthcare, Op. No. 2018-UP-027 (S.C.Ct.App filed January 17, 2018)].

Appellate Case No. 2019-001141:

Appellate Case No. 2016-000514 was remitted to the SCWCC on May 14, 2018. Appellants opted to continue paying weekly benefits to offset Respondent's final permanency award, under the assumption that the Appellate Division would issue an order shortly after the remittitur. Rather, the Appellate Division assigned the case to Commissioner Susan Barden, a hearing was subsequently held and her Order was not issued until eight months thereafter. (Ex. 5 – 8[1]). Commissioner Barden awarded Respondent wage loss benefits for a period of 200 weeks and 5 days. (Ex. 7). Appellants appealed Commissioner Barden's Award to the Appellate Division.

As months continued to pass while the parties awaited a decision from the Appellate Division, Appellants became concerned about not being able to recoup an overpayment. Thus, the decision was made to suspend Respondent's weekly benefits on February 5, 2019, as Appellants had paid beyond the proper calculation of his permanent wage loss award. Over a year after the remittitur, on June 20, 2019, Commissioner Barden's award was affirmed in its entirety by the Appellate Division. (Ex. 9 - 11). Appellants appealed the June 20, 2019 Decision and Order of

[1] A Record on Appeal has not yet been filed in Appellate Case No. 2019-001141; therefore, all supportive documentation following this case's first appearance in this Court are being attached pursuant to Rule 240(c)(3).

the Appellate Division to this Court, and that appeal is presently pending in Appellate Case No. 2019-001141.

Current Order Challenged on Appeal:

While the above appeal was pending before the Appellate Division, another hearing was held in this case, this time before Commissioner Melody James. Respondent sought fines associated with alleged medical delays and recommencement of his weekly benefits with penalties. (Ex. 12 - 13). Commissioner James issued an Order on June 19, 2019, wherein she found that Respondent's permanent wage loss award had not been fully paid and there was no order allowing Appellants to stop payment of benefits commenced pursuant to S.C. Code Ann. § 42-17-60, so Appellants had illegally terminated his benefits. (Ex. 14 - 15). As such, she ordered recommencement and subjected Appellants to a 10% penalty on all unpaid weekly benefits. (Ex. 16 - 17). Commissioner James also held that Appellants had wilfully disobeyed a prior Order for a period of 27 days, and were subject to fines of $200.00/day pursuant to S.C. Code Ann. § 42-3-175. (Id.). On appeal, the Appellate Division upheld Commissioner James' Award in its entirety, yet increased the daily fine imposed to $500.00/day. (Ex. 18 - 20). This is the Order currently being challenged in Appellant's Notice of Appeal filed simultaneously with this Motion.

ARGUMENT AND CITATION OF AUTHORITY

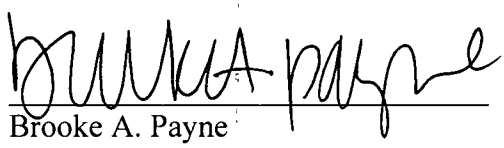
Rule 214, SCACR, permits this Court to consolidate multiple appeals from the same judgment, decision or decree. As detailed above, the current Order being challenged on appeal and the Order challenged in Appellate Case No. 2019-001141 both stem from the same underlying Order - this Court's January 17, 2018 Opinion. Further, both appeals deal with the same question of law, which is the proper calculation of Respondent's permanent wage loss award under S.C. Code Ann. § 42-9-20. As such, Appellants contend that consolidation of these appeals is warranted

in order to avoid duplicative briefing and dual appellate records, thereby promoting efficiency and furthering the interests of judicial economy.

For the reasons stated herein and upon the good cause shown, Appellants herein request this Honorable Court order this appeal to be consolidated with Appellate Case No. 2019-001141.

November 20, 2019

Respectfully submitted,



Brooke A. Payne
Payne Law Group, LLC.
P.O. Box 2449
Mt. Pleasant, SC 29465
(843) 810-8955
Attorney for Appellants

Other Counsel of Record:

Bill Smith
Chappell, Smith, & Arden
PO Box 12330
Columbia, SC 29211
(803) 509-5839

SCWCC JUDICIAL DEPARTMENT
REMITTITUR ROUTING SHEET

Barry Adickes v Philips HeathCare
SCWCC: 1102937
Commissioners: Wilkerson, Beck, Taylor

Claimant: William L. Smith Defendant: Brooke Payne

This is a remittitur from a higher court

SINGLE COMMISSIONER: **McCaskill**

ORIGINAL APPELLATE PANEL: **Wilkerson, Beck, Taylor**

ASSIGN TO: **Single Commissioner** **OR** **Reconstituted Panel**

_____**Beck** _____**McCaskill**

_____**Barden** _____**James**

_____**Campbell** _____**Taylor**

_____**Wilkerson**

Chair:_____ **Date:** 7/16/18

CERTIFICATE OF SERVICE
THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 16 **day of** July, **2018.**

By: Valerie D. Better
SCWCC Judicial Department

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Barry Simmons Adickes,

Claimant,

vs.

Philips Corporation,

Employer,

Gallagher Bassett Services,

Carrier/Defendants.

WCC FILE NO: 1102937

DECISION AND ORDER

HEARING:	Date: October 9, 2018 Location: Rock Hill, South Carolina
APPEARANCES:	Claimant, Barry Simmons Adickes, represented by William L. Smith, II, Esquire Defendants, Philips Healthcare and Fidelity and Guaranty Insurance Co, represented by Brooke A. Payne, Esquire
PURPOSE OF HEARING:	Determination of issue on remand from the Court of Appeals
COMMISSIONER:	Susan S. Barden
FILED:	*January 17, 2019*

STATEMENT OF THE CASE

This matter was originally tried before the Honorable Gene McCaskill who issued an Order on August 27, 2015, in which he found that Claimant had reached maximum medical improvement; found that Claimant had suffered a permanent loss of wage earning capacity; awarded 340 weeks of benefits under § 42-9-20 commencing when the wage loss began on January 17, 2014; and ordered ongoing and future medical care.

contained in the Commission file. The clear reading of § 42-9-20 and the application as shown in Bass v. Kenco shows that these weeks are not credited against the 340 weeks and essentially add seven weeks and five days to the award.

ORDER

IT IS THEREFORE ORDERED that Claimant is entitled to an award of wage loss benefits beginning on January 17, 2014 to be paid by Defendants as per the following:

1. Claimant is limited to 340 weeks from the date of injury March 22, 2011;

2. As such, the award beginning on January 17, 2014 is for 193 weeks as Claimant worked 147 weeks between March 22, 2011 and January 17, 2014.

3. Defendants do not receive credit for the seven weeks and five days of temporary total disability paid, and these weeks extend the period and are added to the award.

4. This makes the total award payable to Claimant 200 weeks and five days.

5. Defendants began making weekly payment of the award under § 42-17-60 when the Order of the Commission's Appellate Panel was filed and continue to make those payments. Thus, any weekly payments made since the appeal was filed shall be credited against the amount due to Claimant.

6. More than 340 weeks have elapsed since the injury so all of the weeks owed have accrued and would not be subject to commutation.

7. Pursuant to § 42-17-60 and § 34-31-20(B) interest would be due to Claimant on benefits owed between January 17, 2014 and when weekly payments were commenced at the time of appeal. No interest would be due on weeks after the date weekly payments began. The interest

rate per the statute was 7.50% per annum during the weeks compensation was owed yet not paid.

AND IT IS SO ORDERED

Dated: *January 17, 2019*

Susan S. Barden

IT IS SO ORDERED.

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 Barbara Skarbek on January 17, 2019

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Barry Adickes,

CLAIMANT,

vs.

Philips Healthcare,

Employer,

and

Fidelity and Guarantee Insurance Company,

Carrier

DEFENDANTS.

WCC FILE NO: 1102937

DECISION AND ORDER

Appellate Panel Review held in Columbia, South Carolina on

April 30, 2019,

Appellate Panel Decision and Order filed on June 20, 2019

Appearances: Claimant represented by William L. Smith II, Esquire
Defendants represented by Brooke A. Payne, Esquire

and supporting case law.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the record as a whole, the Appellate Panel affirms the hearing commissioner's order in full and makes the following conclusions of law:

CONCLUSIONS OF LAW

1. Claimant's wage loss began on January 17, 2014.

2. The Court of Appeals did not reverse the date wage loss began. The Court of Appeals simply ruled that the 340 week allowable period begins with the date of injury and not at a later date. In fact, the order states, "The record is clear Adickes did not suffer a wage loss until he was terminated from Employer. He cannot be compensated for "lost wages" while he worked and earned his usual full-time salary. Under the Appellate Panel's interpretation, Adickes would receive permanent partial disability wage loss compensation for the period he worked full-time and earned a full-time salary. We hold the appellate Panel erred by extending the timeframe and award for permanent partial disability benefits in contravention of the plain language of § 42-9-20 and the legislative intent for compensation."

3. Defendants raised their argument that benefits could not start until maximum improvement before the Court and the Court did not reverse or remand on that ground.

4. The issue of maximum medical improvement is immaterial in a wage loss claim. Bass v. Kenco 622 S.E.2d 577, and benefits can be awarded before or after maximum medical improvement. This issue for determination of benefits under § 42-9-20 is the employee's capacity or incapacity to earn the wages he was receiving at the time of injury. Keeter v. Clifton Mfg. Co., 225 S.C. 389, 392, 82 S.E.2d 520, 522 (1954).

5. The affirmed order does not contain a date of maximum medical improvement and to find such a date would be determining an issue beyond the scope of the remand from the Court of Appeals.

6. Defendants do not receive credit against the 340 weeks for the seven weeks and five days of previous temporary total disability paid. These weeks are shown on the Form 18 contained in the Commission file. The clear reading of § 42-9-20 and the application as shown in Bass v. Kenco shows that these weeks are not credited against the 340 weeks and essentially add seven weeks and five days to the award.

ORDER

IT IS THEREFORE ORDERED: The Decision and Order of the single commissioner filed in the above entitled matter on January 17, 2019 is hereby affirmed by the Appellate Panel of the South Carolina Workers' Compensation Commission.

1. Claimant is limited to 340 weeks from the date of injury March 22, 2011;

2. As such, the award beginning on January 17, 2014 is for 193 weeks as Claimant worked 147 weeks between March 22, 2011 and January 17, 2014;

3. Defendants do not receive credit for the seven weeks and five days of temporary total disability paid, and these weeks extend the period and are added to the award;

4. This makes the total award payable to Claimant 200 weeks and five days;

5. Defendants began making weekly payment of the award under § 42-17-60 when the Order of the Commission's Appellate Panel was filed and continue to make those payments. Thus, any weekly payments made since the appeal was filed shall be credited against the amount due to Claimant;

6. More than 340 weeks have elapsed since the injury so all of the weeks owed have accrued and would not be subject to commutation;

7. Pursuant to § 42-17-60 and § 34-21-20(B) interest would be due to Claimant on benefits owed between January 17, 2014 and when weekly payments were commenced at the time of appeal. No interest would be due on weeks after the date weekly payments began. The interest rate per statute was 7.50% per annum during the weeks compensation was owed yet not paid.

AND IT IS SO ORDERED!

The Honorable Avery B. Wilkerson, Jr., Chair
South Carolina Workers Compensation Commission

The Honorable T. Scott Beck
Commissioner for the Appellate Panel

The Honorable R. Michael Campbell, II
Commissioner for the Appellate Panel

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 June 20, 2019

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov

WCC File #: 1102937
Carrier File #: 002380009116WC01
Carrier Code #:
Employer FEIN #:

Claimant's Name: Barry Simmons Adickes SSN: 251-31-7784 Employer's Name: Phillips Corporation
Address: 1137 Hummingbird Lane Address: 3000 Minuteman Road
City: Rock Hill State: SC Zip: 29732 City: Andover State: MA Zip:
Home Phone: (803) 328-0160 Work Phone: Insurance Carrier: Gallagher Bassett Services
Preparer's Name: William L. Smith II Law Firm: Chappell, Smith & Arden Preparer's Phone #: 803-929-3600

A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness:** 3/22/2011
☑ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to brain, shoulders, neck, & cervical spine (Part(s) of Body Injured) on 3/22/2011 (Month/Day/Year) in North Caroli county, state of SC. Body part(s) affected are: brain, shoulders, neck, & cervical spine
2. Briefly describe how the accident occurred. Claimant injured in an on the job car accident.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/22/2011 (Month/Day/Year) in the following manner:

☑ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☑ (b) additional medical examination and treatment for: brain, shoulders, neck, & cervical spine- carrier is not providing medications prescribed by ATP.

☐ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
N/A

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

☐ 9a. ☐ A determination of permanent disability is premature at this time.

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of 2,788.46 , 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:
N/A

11. Further grounds or unusual aspects of claim:
Only issue is failure to provide treatment as per prior order. Request fines, penalties, interest, and attorney's fees.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
Dr. Howard Mandell; Dr. Jerry L. Barron; Dr. Richard Park; Piedmont Medical Center; Dr. Nicholas Tuttle; Dr. James Rentz

11b. To the best of your knowledge, did you have any prior permanent disability?
If yes, describe: N/A

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.

14. Estimated time needed for hearing:

☐ 13a. **I am filing a claim. I am not requesting a hearing at this time.**
☑ 13b. **I am requesting a hearing. A $50 fee is required.**

☐ **Mediation**
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Brooke A. Payne, Esq. **address** Payne Law Group Charleston, **on the** _____ **day of** September **20** 18 **by** ☐ **first class postage** ☐ **certified mail** ☐ **personal service.**

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

Preparer's Signature | Attorney, Title | bsmith@csa-law.com, Email | 9-20-18, Date

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

Employee's Notice of Claim and/or Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 1102937

Claimant's Name: Barry Simmons Adickes
Address: 1137 Hummingbird Lane
City: Rock Hill State: SC Zip: 29732
Home Phone: (803) 328-0160 Work Phone:
Preparer's Name: William L. Smith II

Employer's Name: Phillips Corporation
Address: 3000 Minuteman Road
City: Andover State: MA Zip:
Carrier: Fidelity & Guaranty Company
Preparer's Phone #: 803-509-5839

A claim for workers' compensation benefits is made based on the following grounds:
☑ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $704.92 2. AWW: $2,788.46 Date of Injury: 3/22/2011
3. Type of injury and body part(s): brain, shoulders and cervical spine
4. Facts in controversy:
   Defendants have been under order to provide medications at the direction of Dr. Howard Mandell for years. Defendants have routinely denied and delayed those prescriptions. Request fines, penalties and attorneys fees.
5. Legal issues involved:
   Section 42-3-175 ($500/day penalty, attorneys fee and costs); 42-3-105 (double fines/penalties); 67-614 (hearing costs); 42-9-260 (g)
6. Unusual aspects: Defendant recently suspended weekly compensation payments contrary to Order of Commissioner Bardan.
7. Witnesses (designate if expert):*
   Claimant and his spouse
8. Exhibits:
   E-mails to defense counsel regarding prescription authorizations and prescription records from pharmacy.
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
   See APA Submissions
10. Name, address, and specialty, if any, of the treating physician:
    Dr. Howard Mandell, B.A., M.D. Metrolina Neurological Associates & Diagnostic Center 200 South Herlong, Suite H, Rock Hill, SC 29732
11. Impairment rating(s); body part(s); physician and date of opinion: n/a
12. I am amending my Form 50/51 in the following manner: to request 25% penalty for illegal termination of weekly compensation benefits

☐ **Mediation**
- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Brooke A. Payne, Esq. **on the** 26 **day of** February **20** 19
address: Payne Law Group PO Box 2449 Mount Pleasant, SC 29465
by first class postage
Signature:
Email: bsmith@csa-law.com
Date of hearing: 3/13/2019
Time needed for hearing: 30 Minutes

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

PRE-HEARING BRIEF

WCC Form # 58
Revised 7/13

58

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

Barry Simmons Adickes, Claimant, vs. Philips Corporation, Employer, and Ghallager Bassett Services, Carrier/Defendants.	**WCC FILE NO: 1102937** **DECISION AND ORDER**

HEARING:	Date: April 19, 2019 Location: Columbia, South Carolina
APPEARANCES:	Claimant, Barry Simmons Adickes, represented by William L. Smith, II, Esquire Defendants, Philips Healthcare and Fidelity and Guaranty Insurance Co, represented by Brooke A. Payne, Esquire
PURPOSE OF HEARING:	Determination of issues as set forth on the Form 50, 52 and by operation of R.67-603
COMMISSIONER:	Melody L. James
FILED:	**June 19, 2019**

The delays in authorization described in the emails are confirmed by the Walgreen's Pharmacy records that show when prescriptions were filled. APA pp 128-143.

The record shows defendants started making weekly payments by way of a form 15 dated March 22, 2016. The record also shows that Commissioner Barden denied defendant's request to stop paying benefits by order dated October 2, 2018. APA p 74. Thereafter, Commissioner Barden heard the issue on remand from the Court of Appeals and issued an order on January 17, 2019 ordering defendants to pay 200 weeks and five days of benefits with any weekly payments made since the appeal was filed to be credited against that amount. A substantial number of weeks remain unpaid so there is not full payment under the current order.

Defendants filed another appeal to Commissioner Barden's order by way of form 30 filed on January 21, 2019. There is no order in the file or record allowing defendants to stop payment of the weekly benefit. The form 18 in the Commission file dated March 19, 2019 shows defendants have paid no weekly benefits since February 5, 2019.

Based on the above-stated evidence and a review of the entire record, the following are made as:

FINDINGS OF FACT

1. A form 15 was filed on March 22, 2016 starting weekly benefits.
2. There is no order in the file allowing defendants to stop payment of weekly benefits.
3. The award has not been fully paid under the current order.
4. Defendants illegally stopped payment of weekly benefits on February 5, 2019.
5. Defendants are required to reinstate weekly payments at $704.92 commencing February 6, 2019.
6. §42-17-60 provides that, "In case of an appeal from the decision of the Commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the

employer is required to make weekly payments of compensation and to provide medical treatment ordered by the Commission involved in the appeal or certification until the questions at issue have been fully determined in the accordance with the provisions of this title." Here, defendants filed a further appeal from Commissioner Barden's order for the issue that was on remand from the Court of Appeals. Thus, the questions at issue have not been fully determined in accordance with the provision of this title.

7. Since defendants illegally stopped payment of weekly benefits, they are subject to fines and penalties.
8. Defendants have been under order to provide medications directed by Dr. Mandell since August 27, 2015.
9. Despite repeated requests and demands defendants denied or failed to authorize prescription medications despite being under order to do so. The failure to authorize medications after this many requests while being under order to do so constitutes willful disobedience of an order and defendants are subject to fines for such disobedience.

CONCLUSIONS OF LAW

1. Pursuant to §42-17-60, defendants are required to make payment of weekly benefits beginning February 6, 2019, as they illegally terminated weekly compensation benefits.
2. Pursuant to §42-9-90 defendants are hereby fined ten (10%) of the total unpaid weekly disability installments, beginning February 6, 2019.
3. Pursuant to §42-3-175, defendants are fined $200.00 per day for the period of 27 days for willful disobedience of the order requiring provision of medication as prescribed by Dr. Mandell.

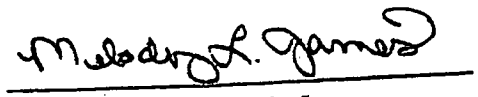
4. Pursuant to §42-3-175 defendants are required to reimburse Claimant's attorney for the $50.00 hearing filing fee.

ORDER

IT IS THEREFORE ORDERED that defendants will pay the following amounts:

1. Weekly benefits to the Claimant beginning February 6, 2019 in the amount of $704.92 per week.
2. An amount of ten (10%) percent of the unpaid disability installments (beginning February 6, 2019) to be paid to the Claimant for illegal termination of benefits pursuant to §42-9-90.
3. Fines payable to the State of South Carolina General Fund pursuant to §42-3-175 in the amount of $5,400.00.
4. $50.00 payable to Claimant's attorney, Chappell, Smith & Arden, for costs associated in enforcing the order.

AND IT IS SO ORDERED!



Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

June 19, 2019

By: Tamara Morris, Administrative Assistant to Commissioner James

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

Barry Adickes,

CLAIMANT,

vs.

Philips Healthcare,

Employer,

and

Fidelity and Guarantee Insurance Company,

Carrier

DEFENDANTS.

WCC FILE NO: 1102937

DECISION AND ORDER

Appellate Panel Review held in Columbia, South Carolina on

September 16, 2019,

Appellate Panel Decision and Order filed on November 8, 2019

Appearances: Claimant represented by William L. Smith II, Esquire
Defendants represented by Brooke A. Payne, Esquire

issue that was on remand from the Court of Appeals. Thus, the questions at issue have not been fully determined in accordance with the provision of this title.

7. Since defendants illegally stopped payment of weekly benefits, they are subject to fines and penalties.
8. Defendants have been under order to provide medications directed by Dr. Mandell since August 27, 2015.
9. Despite repeated requests and demands defendants denied or failed to authorize prescription medications despite being under order to do so. The failure to authorize medications after this many requests while being under order to do so constitutes willful disobedience of an order and defendants are subject to fines for such disobedience.

CONCLUSIONS OF LAW

1. Pursuant to §42-17-60, defendants are required to make payment of weekly benefits beginning February 6, 2019, as they illegally terminated weekly compensation benefits.
2. Pursuant to §42-9-90 defendants are hereby fined 10% of the total unpaid weekly disability installments, beginning February 6, 2019.
3. Pursuant to §42-3-175, defendants are fined $500 per day for the period of 27 days for willful disobedience of the order requiring provision of medication as prescribed by Dr. Mandell.
4. Pursuant to §42-3-175 defendants are required to reimburse claimant's attorney for the $50.00 hearing filing fee.

ORDER

IT IS THEREFORE ORDERED: The Decision and Order of the Single Commissioner filed in the above entitled matter on June 19, 2019 is hereby affirmed with amendment by the Appellate Panel of the Workers' Compensation Commission. We order the Defendants to make the following payments.

1. Weekly benefits to the claimant beginning February 6, 2019 in the amount of $704.92 per week.
2. An amount of ten (10%) of the unpaid disability installments (beginning February 6, 2019) to be paid to the Claimant for illegal termination of benefits pursuant to §42-9-90.
3. Fines payable to the State of South Carolina General Fund pursuant to §42-3-175 in the amount of $13,500.00
4. $50.00 payable to claimant's attorney, Chappell, Smith & Arden, for costs associated in enforcing the order.

AND IT IS SO ORDERED!

The Honorable T. Scott Beck
South Carolina Workers Compensation Commission

The Honorable Mike Campbell
Commissioner for the Appellate Panel

The Honorable Aisha Taylor
Commissioner for the Appellate Panel

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 November 8, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision
SCWCC No. 1102937

Related Appellate Case No. 2019-001141

Barry Adickes, Claimant, Respondent,

v.

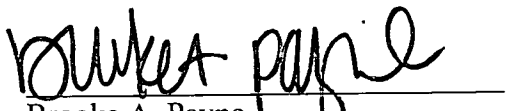
Philips Healthcare, Employer, and Fidelity & Guarantee Insurance Company, Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the Motion to Consolidate on Respondent and the SCWCC Appellate Division by depositing a copy of it in the United States Mail, postage prepaid, on **November 20, 2019**, addressed as follows:

Bill Smith
Chappell, Smith, & Arden
PO Box 12330
Columbia, SC 29211

The Honorable Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202



Brooke A. Payne
Payne Law Group, LLC.
P.O. Box 2449
Mt. Pleasant, SC 29465
(843) 810-8955
Attorney for Appellants

Payne Law Group, LLC
PO Box 2449
Mt. Pleasant, SC 29465

UNITED STATES POSTAL SERVICE
1006
29211

U.S. POSTAGE PAID
PM 2-Day
MOUNT PLEASANT, SC
29464
NOV 20 19
AMOUNT
$7.85
R2304M114150-25

PRIORITY MAIL
TRACKED INSURED

UNITED STATES POSTAL SERVICE
For Domestic and International Use
Label 107R, May 2014

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
NOV 21 2019
SC Court of Appeals

EXPECTED DELIVERY DAY: 11/22/19
USPS TRACKING® NUMBER
9505 5124 6924 9324 4094 90