

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Aisha G. Taylor, Commissioner
Susan S. Barden, Commissioner
H. Gene McCaskill, Commissioner

W.C.C. FILE NOS.: 0725221 and 0921225

APPELLATE CASE NO.: 2019-000393

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SC Court of Appeals

Deborah G. Duggans, Employee, ...APPELLANT.

v.

South Carolina Department of Mental Health, Employer, and State Accident
Fund, Carrier, ...RESPONDENTS.

RECORD ON APPEAL

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DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBERS: 0725221 and 0921225

DEBORAH G. DUGGANS, EMPLOYEE, CLAIMANT,

VERSUS

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, EMPLOYER,

AND

STATE ACCIDENT FUND, CARRIER, DEFENDANTS.

HEARING:

Held on December 14, 2017 in Columbia,
South Carolina.

APPEARANCES:

Claimant represented by Andrew N.
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Defendants represented by George D.
Gallaher, Esquire OF Speed, Seta,
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Office Box 11669, Columbia, South
Carolina 29211.

PURPOSE OF HEARING:

To determine issues raised by the filing
of Forms 50 and 51, particularly the
degree of disability which Ms. Duggans
has experienced as a result of her
compensable injuries, as well as her
entitlement to further medical benefits.

DECISION AND ORDER BY:

The Honorable Avery B. Wilkerson, Jr.,
Commissioner.

FILED:

April 25, 2018

STATEMENT OF THE CASE

On July 16, 2007, Claimant, Deborah G. Duggans, sustained compensable injuries to her arms and neck resulting from her performance of repetitive work duties incidental to her employment with the South Carolina Department of Mental Health. Following the development of symptoms produced by these injuries, her employer and its carrier, State Accident Fund, authorized Ms. Duggans' receipt of evaluation/treatment through several medical providers, including Drs. Joseph P. Jackson, Jr. of Camden Orthopaedics and John F. Johnson of Southeastern Spine Institute.

Subsequently, on December 7, 2009, Ms. Duggans sustained additional spinal injuries (back and neck) while performing duties incidental to her continued employment with the South Carolina Department of Mental Health. As this employer and the State Accident Fund similarly acknowledged liability for the consequences of the December 7, 2009 compensable accident, they subsequently: (a) commenced the payment of temporary total disability compensation effective May 3, 2010; while (b) authorizing her receipt of treatment for these spinal injury components, primarily/predominantly through Dr. Ezra B. Riber of Palmetto Pain Management, LLC.

By Form 50 dated March 6, 2017, Ms. Duggans sought: (a) a determination the consequences of her December 7, 2009 compensable accident had rendered her permanently and totally

disabled pursuant to S.C. Code Ann. Section 42-9-10 (2015); (b) the lump sum payment of her permanent disability compensation award, with apportionment of the net proceeds over her remaining life expectancy in accordance with the provisions of S.C. Code Ann. Sections 19-1-150 (1976, as amended) and 42-9-240 (1976), as well as the South Carolina Supreme Court's ruling in James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730 (2010); and (c) an award of lifetime medical benefits encompassing her spinal injury components. Shortly thereafter, per Form 51 dated April 5, 2017, Defendants limited their admission of compensability to the back (lumbar) injury component, for which they acknowledged her ongoing need for certain medical care, while: (a) denying her alleged degree of permanent disability; and (b) maintaining she was "only entitled to PPD for loss of use under . . . [Section] 42-9-30" (2015).

Although a hearing relative to this matter was initially scheduled for October 4, 2017, it was postponed to allow completion of the mediation process mandated by 8 S.C. Code Regs. 67-1802(A) (2013). When this mediation proved unsuccessful, a hearing relative to Ms. Duggans' claims (which were consolidated by consent of the parties) was held on December 14, 2017. At that time, the undersigned received testimony from Ms. Duggans. Defendants chose to rely upon the documentary evidence submitted

by the respective parties pursuant to the Administrative Procedures Act and offered no witnesses.

STIPULATIONS

At the commencement of the hearing, counsel for the respective parties stipulated:

1. The purpose of the hearing was to determine the issues raised by the filing of Forms 50 and 51, including: (a) the degree of disability which Ms. Duggans had experienced due to the consequences of her compensable injuries, particularly her spinal (back and neck) components; (b) whether the lump sum payment of her permanent disability compensation award was appropriate; and (c) Ms. Duggans' entitlement to an award of lifetime medical benefits.

2. Notice of the hearing was timely and properly served upon the parties of interest.

3. Venue, set in Richland County, was proper per S.C. Code Ann. Section 42-17-20 (1976).

5. Ms. Duggans' average weekly wage relative to each of her pending claims amounted to \$441.48, while her resulting compensation rate equaled \$294.33.

MEDICAL EVIDENCE/APA SUBMISSIONS

The following documents were submitted into evidence pursuant to the Administrative Procedures Act, without objection, by the respective parties:

<u>Exhibit No.</u>	<u>Description</u>	<u>Page Nos.</u>
APA 1:	August 27, 2017 report of Glen K. Adams, MRC, CRC, CEES of Adams & Wilkinson Associates, Inc.	1 - 11
APA 2:	Undated W.C.C. Form 20 re: W.C.C. File No. 0725221	12
APA 3:	July 17, 2017 W.C.C. Form 18 re: W.C.C. File No. 0725221	13
APA 4:	April 8, 2010 payment verification from Southeastern Spine Institute Re: Deborah Duggans	14
APA 5:	May 19, 2010 - November 21, 2017 reports/responses from Palmetto Pain Management, Inc., LLC (Dr. Ezra B. Riber, Mike Robichaud, PA, Amy J. Clark, FNP - BC, Caitlin Wood, PA, Whitney Suggs, PA and Falguni Patel, PA-C)	15 - 202
APA 6:	March 13, 2009 - September 8, 2009 reports of Dr. Joseph P. Jackson, Jr. of Camden Orthopaedic Associates	203 - 208
APA 7:	December 31, 2009 report of Dr. John F. Johnson of Southeastern Spine Institute	209 - 210
APA 8:	November 13, 2015 report from Columbia Rehabilitation, Inc.	211 - 232
APA 9:	May 7, 2008 - October 27, 2008 reports/response/notes of Dr. David E. Fulton of Moore Orthopaedics	233 - 242
APA 10:	April 8, 2009 report of Dr. M. David Redmond of Midlands Orthopedics, PA	243 - 244
APA 11:	April 8, 2009 report of Dr.	

	Martin P. Dommers, Jr. of ImageCare, LLC	245
APA 12:	May 8, 2009 report of Dr. W. Randal Westerkam of Rehabilitation and Geriatric Services, LLC	246 - 247
APA 13:	August 4, 2009 - September 8, 2009 reports of Dr. Joseph P. Jackson, Jr. of Camden Orthopaedic Associates	248 - 250
APA 14:	December 31, 2009 report of Dr. John F. Johnson of Southeastern Spine Institute	251 - 251
APA 15:	October 17, 2008 W.C.C. Form 17 re: W.C.C. File No. 0725221	253
APA 16:	August 4, 2017 - September 20, 2017 reports from Palmetto Pain Management, LLC	254 - 260

FINDINGS OF FACT

Based upon the testimony of Ms. Duggans, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, I FIND AS FACTS:

1. In 2007, Ms. Duggans developed "pain and numbness in both hands", which: (a) produced an admittedly compensable injury to her right arm; and (b) prompted her receipt of medical care, including referral to Dr. David B. Fulton of Moore Orthopaedics who "recommended surgery on the right wrist with right carpal tunnel release." Following this June 12, 2008 procedure, she: (a) continued to report "persistent weakness in her hand",

soreness of the right palm and "pain in the right arm near the elbow region"; (b) was released to resume "work without restriction" effective October 1, 2008; and (c) received a 1% impairment rating to the right upper extremity from this physician.

2. When her symptoms persisted, Ms. Duggans underwent an authorized second opinion evaluation (March 13, 2009) by Dr. Joseph P. Jackson, Jr. of Camden Orthopaedic Associates, who: (a) was apprised "the numbness and tingling in her . . . [right] hand seems to run up and down her arm to the neck and then she has pain from the neck running up and down the left arm as well"; (b) noted she was "devoted to her work"; (c) felt that while her clinical presentation was partially due to "the median nerve recovering", her presentation was also concerning for radicular symptoms; and (d) recommended obtaining updated electrodiagnostic studies, as well as an "MRI of her neck to rule out compression from a disc or cervical spondylosis stenosis or some other entity in the neck."

3. After reexamining Ms. Duggans, in light of her diagnostic test results, Dr. Jackson determined "a lot of her symptoms, especially bilateral symptoms going down into the ulnar nerve, are more typical of an early cervical radiculopathy"; (b) she did not require further carpal tunnel surgery; and (c)

assessment of her cervical symptoms by "Dr. Johnson down at Southeast Spine . . . in Charleston" was warranted.

4. Pending scheduling of this appointment, Ms. Duggans, who continued working without restriction, sustained a compensable accident on December 7, 2009. Specifically, while assisting a patient in the bathroom, she: (a) attempted to transfer him using a gait belt; (b) observed him become unsteady and begin to fall between the toilet and the wall; (c) injured herself while physically attempting to prevent his falling; and (d) reported the presence of spinal symptoms following this trauma.

5. At the time she sustained this compensable accident, Ms. Duggans was performing duties arising out of and within the course and scope of her employment as a certified nursing assistant for the South Carolina Department of Mental Health, where she had been working since 1979.

6. Approximately three weeks following this injury (December 31, 2009), she underwent an authorized evaluation by Dr. John F. Johnson of Southeastern Spine Institute, who: (a) focused his examination on her cervical symptoms; (b) noted they were "predominantly achy with a continuous sensation that runs into her shoulders and upper trapezius region. . . [with] radiating achy pain down the volar lateral aspect of her right upper extremity with numbness and pins and - needles in both palms";

(c) indicated that at that point in time she had "missed about a month of work" (which corresponds with the occurrence/impact of her December 7, 2009 accident); (d) observed the presence of "decreased range of motion to the cervical spine virtually all planes secondary to pain . . . [,] tenderness to palpation throughout her cervical spine in the paraspinal region . . . [, diminished sensation and the presence of] worsening bilateral shoulder pain and radiating pain in the right arm" in response to Spurling's maneuver; (e) felt it was "reasonable to proceed with a C6-7 CESI with cephalad flow"; and (f) concluded "the symptoms she is experiencing are likely most probably to a reasonable degree of medical certainty due to the nature of her job . . . [which had] caused or worsened her underlying condition to the extent that her body is manifesting these symptoms."

7. Several months later (May 19, 2010), Ms. Duggans began receiving treatment through Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) referenced the presence of both lumbar and cervical symptoms; (b) found her cervical range of motion was "limited particularly with right lateral rotation, but also left lateral rotation to a lesser extent"; (c) discovered her low back pain was "clearly worse with Valsalva and increase[d] . . . with forward flexion"; (d) found "returning to the upright position and extension . . . [produced] significant pain . . . , greater on the right side"; (e) indicated straight leg testing generated

"back and gluteal discomfort on the right at greater than 45 degrees"; (f) diagnosed both lumbar and cervical conditions (lumbar radicular and post traumatic facet syndrome, as well as cervical radiculopathy); and (g) recommended beginning with "transforaminal block . . . [at the] L4-5 and L5-S1 . . . [levels] on the right", while deferring "mov[ing] . . . on to the cervical region" until addressing her lumbar symptoms.

8. Inspection of treatment notes generated by Dr. Riber during the ensuing months confirms: (a) Ms. Duggans' persistent reports of both lumbar and cervical symptoms; (b) performance of several injections aimed toward addressing her low back and radiating right leg pain; (c) her regular use of prescription medication; and (d) his acknowledgement the absence of certain medication per the results of a random drug screen was "consistent with Ms. Duggans' acknowledgment that she does not take pain medication every day, but instead ingests them less frequently (in an attempt not to become dependent upon narcotic medication)" (See, Claimant's APA Exhibit 5, p. 47).

9. Review of records from this facility also indicates: (a) an attempt to focus on Ms. Duggans' complaint of neck pain on August 21, 2013 following her favorable response to a July 31, 2013 transforaminal epidural steroid injection; (b) her cervical symptoms remained a primary complaint until her lumbar pain became more problematic in February, 2014, at which time she

underwent another transforaminal epidural steroid injection involving the L4-5 and L5-S1 levels; (c) after obtaining noticeable relief from this procedure, her chief complaints again included neck pain throughout the remainder of 2014; and (d) Dr. Riber's treatment plan "continue[d] . . . to focus on medical management and interventional treatment for her chronic pain."

10. The contents of treatment notes generated from the Fall of 2014 through 2015 similarly reveal verify Ms. Duggans: (a) continued to receive intermittent lumbar transforaminal steroid injections, which provided reasonable relief; (b) likewise reported not only lumbar symptoms, but also cervical pain involving the neck and shoulders; (c) required medication adjustment, through addition of Mobic to the previous regimen (Norco and Zanaflex) to better address her symptoms; and (d) was approaching a medical plateau.

11. On November 13, 2015, Ms. Duggans completed a functional capacity evaluation, which confirmed she: (a) "put forth a consistent effort", with no evidence of symptom magnification; (b) could only "tolerate . . . occasional walking, stairclimbing, kneeling, twisting, and reaching"; (c) did not "tolerate occasional squatting or bending"; (d) was incapable of lifting/carrying more than minimal weights ("7 to 12 pounds at various heights on an occasional basis"); (e) exhibited decreased

lumbar and cervical range of motion; and (f) can only "meet the demands of limited sedentary to limited light work" activities.

12. Following completion of this testing, Ms. Duggans: (a) maintained her previous treatment routine through Palmetto Pain Management (undergoing another right transforaminal epidural steroid injection encompassing the L4-S1 levels on December 9, 2015); (b) likewise experienced consistent pain levels that reflected the benefit of these treatment modalities; (c) regularly reported both lumbar and cervical symptoms to her authorized treater; (d) received another L4-S1 injection (June 21, 2016) when the expiration of relief from the prior interventional treatment left her "counting down the days" until she could repeat the procedure; (e) was determined to have reached maximum medical improvement by Dr. Riber on August 1, 2016.

13. In this connection, pursuant to an August 1, 2016 report addendum, this treating physician verified: (a) Ms. Duggans "has typically responded well to a combination of medical management and right sided transforaminal blocks at L4-5 and L5-S1"; (b) she had also been "followed . . . for cervicalgia and right cervical radicular pain radiating into the shoulder, previously evaluated by Dr. John Johnson . . . [, which] has not required interventional treatment and is reasonably well controlled with her current medications"; (c) the limitations

identified by her functional capacity evaluation "are reasonable and therefore preclude her from returning to her previous work as a CNA"; (d) she has sustained a 17% whole person impairment due to her causally related lumbar injury component, as well as a 6% whole person impairment as a result of her cervical injury component in accordance with the applicable portions of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; (e) "Ms. Duggans will require continued medication management and interventional treatment for her lumbosacral radicular syndrome . . . [,while] her cervical injury . . . [would continue to be treated] with medical management"; and (f) this treatment protocol would involved "monthly assessment to monitor her medications, which will likely require adjustments in the future", as well as performance of a "transforaminal epidural steroid injections at L4-5 and L5-S1" intermittently.

14. After reaching this medical plateau, Ms. Duggans: (a) continued to experience spinal symptoms consistent with her well documented pattern; (b) received three medications in tablet form (Norco, Zanaflex and Mobic), as well as "Tps Cream"; (c) required another (January 11, 2017) injection; (d) reported (February 2, 2017) that this procedure afforded sufficient relief to allow reduction in her Norco (hydrocodone) intake ("she has been taking Norco twice a day for the first 2 weeks, once a day third week, and has not required any lately."); (e) reiterated her "as needed"

use of this narcotic medication on April 3, 2017 (which her medical provider noted as an appropriate explanation for the fact "hydrocodone [was] not detected" in her prior urine drug screen; (f) similarly advised Dr. Riber's physician's assistant (September 5, 2017) that she had "not required taking medications [the] . . . last 4-5 days since her pain was tolerable and [she] . . . reserves medication for severe pain"; (g) produced a September 5, 2017 urine sample that, consistent with this acknowledgement, did not detect the presence of hydrocodone; and (h) was uniformly determined to be "compliant" with treatment throughout this period.

15. Despite her repeatedly advising Dr. Riber and his staff as to this "as needed" medication usage, Defendants attempted to question Ms. Duggans' compliance with medical care. In addressing this issue, Dr. Riber, through questionnaire responses dated November 29, 2017, confirmed: (a) as Ms. Duggans "has been instructed to use each of [her] . . . medication 'prn' (as needed), . . . there is no . . . expectation any of these medications are being ingested on a daily basis"; (b) it is not "unexpected that these medications may not be detected through urine drug screening, which only measures ingestion during finite periods prior to the time a sample is obtained"; c) "Ms. Duggans' 'prn' (as needed) use of these medications is consistent, as opposed to noncompliant, with her established treatment regimen";

and (d) his prior long term treatment recommendations "remain . . . viable/in effect" at this time.

16. On August 21, 2017, Ms. Duggans was evaluated by Glen K. Adams, MRC, CRC, CEES of Adams & Wilkinson Associates, Inc. for the purpose of determining her vocational status/potential. Based upon this assessment, which included not only clinical interview, but also testing aimed toward verifying educational/vocational capacities, Mr. Adams determined/observed: (a) Ms. Duggans continues to experience low back pain that also involves her right leg, as well as neck pain; (b) use of prescription medication causes her to sleep; (c) her diminished ability to perform household chores (nature and duration); (d) notwithstanding her graduation from high school, she performed below this level on educational testing; (e) her previous relevant work history was classified in the "Medium-Heavy" physical demand level; (f) this work history had also been restricted to "semi-skilled" jobs; (g) her vocational profile contained ". . . [n]o positive factors. . . that will benefit her in future employment."

17. Based upon these factors, in light of all pertinent medical and vocational data, Mr. Adams concluded: (a) ". . . [n]egative factors in her profile include her age of 60, indicating a reduced capacity to adapt to new work situations and environments[,] . . . her entire relevant work history as a CNA,

with limited transferability to alternate occupations[,] . . . and an absence of skills relevant to 'sedentary' employment . . . and ongoing pain and dysfunction impacting the performance of her daily activities"; (b) she "is unable to resume her past work based on the FCE results"; (c) Ms. Duggans "is unable to resume any similar employment, such as work as a home companion, without being able to function in a full range of 'light' work activities"; (d) a "transferable skills analysis . . . [did not reveal any] transferable occupations compatible with Ms. Duggans' vocational profile"; (e) "[s]he does not possess the computer skills or work experience to successfully compete for any remaining clerical or customer service employment in a 'light' capacity"; (f) ". . . [n]o stable market remains that will enable Ms. Duggans to resume competitive employment"; (g) she "is classified as totally vocationally disabled as a result of injuries sustained on July 16, 2007 and December 7, 2009 while working for the SCDMH"; and (h) as "the majority of her limitations result from her second injury . . . [,] Ms. Duggans would also be classified as totally vocationally disabled from the impact of her December 7, 2009 injury alone."

18. As confirmed by her clear and honest hearing testimony, Ms. Duggans: (a) not only enjoyed, but also obtained great satisfaction from working with patients at the mental health facility; (b) despite the presence of ongoing cervical symptoms

identified by Dr. Jackson, she had resumed/maintained performance of full duty work activity until experiencing the December 7, 2009 accident; (c) this trauma not only created lumbar symptoms, but also aggravated/increased the previously-diagnosed cervical symptoms; and (d) while her lumbar symptoms had been the focus of Dr. Riber's treatment, she continued to encounter persistent cervical symptoms that favorably responded to ongoing medical pain management.

19. Additionally, Ms. Duggans explained the constellation of causally related symptoms remained materially problematic, to the extent she: (a) was only able to obtain intermittent sleep; (b) could no longer lift more than light weights, a deficiency which was wholly inconsistent with the basic demands (including lifting/moving patients) of her long time employment with the South Carolina Department of Mental Health; (c) although she continued to attempt certain household activities (mopping, sweeping, cooking, etc.), she has substantially decreased her performance of these activities (in terms of both frequency and duration); (d) has great difficulty washing her hair and maneuvering in/out of her tub; (e) likewise minimizes her pursuit of several recreational activities; (f) has difficulty with extended driving and standing/walking, as well as stairclimbing had become difficult; and (g) was obliged to successfully pursue

an award of Social Security disability benefits due to these injury consequences.

20. After thoroughly reviewing all evidence of record and observing Ms. Duggans during the course of the hearing, I specifically find: (a) her testimony was credible and wholly consistent with the medical evidence; (b) she continues to experience significant spinal symptoms, predominantly emanating from the lumbar injury component, which negatively impact upon her ability to engage in various activities of daily living; (c) these causally related symptoms have likewise prohibited continuance of her lengthy employment with the South Carolina Department of Mental Health; (d) both her physical presentation and description of the material consequences of her compensable injuries validate the results of her functional capacity evaluation, as well as Dr. Riber's opinion that she is most probably incapable of performing more than the limited sedentary/limited light work activities identified by this reliable testing; and (e) the unrebutted opinions of Dr. Riber, her long time authorized treater, warrant substantial weight.

21. I also find: (a) Dr. Riber's consistent references to Ms. Duggans' cervical symptoms conform with her testimony relative to the particular aspects of this injury component; (b) she has uniformly received medical pain management for these cervical symptoms, in tandem with medical care directed toward

her lumbar injury component, through Dr. Riber since 2010; and (c) her receipt of this extended course of care reflects the State Accident Fund's acknowledgement these symptoms were the product of her admittedly compensable injuries.

22. I further find the vocational prognosis offered by Mr. Adams to be especially appropriate, as: (a) his opinions are founded upon uncontradicted medical findings (including the physical/functional impact of Ms. Duggans' spinal pathology); (b) she is clearly physically incapable of sustaining more than limited sedentary to limited light work activities; (c) the nature/degree of her causally related symptoms (and resulting physical limitations) unquestionably prohibit a return to any previous forms of employment; (d) this inability to resume gainful employment results from not only the combination of her lumbar and cervical injury components, but also the impact of her lumbar injury component alone; and (e) Ms. Duggans will obviously be required to seek jobs for which a reasonably stable market does not exist.

23. I consequently find: (a) the consequences of Ms. Duggans' compensable injuries affect multiple parts of her body (back, right leg and neck); (b) the evidence establishes she has unquestionably been rendered permanently and totally disabled by the combined effects of these multiple injury components; (c) she has likewise experienced a 50%(+) permanent disability to (loss

of use of) her back as a result of the consequences of her compensable injuries; (d) Ms. Duggans has been rendered permanently and totally disabled, through both a loss of earning capacity and 50%(+) permanent disability to the back, based upon the symptoms/pathology/limitations produced by her lumbar injury component alone, regardless of the documented dysfunction attributable to her cervical injury component; and (e) there is no realistic expectation that her causally related conditions will improve to the extent that she will ever be able to sustain meaningful work activities in the future.

24. The medical treatment, evaluations, medications, evaluative procedures, interventional treatment, imaging studies, etc. which Ms. Duggans has heretofore received/undergone as a result of her compensable injury components have been reasonable, medically necessary and tended to lessen her ultimate period of disability. In this connection, I also find: (a) Ms. Duggans continues to require ongoing medical modalities of the nature identified by Dr. Riber as a result of her causally related symptoms/pathology; (b) her receipt of these various treatment modalities is reasonable and medically necessary given the nature/degree of her causally related pathology; and (c) assuming *arguendo*, the cervical symptoms were not attributable, in part to the consequences of Ms. Duggans' December 7, 2009 compensable accident, her receipt of causally related treatment modalities

for this injury component are nonetheless reasonable, medically necessary and geared toward lessening the disability produced by her July 16, 2007 compensable injury.

25. I finally find: (a) Ms. Duggans has reasonably requested the lump sum payment of her permanent disability compensation award; (b) there is no indication that she cannot adequately manage or appropriately use these funds; and (c) the record is devoid of any evidence which indicates or implies a lump sum payment in this instance, which involves less than 100 weeks of compensation, would be contrary to Ms. Duggans' best interests.

CONCLUSIONS OF LAW

IN VIEW OF THESE FINDINGS OF FACT, I CONCLUDE AS MATTERS OF LAW:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On July 16, 2007, Ms. Duggans, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2015), sustained compensable injuries to her right arm and back (neck) within the meaning of S.C. Code Ann. Section 42-1-160 (2015), while performing duties arising out of and within the course and scope of her employment with the South Carolina Department of Mental Health, an employer within the meaning of S.C. Code Ann. Section

42-1-140 (1976). After resuming full duty work activities, Ms. Duggans sustained additional injuries to her back (lumbar and cervical) within the meaning of Section 42-1-160 on December 7, 2009 while performing duties arising out of and within the course and scope of her employment with the South Carolina Department of Mental Health.

3. As previously noted, the reliable evidence of record verifies that following her December 7, 2009 compensable trauma, Ms. Duggans: (a) developed lumbar symptoms that have necessitated her receipt of extended treatment through Dr. Riber, including multiple interventional procedures in conjunction with use of several prescription medications; (b) also consistently reported with cervical symptoms that were noticeably impacted by this trauma; (c) was forced to seek retirement status due to her physical incapacity to resume the duties incidental to her long time employment with the South Carolina Department of Mental Health; (d) has continued to experience symptoms that materially/negatively affect her ability to engage in various activities of daily living; and (e) has been appropriately/reasonably restricted, per a valid functional capacity evaluation endorsed by Dr. Riber, to the performance of limited sedentary to limited light demand activities.

4. "[W]here an injury is confined to a scheduled member of the body, the employee is limited to the scheduled compensation

fixed in the statute." Moss v. Davey Tree Expert Company, 245 S.C. 127, 139 S.E. 2d 532, 535 (1964). "However, if the effects of the loss of the member extend to other parts of the body and interfere with their efficiency, the claimant. . . [has] the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section." Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E. 2d 457, 459 (Ct. App. 1996); See also, Simmons v. City of Charleston, 349 S.C. 64, 562 S.E. 2d 476, 482 (2002) ("All that is required . . . [to proceed under the general disability statutes] is that the injury to a scheduled member also affects another body part.").

5. "Under Workers' Compensation Law 'total disability' does not require complete, abject helplessness." McCollum v. Singer Co., 300 S.C. 103, 386 S.E. 2d 471, 474 (Ct. App. 1999); Eaddy v. Smurfit-Stone Container Corporation, 355 S.C. 154, 584 S.E. 2d 390, 395 (Ct. App. 2003). Rather, this condition amounts to the "inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E. 2d 812, 817 (1961); Stephenson v. Rice Services, Inc., 323 S.C. 113, 473 S.E. 2d 699, 702 (1996).

6. "Disability is a relative term and must be related to the occupation of the claimant." Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 88 S.E. 2d 581, 585 (1955). In view of this fact, the nature of Ms. Duggans' prior employment is particularly relevant to the assessment of her degree of residual permanent disability under the general disability model.

7. In this instance, the relevant evidence confirms: (a) the consequences of Ms. Duggans' December 7, 2009 compensable accident affect multiple body parts; (b) the combination of impairments/limitations stemming from her compensable injury components (especially the back and right leg) prohibit her from resuming the types of work activities she has performed throughout her adult life; (c) her functional limitations, as validated by Dr. Riber, are wholly inconsistent with the physical demands of her relevant past employment; and (d) in view of these undisputed facts, as well as the uncontradicted opinions of Mr. Adams, no reasonably stable market exists (in terms of quality, dependability or quantity of employment options) for the types of services which Ms. Duggans is capable of providing/sustaining.

8. Based upon these facts, I conclude Mr. Duggans: (a) has sustained a 50%(+) permanent partial disability to (loss of use of) her back within the meaning of S.C. Code Ann. Section 42-9-30(21)(2015) as a result of her December 7, 2009 compensable accident; (b) this degree of residual disability to the back per

Section 42-9-30 (21) exceeds 50% regardless of the presence of her neck injury component; (c) she has likewise been rendered permanently and totally disabled within the meaning of Section 42-9-10 by the combined consequences of her December 7, 2009 compensable injuries, particularly the back and right leg symptoms; and (d) the nature/degree of the back (lumbar) injury component resulting from this injury (affecting both her back and right leg) are sufficient to, in and of themselves, produce a total loss of earning capacity warranting an award of permanent and total disability compensation per Section 42-9-10.

9. Defendants are financially responsible for: (a) the medical treatment, evaluations, medications, evaluative procedures, surgical procedures, physical therapy, etc. which Ms. Duggans has heretofore received/undergone through any authorized medical providers due to the consequences of her July 16, 2007 compensable accident, as these modalities were reasonable, medically necessary and tended to lessen the period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (2015); and (b) the medical treatment, evaluations, medications, evaluative procedures, interventional procedures, physical therapy, etc. which she has heretofore received/undergone through her authorized medical providers as a result of her December 7, 2009 compensable accident, as these modalities were likewise

reasonable, medically necessary and continued to lessen her period of disability within the meaning of Section 42-15-60.

10. I also conclude: (a) Defendants shall remain financially responsible for the provision of lifetime medical benefits as to all causally related injury components stemming from the December 7, 2009 accident per this statute; (b) her receipt of these treatment modalities is reasonable and medically necessary; and (c) she is similarly entitled to continued/ongoing receipt of medical modalities for any residual cervical symptoms that are attributable to the consequences of her July 16, 2007 compensable accident per Section 42-15-60.

11. I further conclude inspection of this Commission's disability compensation payment record relative to Ms. Duggans' 2009 claim confirms: (a) she will have received 419 weeks of temporary total disability compensation through May 13, 2018; (b) as her permanent disability award involves less than 100 weeks, no commutation is warranted; and (c) Ms. Duggans is entitled to receive a lump sum payment in the amount of \$23,840.73.

12. Pursuant to Mr. Duggans' request, this lump sum payment shall be allocated in the following fashion: a) the sum of \$5,000.00 to Andrew N. Safran, Esquire as attorney fees pursuant to 8 S.C. Code Regs. 67-1205(C)(1); b) the sum of \$1,871.55 to this attorney as reimbursement for litigation expenses pursuant to 8 S.C. Code Regs. 67-1206; and (c) the sum of \$16,969.18 to

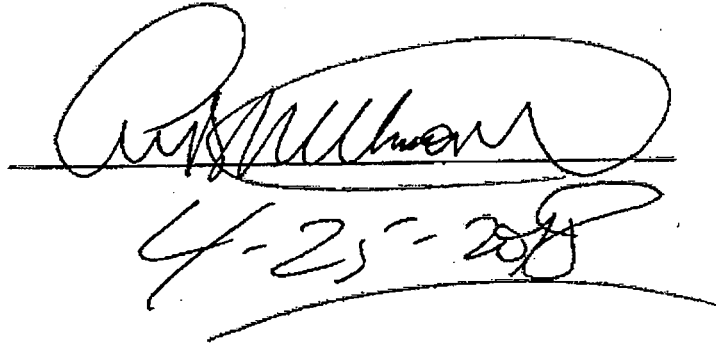
Ms. Duggans as payment for permanent disability for a period of 1,182.48 weeks at the rate of \$14.35 per week, commencing on May 14, 2018, pursuant to the provisions of S.C. Code Ann. Sections 19-1-150 (1976, as amended) and 42-9-240 (2015), as well as the decisions of the South Carolina Supreme Court in James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730 (2010); and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

AWARD

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants shall: (a) pay Ms. Duggans continued weekly disability compensation through May 13, 2018; (b) expeditiously deliver a check in the amount of \$23,840.73 to her counsel in satisfaction of this Commission's permanent disability compensation award; (c) accept financial responsibility for all causally related medical modalities heretofore provided/prescribed by any authorized physicians, specialists, facilities, etc. in connection with the treatment of all compensable injury components stemming from Ms. Duggans' respective compensable injuries; d) similarly authorize Ms. Duggans' receipt of lifetime medical care for all causally related conditions arising from the December 7, 2009 compensable accident, including, but not limited to, authorization of all causally related treatment modalities provided/prescribed by Dr. Riber per Section 42-15-60 in view of her permanent and total

disability status; and (e) accept financial responsibility for any residual effects of the cervical injury component attributable to her July 16, 2007 compensable injury.

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 Deborah Hutto on April 25, 2018

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC
ATTORNEYS AT LAW

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LILY D. WILKERSON (GA & FL)

∞
GEORGE D. GALLAGHER (SC), of counsel
ROBERT E. HORNER (SC & NC), of counsel

May 9, 2018

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

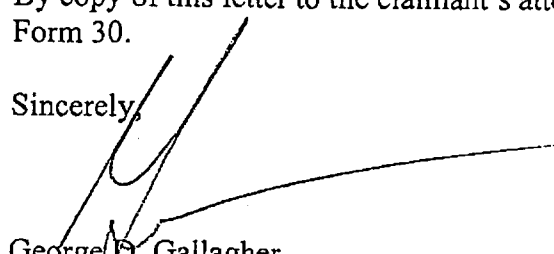
RE: *Deborah Duggans v SC Department of Mental Health*
WCC No.: 0921225
Claim No.: 2009-4965
DOA: 12/7/09
Our File No.: 1200-0134

Dear Ms. Bracy:

Enclosed for filing are the original and 8 copies of a Form 30 with addendum, 3 copies of the Decision and Order of the Single Commissioner and a check in the amount of \$150.00 to cover the filing fee. Please return a stamped copy of the Form 30 to me in the enclosed stamped envelope.

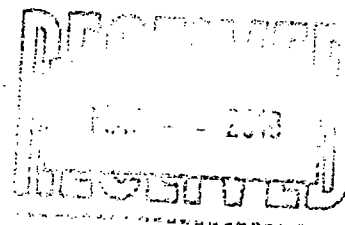
By copy of this letter to the claimant's attorney, Andy Safran, Esquire, I am serving him with the Form 30.

Sincerely,


George D. Gallagher

GDG/ecs
Enclosures

cc: Andy Safran, Esquire (w/encl)
The Honorable Avery B. Wilkerson, Jr. (w/encl)
April Edwards (w/encl)





Claimant's Name: Deborah Duggans SSN: 251-08-9065 Employer's Name: SCDMH
Address: 1-A Bradley Court Address: 2414 Bull Street
City: Columbia State: SC Zip: 29203 City: Columbia State: SC Zip: 29202
Home Phone: _____ Work Phone: () - Insurance Carrier: State Accident Fund
Date of Injury: 12/7/09
Preparer's Name: George D. Gallagher, Esquire Law Firm: Speed, Seta, Martin, Trivett & Stubley, LLC Preparer's Phone #: (803) 748-2919

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: 12/7/09

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

See attached Addendum.

(Check one) Oral argument ☒ is requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

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 Andy Safran, Esquire
Address P O Box 12089, Columbia SC 29211 on the 9th day of May 2018, by ☒ first class postage ☐ certified mail ☐ personal service.

Preparer's Signature: [Signature] Title: Attorney for Defendants Email: ggallagher@speed-seta.com Date: May 9, 2018

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

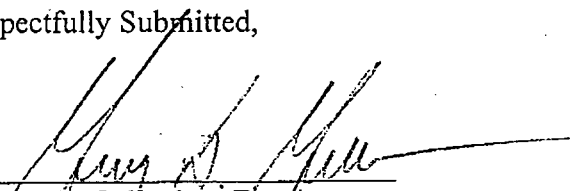
Deborah Duggans v. SC Department of Mental Health
WCC No.: 0921225

FORM 30 ADDENDUM

The Defendants/Appellants herein appeal the trial Commissioner's findings and conclusions based on the followings exceptions for judicial review by the Full Commission:

- 1) Did the Hearing Commissioner err in his calculation of the Claimant's net lump sum award on WCC Claim # 0921225 by failing to take into account a credit or offset for benefits paid on a prior claim against Defendants (WCC Claim # 0725221)?
- 2) Did the Hearing Commissioner err in awarding Claimant greater than 500 weeks of benefits for successive claims within the same employment?

Respectfully Submitted,


George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stublely, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919
Attorneys for the Employer/Carrier

Columbia, South Carolina

May 9, 2018

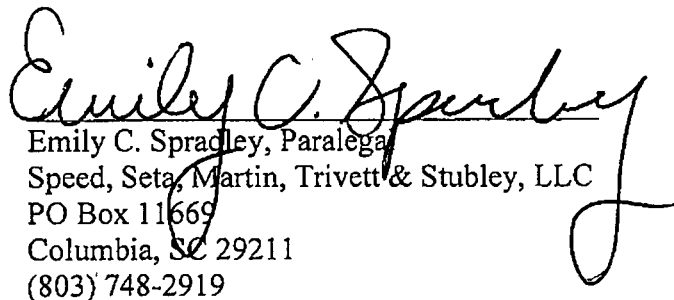
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing WCC Form 30, Request for Commission Review, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 9 day of May, 2018.

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

The Honorable Avery B. Wilkerson, Jr.
Commissioner
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Andy Safran, Esquire
Andrew N. Safran, LLC
P O Box 12089
Columbia SC 29211


Emily C. Spradley, Paralegal
Speed, Seta, Martin, Trivett & Stuble, LLC
PO Box 11669
Columbia, SC 29211
(803) 748-2919

Attorneys for Defendants

RECEIVED

MAR 07 2019

APPELATE PANEL

SC Court of Appeals

**DECISION AND ORDER
OF THE FULL
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBERS: 0725221 and 0921225**

DEBORAH G. DUGGANS, EMPLOYEE, CLAIMANT/RESPONDENT

VERSUS

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH, EMPLOYER,

AND

STATE ACCIDENT FUND, CARRIER, DEFENDANTS/APPELANTS.

Appellant Panel Review held in Columbia,
South Carolina on September 18, 2018 per notices
timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed

February 5, 2019

APPEARANCES:

Claimant/Respondent represented by
Andrew N. Safran, Esq. of Columbia, South Carolina

Employer/Defendants/Appellants represented by
David Hill Keller, Esq. of Greenville, South Carolina

STATEMENT OF THE CASE

This matter comes before the Full South Carolina Workers' Compensation Commission based on the petition of the Defendants appealing an Order of Commissioner Avery B. Wilkerson, Jr. dated April 25, 2018. It appears from the record the claimant suffered two injuries by accident while in the employ of the South Carolina Department of Mental Health.

Respondent initially alleged right carpal tunnel syndrome due to repetitive trauma on July 16, 2007. She also alleged cervical radiculopathy as a result of the July 2007 injury. Appellants provided medical care and treatment in accordance with Title 42, first with Dr. David B. Fulton and subsequently with Dr. Joseph P. Jackson, Jr. On October 1, 2008, Dr. Fulton placed the Respondent at maximum medical improvement for her right carpal tunnel syndrome and assigned a 1% impairment rating. Later, on September 8, 2009, Dr. Jackson recommended Respondent undergo an evaluation by Dr. John F. Johnson at Southeastern Spine for her continuing cervical spine complaints.

While the referral was pending, the Respondent alleged additional injuries to the cervical and lumbar spines as a result of a work-related injury on December 7, 2009. Appellants subsequently authorized the spine evaluation with Dr. Johnson who recommended physical therapy and medications. Thereafter the Appellants provided further treatment for both the cervical and lumbar spine with Dr. Ezra B. Rieber of Palmetto Pain Management with included intermittent injections and medication on an as needed/p.r.n. basis.

Ultimately on August 1, 2016, Dr. Rieber placed Respondent at maximum medical improvement assigning a 17% impairment rating to the whole person for the lumbar spine injury

and 6% impairment rating to the whole person for the cervical spine injury. At the hearing the parties agreed that Respondent was at maximum medical improvement on the date she was released by Dr. Rieber, August 1, 2016.

At the time the Appellants were providing medical care and treatment to the claimant, and they also paid the claimant temporary total disability in accordance with Title 42. First, the Appellants paid temporary total disability compensation from June 13, 2008 to October 13, 2008 totaling 17.5714 weeks of benefits as a result of the July 2007 injury. Appellant was also paid temporary total disability compensation from May 3, 2010 to July 9, 2018 totaling 427.1428 weeks of benefits as a result of the December 7, 2009 injury.

When combining the two claims, Appellants have paid the Respondent 444.7142 weeks of temporary total disability compensation totaling in excess of \$130,000.00.

Following Respondent's placement at maximum medical improvement, her attorney filed for a hearing alleging total and permanent disability under Section 42-9-10, or alternatively under Section 42-9-30. Respondent also requested any permanent benefits be paid in a lump sum pursuant to Section 42-9-301. Respondent also requested lifetime medical benefits for her injuries.

Appellants contended that Respondent should be limited to an award for partial disability to the spine and right arm under Section 42-9-30, the Respondent was not entitled to lifetime medical benefits, and any award should take into account a credit for the total weeks of temporary total disability compensation already paid claimant including the weeks paid since maximum medical improvement as of August 2016.

At the hearing on December 14, 2017, the parties agreed to consolidate the claimant's 2007 and 2009 claims into one hearing to address all issues. By Decision and Order dated April 25, 2018, Commissioner Wilkerson determined Respondent was permanently and totally disabled under Section 42-9-30(21) due to a loss of use of spine in excess of 50%. Commissioner Wilkerson further determined that Respondent was totally and permanently disabled under Section 42-9-10 due to a total loss of earning capacity and the combined results of her injuries from the December 7, 2009 accident including the fact that she suffered disability to multiple body parts. Commissioner Wilkerson ordered the Appellants to provide lifetime medical benefits to the claimant for her lumbar and cervical spine conditions. The Commissioner also awarded the claimant the remainder of disability compensation award be paid in a lump sum. He determined that the lump sum was in Respondent's best interest and therefore appropriate under Section 42-9-301.

Finally, Commissioner Wilkerson concluded Respondent would have received only 419 weeks of disability as of May 13, 2018, only considering the weeks paid following the 2009 date of injury. He did not include the period of temporary total disability compensation for the 2007 injury even though the 2007 and 2009 injuries both included the cervical spine and despite the fact claimant agreed to a consolidate the respective claims for hearing purposes. He also determined that no commutation was warranted of the lump sum payment on the primary basis that the award was less than 100 weeks and was therefore to be paid in an uncommuted/undiscounted lump sum award in the amount of \$23,840.73, representing 81 weeks of benefits undiscounted at Respondent's compensation rate of \$294.33.

Commissioner Wilkerson's Order made the following findings:

FINDINGS OF FACT

Based upon the testimony of Ms. Duggans, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission file relative to this claim, **I FIND AS FACTS:**

1. In 2007, Ms. Duggans developed "pain and numbness in both hands", which: (a) produced an admittedly compensable injury to her right arm; and (b) prompted her receipt of medical care, including referral to Dr. David B. Fulton of Moore Orthopaedics who "recommended surgery on the right wrist with right carpal tunnel release." Following this June 12, 2008 procedure, she: (a) continued to report "persistent weakness in her hand", soreness of the right palm and "pain in the right arm near the elbow region"; (b) was released to resume "work without restriction" effective October 1, 2008; and (c) received a 1% impairment rating to the right upper extremity from this physician.

2. When her symptoms persisted, Ms. Duggans underwent an authorized second opinion evaluation (March 13, 2009) by Dr. Joseph P. Jackson, Jr. of Camden Orthopaedic Associates, who: (a) was apprised "the numbness and tingling in her . . . [right] hand seems to run up and down her arm to the neck and then she has pain from the neck running up and down the left arm as well"; (b) noted she was "devoted to her work"; (c) felt that while her clinical presentation was partially due to "the median nerve recovering", her presentation was also concerning for radicular symptoms; and (d) recommended obtaining updated electrodiagnostic

studies, as well as an "MRI of her neck to rule out compression from a disc or cervical spondylosis stenosis or some other entity in the neck."

3. After reexamining Ms. Duggans, in light of her diagnostic test results, Dr. Jackson determined "a lot of her symptoms, especially bilateral symptoms going down into the ulnar nerve, are more typical of an early cervical radiculopathy"; (b) she did not require further carpal tunnel surgery; and (c) assessment of her cervical symptoms by "Dr. Johnson down at Southeast Spine . . . in Charleston" was warranted.

4. Pending scheduling of this appointment, Ms. Duggans, who continued working without restriction, sustained a compensable accident on December 7, 2009. Specifically, while assisting a patient in the bathroom, she: (a) attempted to transfer him using a gait belt; (b) observed him become unsteady and begin to fall between the toilet and the wall; (c) injured herself while physically attempting to prevent his falling; and (d) reported the presence of spinal symptoms following this trauma.

5. At the time she sustained this compensable accident, Ms. Duggans was performing duties arising out of and within the course and scope of her employment as a certified nursing assistant for the South Carolina Department of Mental Health, where she had been working since 1979.

6. Approximately three weeks following this injury (December 31, 2009), she underwent an authorized evaluation by Dr. John F. Johnson of Southeastern Spine Institute, who: (a) focused his examination on her cervical symptoms; (b) noted they were "predominantly achy with a continuous sensation that runs into her shoulders and upper trapezius region. . . [with]

radiating achy pain down the volar lateral aspect of her right upper extremity with numbness and pins and -- needles in both palms”; (c) indicated that at that point in time she had “missed about a month of work” (which corresponds with the occurrence/impact of her December 7, 2009 accident); (d) observed the presence of “decreased range of motion to the cervical spine virtually all planes secondary to pain . . . [,] tenderness to palpation throughout her cervical spine in the paraspinal region . . . [, diminished sensation and the presence of] worsening bilateral shoulder pain and radiating pain in the right arm” in response to Spurling’s maneuver; (e) felt it was “reasonable to proceed with a C6-7 CESI with cephalad flow”; and (f) concluded “the symptoms she is experiencing are likely most probably to a reasonable degree of medical certainty due to the nature of her job . . . [which had] caused or worsened her underlying condition to the extent that her body is manifesting these symptoms.”

7. Several months later (May 19, 2010), Ms. Duggans began receiving treatment through Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who: (a) referenced the presence of both lumbar and cervical symptoms; (b) found her cervical range of motion was “limited particularly with right lateral rotation, but also left lateral rotation to a lesser extent”; (c) discovered her low back pain was “clearly worse with Valsalva and increase[d] . . . with forward flexion”; (d) found “returning to the upright position and extension . . . [produced] significant pain . . . , greater on the right side”; (e) indicated straight leg testing generated “back and gluteal discomfort on the right at greater than 45 degrees”; (f) diagnosed both lumbar and cervical conditions (lumbar radicular and post traumatic facet syndrome, as well as cervical radiculopathy); and (g) recommended beginning with “transforaminal block . . . [at the] L4-5 and

L5-S1 . . . [levels] on the right”, while deferring “mov[ing] . . . on to the cervical region” until addressing her lumbar symptoms.

8. Inspection of treatment notes generated by Dr. Riber during the ensuing months confirms: (a) Ms. Duggans’ persistent reports of both lumbar and cervical symptoms; (b) performance of several injections aimed toward addressing her low back and radiating right leg pain; (c) her regular use of prescription medication; and (d) his acknowledgement the absence of certain medication per the results of a random drug screen was “consistent with Ms. Duggans’ acknowledgment that she does not take pain medication every day, but instead ingests them less frequently (in an attempt not to become dependent upon narcotic medication)” (See, Claimant’s APA Exhibit 5, p. 47).

9. Review of records from this facility also indicates: (a) an attempt to focus on Ms. Duggans’ complaint of neck pain on August 21, 2013 following her favorable response to a July 31, 2013 transforaminal epidural steroid injection; (b) her cervical symptoms remained a primary complaint until her lumbar pain became more problematic in February, 2014, at which time she underwent another transforaminal epidural steroid injection involving the L4-5 and L5-S1 levels; (c) after obtaining noticeable relief from this procedure, her chief complaints again included neck pain throughout the remainder of 2014; and (d) Dr. Riber’s treatment plan “continue[d] . . . to focus on medical management and interventional treatment for her chronic pain.”

10. The contents of treatment notes generated from the Fall of 2014 through 2015 similarly reveal verify Ms. Duggans: (a) continued to receive intermittent lumbar transforaminal steroid injections, which provided reasonable relief; (b) likewise reported not only lumbar

symptoms, but also cervical pain involving the neck and shoulders; (c) required medication adjustment, through addition of Mobic to the previous regimen (Norco and Zanaflex) to better address her symptoms; and (d) was approaching a medical plateau.

11. On November 13, 2015, Ms. Duggans completed a functional capacity evaluation, which confirmed she: (a) “ put forth a consistent effort”, with no evidence of symptom magnification; (b) could only “tolerate . . . occasional walking, stairclimbing, kneeling, twisting, and reaching”; (c) did not “tolerate occasional squatting or bending”; (d) was incapable of lifting/carrying more than minimal weights (“7 to 12 pounds at various heights on an occasional basis”); (e) exhibited decreased lumbar and cervical range of motion; and (f) can only “meet the demands of limited sedentary to limited light work” activities.

12. Following completion of this testing, Ms. Duggans: (a) maintained her previous treatment routine through Palmetto Pain Management (undergoing another right transforaminal epidural steroid injection encompassing the L4-S1 levels on December 9, 2015); (b) likewise experienced consistent pain levels that reflected the benefit of these treatment modalities; (c) regularly reported both lumbar and cervical symptoms to her authorized treater; (d) received another L4-S1 injection (June 21, 2016) when the expiration of relief from the prior interventional treatment left her “counting down the days” until she could repeat the procedure; (e) was determined to have reached maximum medical improvement by Dr. Riber on August 1, 2016.

13. In this connection, pursuant to an August 1, 2016 report addendum, this treating physician verified: (a) Ms. Duggans “has typically responded well to a combination of medical

management and right sided transforaminal blocks at L4-5 and L5-S1"; (b) she had also been "followed . . . for cervicalgia and right cervical radicular pain radiating into the shoulder, previously evaluated by Dr. John Johnson . . . [, which] has not required interventional treatment and is reasonably well controlled with her current medications"; (c) the limitations identified by her functional capacity evaluation "are reasonable and therefore preclude her from returning to her previous work as a CNA"; (d) she has sustained a 17% whole person impairment due to her causally related lumbar injury component, as well as a 6% whole person impairment as a result of her cervical injury component in accordance with the applicable portions of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition; (e) "Ms. Duggans will require continued medication management and interventional treatment for her lumbosacral radicular syndrome . . . [,while] her cervical injury . . . [,would continue to be treated] with medical management"; and (f) this treatment protocol would involved "monthly assessment to monitor her medications, which will likely require adjustments in the future", as well as performance of a "transforaminal epidural steroid injections at L4-5 and L5-S1" intermittently.

14. After reaching this medical plateau, Ms. Duggans: (a) continued to experience spinal symptoms consistent with her well documented pattern; (b) received three medications in tablet form (Norco, Zanaflex and Mobic), as well as "Tps Cream"; (c) required another (January 11, 2017) injection; (d) reported (February 2, 2017) that this procedure afforded sufficient relief to allow reduction in her Norco (hydrocodone) intake ("she has been taking Norco twice a day for the first 2 weeks, once a day third week, and has not required any lately."); (e) reiterated her "as needed" use of this narcotic medication on April 3, 2017 (which her medical provider noted

as an appropriate explanation for the fact “hydrocodone [was] not detected” in her prior urine drug screen; (f) similarly advised Dr. Riber’s physician’s assistant (September 5, 2017) that she had “not required taking medications [the] . . . last 4-5 days since her pain was tolerable and [she] . . . reserves medication for severe pain”; (g) produced a September 5, 2017 urine sample that, consistent with this acknowledgement, did not detect the presence of hydrocodone; and (h) was uniformly determined to be “compliant” with treatment throughout this period.

15. Despite her repeatedly advising Dr. Riber and his staff as to this “as needed” medication usage, Defendants attempted to question Ms. Duggans’ compliance with medical care. In addressing this issue, Dr. Riber, through questionnaire responses dated November 29, 2017, confirmed: (a) as Ms. Duggans “has been instructed to use each of [her] . . . medication ‘prn’ (as needed), . . . there is no . . . expectation any of these medications are being ingested on a daily basis”; (b) it is not “unexpected that these medications may not be detected through urine drug screening, which only measures ingestion during finite periods prior to the time a sample is obtained”; c) “Ms. Duggans’ ‘prn’(as needed) use of these medications is consistent, as opposed to noncompliant, with her established treatment regimen”; and (d) his prior long term treatment recommendations “remain . . . viable/in effect” at this time.

16. On August 21, 2017, Ms. Duggans was evaluated by Glen K. Adams, MRC, CRC, CEES of Adams & Wilkinson Associates, Inc. for the purpose of determining her vocational status/potential. Based upon this assessment, which included not only clinical interview, but also testing aimed toward verifying educational/vocational capacities, Mr. Adams determined/observed: (a) Ms. Duggans continues to experience low back pain that also involves

her right leg, as well as neck pain; (b) use of prescription medication causes her to sleep; (c) her diminished ability to perform household chores (nature and duration); (d) notwithstanding her graduation from high school, she performed below this level on educational testing; (e) her previous relevant work history was classified in the "Medium-Heavy" physical demand level; (f) this work history had also been restricted to "semi-skilled" jobs; (g) her vocational profile contained "... [n]o positive factors. . . that will benefit her in future employment."

17. Based upon these factors, in light of all pertinent medical and vocational data, Mr. Adams concluded: (a) "... [n]egative factors in her profile include her age of 60, indicating a reduced capacity to adapt to new work situations and environments[,] . . . her entire relevant work history as a CNA, with limited transferability to alternate occupations[,] . . . and an absence of skills relevant to 'sedentary' employment . . . and ongoing pain and dysfunction impacting the performance of her daily activities"; (b) she "is unable to resume her past work based on the FCE results"; (c) Ms. Duggans "is unable to resume any similar employment, such as work as a home companion, without being able to function in a full range of 'light' work activities"; (d) a "transferable skills analysis . . . [did not reveal any] transferable occupations compatible with Ms. Duggans' vocational profile"; (e) "[s]he does not possess the computer skills or work experience to successfully compete for any remaining clerical or customer service employment in a 'light' capacity"; (f) "... [n]o stable market remains that will enable Ms. Duggans to resume competitive employment"; (g) she "is classified as totally vocationally disabled as a result of injuries sustained on July 16, 2007 and December 7, 2009 while working for the SCDMH"; and (h) as "the majority of her limitations result from her second injury . . . [.] Ms. Duggans would

also be classified as totally vocationally disabled from the impact of her December 7, 2009 injury alone.”

18. As confirmed by her clear and honest hearing testimony, Ms. Duggans: (a) not only enjoyed, but also obtained great satisfaction from working with patients at the mental health facility; (b) despite the presence of ongoing cervical symptoms identified by Dr. Jackson, she had resumed/maintained performance of full duty work activity until experiencing the December 7, 2009 accident; (c) this trauma not only created lumbar symptoms, but also aggravated/increased the previously-diagnosed cervical symptoms; and (d) while her lumbar symptoms had been the focus of Dr. Riber’s treatment, she continued to encounter persistent cervical symptoms that favorably responded to ongoing medical pain management.

19. Additionally, Ms. Duggans explained the constellation of causally related symptoms remained materially problematic, to the extent she: (a) was only able to obtain intermittent sleep; (b) could no longer lift more than light weights, a deficiency which was wholly inconsistent with the basic demands (including lifting/moving patients) of her long time employment with the South Carolina Department of Mental Health; (c) although she continued to attempt certain household activities (mopping, sweeping, cooking, etc.), she has substantially decreased her performance of these activities (in terms of both frequency and duration); (d) has great difficulty washing her hair and maneuvering in/out of her tub; (e) likewise minimizes her pursuit of several recreational activities; (f) has difficulty with extended driving and standing/walking, as well as stairclimbing had become difficult; and (g) was obliged to

successfully pursue an award of Social Security disability benefits due to these injury consequences.

20. After thoroughly reviewing all evidence of record and observing Ms. Duggans during the course of the hearing, I specifically find: (a) her testimony was credible and wholly consistent with the medical evidence; (b) she continues to experience significant spinal symptoms, predominantly emanating from the lumbar injury component, which negatively impact upon her ability to engage in various activities of daily living; (c) these causally related symptoms have likewise prohibited continuance of her lengthy employment with the South Carolina Department of Mental Health; (d) both her physical presentation and description of the material consequences of her compensable injuries validate the results of her functional capacity evaluation, as well as Dr. Riber's opinion that she is most probably incapable of performing more than the limited sedentary/limited light work activities identified by this reliable testing; and (e) the un rebutted opinions of Dr. Riber, her long time authorized treater, warrant substantial weight.

21. I also find: (a) Dr. Riber's consistent references to Ms. Duggans' cervical symptoms conform with her testimony relative to the particular aspects of this injury component; (b) she has uniformly received medical pain management for these cervical symptoms, in tandem with medical care directed toward her lumbar injury component, through Dr. Riber since 2010; and (c) her receipt of this extended course of care reflects the State Accident Fund's acknowledgement these symptoms were the product of her admittedly compensable injuries.

22. I further find the vocational prognosis offered by Mr. Adams to be especially appropriate, as: (a) his opinions are founded upon uncontradicted medical findings (including the

physical/functional impact of Ms. Duggans' spinal pathology); (b) she is clearly physically incapable of sustaining more than limited sedentary to limited light work activities; (c) the nature/degree of her causally related symptoms (and resulting physical limitations) unquestionably prohibit a return to any previous forms of employment; (d) this inability to resume gainful employment results from not only the combination of her lumbar and cervical injury components, but also the impact of her lumbar injury component alone; and (e) Ms. Duggans will obviously be required to seek jobs for which a reasonably stable market does not exist.

23. I consequently find: (a) the consequences of Ms. Duggans' compensable injuries affect multiple parts of her body (back, right leg and neck); (b) the evidence establishes she has unquestionably been rendered permanently and totally disabled by the combined effects of these multiple injury components; (c) she has likewise experienced a 50%(+) permanent disability to (loss of use of) her back as a result of the consequences of her compensable injuries; (d) Ms. Duggans has been rendered permanently and totally disabled, through both a loss of earning capacity and 50%(+) permanent disability to the back, based upon the symptoms/pathology/limitations produced by her lumbar injury component alone, regardless of the documented dysfunction attributable to her cervical injury component; and (e) there is no realistic expectation that her causally related conditions will improve to the extent that she will ever be able to sustain meaningful work activities in the future.

24. The medical treatment, evaluations, medications, evaluative procedures, interventional treatment, imaging studies, etc. which Ms. Duggans has heretofore

received/undergone as a result of her compensable injury components have been reasonable, medically necessary and tended to lessen her ultimate period of disability. In this connection, I also find: (a) Ms. Duggans continues to require ongoing medical modalities of the nature identified by Dr. Riber as a result of her causally related symptoms/pathology; (b) her receipt of these various treatment modalities is reasonable and medically necessary given the nature/degree of her causally related pathology; and (c) assuming *arguendo*, the cervical symptoms were not attributable, in part to the consequences of Ms. Duggans' December 7, 2009 compensable accident, her receipt of causally related treatment modalities for this injury component are nonetheless reasonable, medically necessary and geared toward lessening the disability produced by her July 16, 2007 compensable injury.

25. I finally find: (a) Ms. Duggans has reasonably requested the lump sum payment of her permanent disability compensation award; (b) there is no indication that she cannot adequately manage or appropriately use these funds; and (c) the record is devoid of any evidence which indicates or implies a lump sum payment in this instance, which involves less than 100 weeks of compensation, would be contrary to Ms. Duggans' best interests.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. On July 16, 2007, Ms. Duggans, an employee within the meaning of S.C. Code Ann. Section 42-1-130 (2015), sustained compensable injuries to her right arm and back (neck) within the meaning of S.C. Code Ann. Section 42-1-160 (2015), while performing duties arising

out of and within the course and scope of her employment with the South Carolina Department of Mental Health, an employer within the meaning of S.C. Code Ann. Section 42-1-140 (1976). After resuming full duty work activities, Ms. Duggans sustained additional injuries to her back (lumbar and cervical) within the meaning of Section 42-1-160 on December 7, 2009 while performing duties arising out of and within the course and scope of her employment with the South Carolina Department of Mental Health.

3. As previously noted, the reliable evidence of record verifies that following her December 7, 2009 compensable trauma, Ms. Duggans: (a) developed lumbar symptoms that have necessitated her receipt of extended treatment through Dr. Riber, including multiple interventional procedures in conjunction with use of several prescription medications; (b) also consistently reported with cervical symptoms that were noticeably impacted by this trauma; (c) was forced to seek retirement status due to her physical incapacity to resume the duties incidental to her long time employment with the South Carolina Department of Mental Health; (d) has continued to experience symptoms that materially/negatively affect her ability to engage in various activities of daily living; and (e) has been appropriately/reasonably restricted, per a valid functional capacity evaluation endorsed by Dr. Riber, to the performance of limited sedentary to limited light demand activities.

4. "[W]here an injury is confined to a scheduled member of the body, the employee is limited to the scheduled compensation fixed in the statute." Moss v. Davey Tree Expert Company, 245 S.C. 127, 139 S.E. 2d 532, 535 (1964). "However, if the effects or the loss of the member extend to other parts of the body and interfere with their efficiency, the claimant. . .[has]

the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section.” Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E. 2d 457, 459 (Ct. App. 1996); See also, Simmons v. City of Charleston, 349 S.C. 64, 562 S.E. 2d 476, 482 (2002) (“All that is required . . . [to proceed under the general disability statutes] is that the injury to a scheduled member also affects another body part.”).

5. “Under Workers’ Compensation Law ‘total disability’ does not require complete, abject helplessness.” McCollum v. Singer Co., 300 S.C. 103, 386 S.E. 2d 471, 474 (Ct. App. 1999); Eaddy v. Smurfit-Stone Container Corporation, 355 S.C. 154, 584 S.E. 2d 390, 395 (Ct. App. 2003). Rather, this condition amounts to the “inability to perform services other than those that are so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.” Wynn v. Peoples Natural Gas Co., 238 S.C. 1, 118 S.E. 2d 812, 817 (1961); Stephenson v. Rice Services, Inc., 323 S.C. 113, 473 S.E. 2d 699, 702 (1996).

6. “Disability is a relative term and must be related to the occupation of the claimant.” Colvin v. E.I. DuPont De Nemours Co., 227 S.C. 465, 88 S.E. 2d 581, 585 (1955). In view of this fact, the nature of Ms. Duggans’ prior employment is particularly relevant to the assessment of her degree of residual permanent disability under the general disability model.

7. In this instance, the relevant evidence confirms: (a) the consequences of Ms. Duggans’ December 7, 2009 compensable accident affect multiple body parts; (b) the combination of impairments/limitations stemming from her compensable injury components (especially the back and right leg) prohibit her from resuming the types of work activities she has performed throughout her adult life; (c) her functional limitations, as validated by Dr. Riber, are

wholly inconsistent with the physical demands of her relevant past employment; and (d) in view of these undisputed facts, as well as the uncontradicted opinions of Mr. Adams, no reasonably stable market exists (in terms of quality, dependability or quantity of employment options) for the types of services which Ms. Duggans is capable of providing/sustaining.

8. Based upon these facts, I conclude Mr. Duggans: (a) has sustained a 50%(+) permanent partial disability to (loss of use of) her back within the meaning of S.C. Code Ann. Section 42-9-30(21)(2015) as a result of her December 7, 2009 compensable accident; (b) this degree of residual disability to the back per Section 42-9-30 (21) exceeds 50% regardless of the presence of her neck injury component; (c) she has likewise been rendered permanently and totally disabled within the meaning of Section 42-9-10 by the combined consequences of her December 7, 2009 compensable injuries, particularly the back and right leg symptoms; and (d) the nature/degree of the back (lumbar) injury component resulting from this injury (affecting both her back and right leg) are sufficient to, in and of themselves, produce a total loss of earning capacity warranting an award of permanent and total disability compensation per Section 42-9-10.

9. Defendants are financially responsible for: (a) the medical treatment, evaluations, medications, evaluative procedures, surgical procedures, physical therapy, etc. which Ms. Duggans has heretofore received/undergone through any authorized medical providers due to the consequences of her July 16, 2007 compensable accident, as these modalities were reasonable, medically necessary and tended to lessen the period of disability within the meaning of S.C. Code Ann. Section 42-15-60 (2015); and (b) the medical treatment, evaluations, medications,

evaluative procedures, interventional procedures, physical therapy, etc. which she has heretofore received/undergone through her authorized medical providers as a result of her December 7, 2009 compensable accident, as these modalities were likewise reasonable, medically necessary and continued to lessen her period of disability within the meaning of Section 42-15-60.

10. I also conclude: (a) Defendants shall remain financially responsible for the provision of lifetime medical benefits as to all causally related injury components stemming from the December 7, 2009 accident per this statute; (b) her receipt of these treatment modalities is reasonable and medically necessary; and (c) she is similarly entitled to continued/ongoing receipt of medical modalities for any residual cervical symptoms that are attributable to the consequences of her July 16, 2007 compensable accident per Section 42-15-60.

11. I further conclude inspection of this Commission's disability compensation payment record relative to Ms. Duggans' 2009 claim confirms: (a) she will have received 419 weeks of temporary total disability compensation through May 13, 2018; (b) as her permanent disability award involves less than 100 weeks, no commutation is warranted; and (c) Ms. Duggans is entitled to receive a lump sum payment in the amount of \$23,840.73.

12. Pursuant to Mr. Duggans' request, this lump sum payment shall be allocated in the following fashion: a) the sum of \$5,000.00 to Andrew N. Safran, Esquire as attorney fees pursuant to 8 S.C. Code Regs. 67-1205(C)(1); b) the sum of \$1,871.55 to this attorney as reimbursement for litigation expenses pursuant to 8 S.C. Code Regs. 67-1206; and (c) the sum of \$16,969.18 to Ms. Duggans as payment for permanent disability for a period of 1,182.48 weeks at the rate of \$14.35 per week, commencing on May 14, 2018, pursuant to the provisions of S.C.

Code Ann. Sections 19-1-150 (1976, as amended) and 42-9-240 (2015), as well as the decisions of the South Carolina Supreme Court in James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730 (2010); and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

Appellants subsequently filed a Form 30 for judicial review by the Full South Carolina Workers' Compensation Commission. This matter was set for review on September 18, 2018 before an appellate panel consisting of Commissioners McCaskill, Barden, and Taylor. Oral Argument was held as scheduled on September 18, 2018 with Mr. Safran appearing for the claimant/Respondent and Mr. Keller appearing for the employer and State Accident Fund. Since the time of Oral Argument this matter has been under consideration and review of the Full Commission Panel. The panel had before it for review, and since the date of the Oral Argument has reviewed the transcript of the hearing, all of the APA submissions including but not limited to all medical reports submitted by the parties and the prior Orders in this matter. The Panel, after consideration, has determined that the Order of Commissioner Wilkerson should be affirmed in part and reversed in part. Specifically it is the determination of the panel that the issue of the awarding of an uncommuted/undiscounted lump sum award to the claimant is not properly before the Commission because there was no exception properly raised pursuant to Section 42-17-60 and Regulation 67-701A(3)(a). It is further the determination of the Full Commission that under the facts and circumstances of this case, where the parties specifically agreed to proceed with a hearing encompassing each of the respective claims because the two cases involve multiple injuries to the cervical spine, and because Commissioner Wilkerson

found the claimant totally disabled under Section 42-9-10, it was error for Commissioner Wilkerson to fail to award a credit to the defendants of 17.5714 weeks of temporary total disability compensation paid to the claimant pursuant to the 2007 carpal tunnel case.

FINDINGS OF FACT

1. That the claimant, Deborah G. Duggans, suffered an injury by accident as aforesaid occurring on or about July 16, 2007 involving carpal tunnel syndrome due to repetitive trauma as well as cervical radiculopathy as a result of the July 2007 injury.
2. That the claimant was referred for medical care and treatment by the defendants for her cervical spine and before the appointment could be made by claimant she suffered a second injury by accident occurring on or about December 7, 2009 to her cervical and lumbar spine.
3. That the 2007 and 2009 injuries both involve and affect claimant's cervical spine.
4. That the parties agreed at the time of the hearing in this matter to consolidate the two cases for hearing purposes for a full and final determination of all issues.
5. That the claimant's cervical injuries each arise out of and in the course of the same employment.
6. That the claimant was not at maximum medical improvement from the 2007 injury of her cervical spine at the time of the 2009 injury in which she reinjured the cervical spine.
7. That the claimant received 17.5714 weeks of temporary total disability compensation between June 13 and October 13, 2008 as a result of the 2007 injury.

8. That for the combined injuries the claimant received 444.7142 weeks of temporary total disability compensation at the time of the hearing in this matter.
9. That under the facts of this case, as stated hereinabove, the defendants are entitled to a credit for 17.5714 weeks of temporary total disability compensation paid to the claimant prior to the re-injury of her cervical spine on or about December 7, 2009.
10. That the issue of whether Commissioner Wilkerson erred in awarding the remainder of the 500 weeks of benefits due claimant in an uncommuted lump sum payment is not properly before the Commission in that the defendants' failed to make an exception to the same in their Form 30/Appeal to the Full South Carolina Workers' Compensation Commission.
11. That therefore, all other issues other than the credit of 17.5714 weeks of temporary total disability compensation paid the claimant are affirmed.

CONCLUSIONS OF LAW

1. That pursuant to Section 42-9-10, the claimant can receive no more than 500 weeks of benefits for permanent and total disability.
2. That pursuant to Section 42-1-160 and Section 42-15-60, the claimant suffered a carpal tunnel syndrome and a cervical spine injury on or about July 16, 2007.
3. That pursuant to Section 42-1-160 and Section 42-15-60, the claimant never reached maximum medical improvement for the 2007 cervical injury.

4. That pursuant to Section 42-15-60, the claimant was provided with a medical appointment for her 2007 cervical injury which had yet to occur at the time she reinjured her cervical spine on or about December 7, 2009.
5. That pursuant to Section 42-9-10, the defendants paid the claimant 17.5714 weeks of temporary total disability compensation prior to the 2009 injury.
6. That pursuant to Section 42-9-10, Section 42-9-30 and Section 42-17-40, the parties agreed to consolidate the two cases for hearing purposes to obtain rulings on all issues involving the respective claims.
7. That pursuant to Section 42-9-10 and Section 42-17-40 and because the parties agreed that the respective claims were consolidated for consideration through one hearing, the defendants are entitled to a credit for 17.5714 weeks of temporary total disability compensation paid to the claimant for the 2007 injury.
8. That pursuant to Section 42-17-60, the defendants filed a South Carolina Workers' Compensation Commission Form 30/Appeal to the Full Commission.
9. That pursuant to Section 42-17-60, the defendants failed to properly raise the issue of whether the award of an uncommuted lump sum payment to the claimant was proper, and, therefore, the Commission lacks jurisdiction over the issue.
10. That pursuant to Section 42-17-60, the Order of Commissioner Wilkerson is reversed in so far as it failed to give a credit to the defendants for 17.5714 weeks of temporary total disability compensation previously paid and the Order is further, affirmed in all other aspects.

11. Pursuant to Ms. Duggans' request, her lump sum payment proceeds, which amount to \$16,273.50 as of July 10, 2018, shall be allocated in the following fashion: a) the sum of \$2,000.00 to Andrew N. Safran, Esquire as attorney fees pursuant to 8 S.C. Code Regs. 67-1205(C)(1); b) the sum of \$1,959.05 to this attorney as reimbursement for litigation expenses pursuant to 8 S.C. Code Regs. 67-1206; and (c) the sum of \$12,314.45 to Ms. Duggans as payment for permanent disability for a period of 1,174.48 weeks at the rate of \$10.51 per week, commencing on July 10, 2018, pursuant to the provisions of S.C. Code Ann. Sections 19-1-150 (1976, as amended) and 42-9-240 (2015), as well as the decisions of the South Carolina Supreme Court in James v. Anne's, Inc., 390 S.C. 188, 701 S.E. 2d 730 (2010); and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

ORDER

IT IS THEREFORE ORDERED that the Order of Commissioner Wilkerson is reversed on the issue of a credit for temporary total disability compensation and defendants shall, therefore, receive a credit of 17.5714 weeks of temporary total disability compensation against the claimant's permanent and total disability award.

IT IS FURTHER ORDERED that the Order of Commissioner Wilkerson in all particulars should be and hereby is affirmed.

IT IS FURTHER ORDERED that defendants shall pay claimant an uncommuted lump sum payment of the remainder of 500 weeks of compensation taking a credit for 17.5714 weeks

paid on the 2007 claim, and further taking a credit for any other amounts paid claimant subsequent to the Order of Commissioner Wilkerson.

SO ORDERED.



Commissioner Aisha Taylor

Commissioner Susan S. Barden

Commissioner Gene McCaskill

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 February 5, 2019

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(b) The **entire** 17.5714 weeks of **temporary** total disability attributable to the 2007 claim occurred **prior to** not only her receipt of this full duty medical release, but also any diagnosis of a cervical injury component;

(c) Ms. Duggans received **neither focused treatment nor any form of compensation** for a **cervical injury** in the context of her 2007 claim; and

(d) this Commission likewise **never** ascribed either a permanent injury or any degree of permanent disability to the consequences of Ms. Duggans' July 16, 2007 compensable accident.

2) The February 5, 2019 Order does not address, determine or pass upon the impact of the South Carolina Court of Appeals' decision in Eaddy v. Smurfit-Stone Container Corporation, 355 S.C. 154, 584 S.E. 2d 390 (Ct. App. 2003) in this instance in that it overlooks and/or misconstrues the facts:

(a) assessment of credit for previously paid compensation per the South Carolina Workers' Compensation Act hinges upon compliance with one of three governing statutes;

(b) S.C. Code Ann. Section 42-9-150 (2015) is **only applicable** if an injured employee "has a permanent disability or has sustained a permanent injury that resulted from serving in the United States Armed Forces or in another employment other than that in which he receives a subsequent permanent injury";

(c) the current record is devoid of any evidence establishing either a permanent disability arising from Ms. Duggans' 2007 claim or the presence of a permanent injury resulting from military service or another employment;

(d) S.C. Code Ann. Section 42-9-160 (2015) similarly **requires** evidence an individual is "still receiving or entitled to compensation" for a prior injury, while exempting subsequent permanent injuries from the purview of this statute (See, Eaddy, 584 S.E. 2d at 397);

(e) as Ms. Duggans was continuing to work at full duty at the time of her subsequent (December 7, 2009) accident (notwithstanding the presence of cervical symptoms), she was obviously not receiving compensation;

(f) the absence of any permanent disability attributed to the 2007 accident, as well as the permanent nature of her 2009 injuries, render Section 42-9-160 wholly inapplicable;

(g) S.C. Code Ann. Section 42-9-170 (2015) **only** governs situations when an employee receives a permanent injury “after having sustained another permanent injury in the same employment” (Id.);

(h) there is no adjudication of permanent injury associated with the 2007 accident;

(i) given these facts, assessment of a credit for previously paid temporary total disability compensation is precluded by the Eaddy decision; and

(j) the Eaddy constitutes controlling authority in this instance.

3) The February 5, 2019 Order misconstrues the impact/applicability of S.C. Code Ann. Sections 42-9-10 (2015), 42-17-40 (2015) and 42-17-60 (2015) in the current context, as:

(a) the Eaddy ruling clearly holds that the 500 week component of Section 42-9-10 does not govern situations where, as here, the South Carolina Workers’ Compensation Act’s specific set off/credit provisions are inapplicable;

(b) Section 42-17-40 does not address the current circumstances; and

(c) Section 42-17-60 is likewise irrelevant to the current dispute.

4) The February 5, 2019 Order mistakenly presumes:

(a) Ms. Duggans’ 2007 and 2009 claims were consolidated into one claim, rather than simply separately considered in the context of a single hearing;

(b) the 17.5714 weeks of temporary total disability compensation sought by the State Accident Fund correlated with an out-of-work period attributable to a 2007 cervical injury component when this compensation was actually paid in conjunction with treatment for carpal tunnel syndrome;

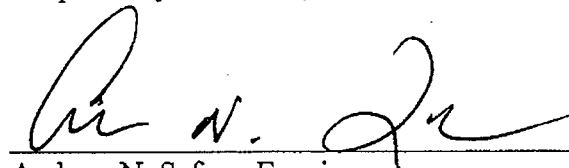
(c) there was any disability associated with Ms. Duggans' cervical component prior to her December 7, 2009 accident date, despite the fact there is no evidence that supports this notion;

(d) Commissioner Wilkerson's award of permanent and total disability compensation was based, to any extent, on the 2007 injury or that otherwise ascribed any specified degree of permanent disability to this injury; and

(e) there was anything other than temporary disability attributable to a non-permanently disabling body part paid in connection with the 2007 claim.

ACCORDINGLY, Ms. Duggans requests the Appellate Panel to reconsider its prior ruling and affirm the Hearing Commissioner's determination in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. N. Safran", written over a horizontal line.

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
Attorney for Employee/Claimant

February 11, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

Deborah G. Duggans,)
)
Employee,)
)
vs.)
)
South Carolina Department of)
Mental Health,)
)
Employer,)
)
and)
)
South Carolina State Accident Fund,)
)
Carrier.)
)
_____)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

CERTIFICATE OF SERVICE
WCC FILE NUMBERS: 0725221 and 0921225

Paula F. Bregovi, paralegal for Andrew N. Safran, certifies that on the 11th day of February, 2019, she served the documents identified below in the following fashion:

Documents: Notice of Motion and Motion for Reconsideration

To: **VIA HAND DELIVERY**
The Honorable Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29201

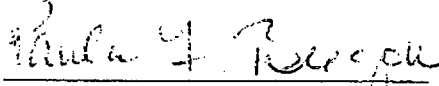
VIA EMAIL
David H. Keller, Esquire
Turner, Padget, Graham & Laney, P.A.
Post Office Box 1509
Greenville, South Carolina 29602
DKeller@turnerpadget.com

RECEIVED

FEB 11 2019

SC WORKERS' COMPENSATION

This 11th day of February, 2019.


Paula F. Bregovi
Post Office Box 12089
Columbia, South Carolina 29211
(803) 256-6689

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Deborah Duggans v SC Dept. of Mental Health
SCWCC: 0725221 & 0921225
Commissioner: Wilkerson
Panel: Taylor, Barden, McCaskill

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reconsider**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. _____ Denied. _____ Dismissed _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

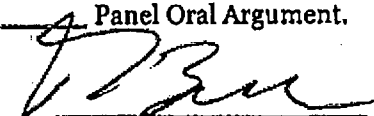
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

✓ Remand to Panel as indicated below.
_____ Barden _____ James
_____ Beck _____ Campbell
_____ McCaskill
_____ Taylor
_____ Wilkerson

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

7/15 2019

CONCURRING:

Commissioner Susan S. Barden
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill

NOT PARTICIPATING:

_____x_____

DISSENTING:

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 COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 15 day of July, 2019.

By: Valerie D. Decker
SCWCC Judicial Department

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

JUDICIAL CONFERENCE DECISION AND ORDER

Deborah Duggans v Dept. of Mental Health

SCWCC: 0921225

Panel: A. Taylor, S. Barden, G. McCaskill

This matter was reviewed by the South Carolina Workers' Compensation Appellate Panel in Judicial Conference on **Motion to Reconsider**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. ☒ Denied. _____ Dismissed _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.

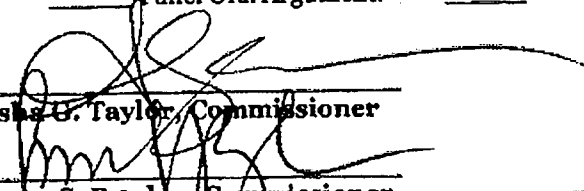
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____ Barden _____ James _____ Taylor
_____ Beck _____ Campbell _____ Wilkerson
_____ McCaskill

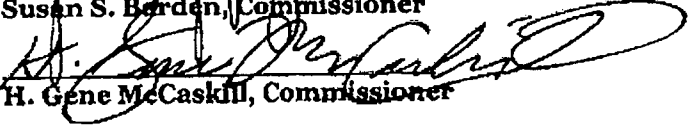
_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.


Aisha G. Taylor, Commissioner


Susan S. Barden, Commissioner


H. Gene McCaskill, Commissioner

Columbia, South Carolina

July 16 2019

CONCURRING:

Commissioner T. Scott Beck
Commissioner Melody James
Commissioner Aisha Taylor
Commissioner Avery Wilkerson
Commissioner Michael Campbell
Commissioner Gene McCaskill
Commissioner Susan S. Barden

NOT PARTICIPATING:

____x____
____x____

____x____
____x____

DISSENTING:

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 COPY HEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 17 day of July, 2019.

By: 
SCWCC Judicial Department

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

WCC File # 0725221
Carrier File # 2007-006125
Carrier Code # 500 - SF
Employer FEIN 570000J12

Deborah Duggans 251-08-9065
1-A Bradley Court, Cayce, SC 29033

DEPT OF MENTAL HEALTH
2414 Bull Street, Columbia, SC 29202

(803) 740-5289 (home) 0 - (work)

Preparer's name: Noelle Shekitka (803) 896-5915 State Accident Fund, Insurance Carrier

Date of injury: 07/16/2007

1. Temporary Compensation Paid:

TT	Number of Weeks	From	To	Amount
	15.57	13-JUN-08	29-SEP-08	4,583.14

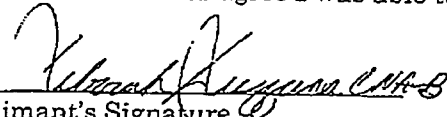
More on page two...

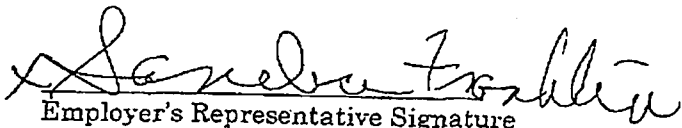
2. The claimant returned to work on 10/2/2008

() With restrictions but at a salary not less than before the injury
(X) Without restrictions.

3. The claimant agrees he or she was able to return to work on 10/2/2008

I agree that I was disabled for the period(s) indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work or agree I was able to return to work.

X 
Claimant's Signature

X 
Employer's Representative Signature

☐ Witness ☐ Claimant's Attorney

X 10-17-08
Date Agreement Signed

File this form with the Claims Department no later than 31 days from the date the claimant returned to work to terminate temporary compensation after the first 150 days after employer's notice of the injury according to R.67-505. Within the 150 day period, obtain a Form 17 to document that claimant agrees he or she is able to return to work.

WCC FORM # 17 REV. DATE 3/97

17

RECEIPT OF COMPENSATION

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #0921225 AND 0725221

DEBORAH G. DUGGANS)
)
 CLAIMANT,)
)
 VS.)
)
 DEPT OF MENTAL HEALTH)
)
 EMPLOYER,)
)
 AND)
)
 STATE ACCIDENT FUND)
)
 CARRIER.)

SC WORKERS' COMPENSATION COMMISSION

HEARING OF

DEBORAH G. DUGGANS

VS

DEPARTMENT OF MENTAL HEALTH

This is the Transcript of the South Carolina Workers' Compensation Hearing of Deborah G. Duggans versus Department of Mental Health, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:20 A.M., Thursday, December 14, 2017, at South Carolina Workers' Compensation Commission, 1333 Main Street Columbia, South Carolina.

COPY**REPORTED****BY****GLORIA DAVIS**

PALMETTO COURT REPORTING
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 (803) 358-0515

www.Pa:67toCourtReporting.com

APPEARANCES

FOR THE CLAIMANT:

Andrew N. Safran, Esquire
Andrew N. Safran, LLC
1224 Pickens Street
Columbia, SC 29211

FOR THE EMPLOYER/CARRIER:

George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett & Stublely, LLC
1122 Lady Street, Suite 620
P.O. Box 11669
Columbia, SC 29211

ALSO PRESENT:

*Reporter's Note: -- Indicates incomplete thought or sentence, trailing off or interruption by speakers.

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I N D E X

WITNESSES

All witnesses:	Page
Ms. Duggans for Claimant	
Direct Examination by Mr. Safran	11:12
Cross-Examination by Mr. Gallagher	28:5
Redirect Examination by Mr. Safran	33:2
Certificate	35

STIPULATIONS

Commissioner Wilkerson: Today's date is the 14th day of December, 2017. We're here in reference to workers' Comp file number 0921225 as well as 0725221; I'll ask you all a question in a minute in reference to that as well. The -- the same Employer, Department of Mental Health; Ms. Duggans is represented by Andy Safran. The State Accident Fund, represented by George Gallagher. The date of accident was 12/7/2009, on that one; the date of accident on the 0725221 is 7/16/07. The average weekly wage was four forty-one, forty-eight (\$441.48); thus, the comp rate would be two ninety-four, thirty-three (\$294.33). We're here to determine issues set forth on a Form 50 and 51. Are there any objections to the APA's, jurisdiction, venue or any other items, Mr. Safran?

Mr. Safran: None, Your Honor.

Commissioner Wilkerson: And you do agree that we're here on both --

Mr. Safran: Yes, sir.

Commissioner Wilkerson: -- those of those cases? And you were asking that they both be combined under this particular hearing --

1 Mr. Safran: Yes, sir.

2 Commissioner Wilkerson: -- is that fair?

3 Mr. Gallagher, I'm going to ask you that same
4 question again; I know we've talked about it. You
5 -- you agree that the hearing is on both of those
6 Workers' Comp file numbers here today --

7 Mr. Gallagher: Yes, sir.

8 Commissioner Wilkerson: -- and that they be
9 combined for this hearing?

10 Mr. Gallagher: Yes, sir.

11 Commissioner Wilkerson: Okay. Thank you.
12 I'm sorry; we're going to get the positions along
13 the way. There's no objection, I'm guessing, from
14 either side; is that fair --

15 Mr. Safran: That's correct.

16 Commissioner Wilkerson: -- on what's before
17 us, not the positions?

18 Mr. Gallagher: Right. Nothing --

19 Commissioner Wilkerson: Yes, this?

20 Mr. Gallagher: -- correct.

21 Commissioner Wilkerson: Yes, okay. I'm
22 sorry. Because I know there had been a -- okay.
23 So, without objection the Commission's files
24 become a part of the record with the exception of
25 self-serving declarations and unstipulated medical

1 reports. So, at this time, I'm going to have Mr.
2 Safran put his client's position on the record,
3 then I'm going to, likewise, have Mr. Gallagher do
4 the same.

5 Mr. Safran: Your Honor, very briefly, Ms.
6 Duggans had worked for the Department of Mental
7 Health for thirty (30) years. In her last
8 position, even though she did some administrative
9 work, her primary responsibilities were patient
10 care that required a great deal of physical
11 exertion, including being able to lift a minimum
12 of fifty (50) pounds. She had the initial injury
13 in 2007, that led her to have a carpal tunnel
14 surgery. She also developed symptoms that were,
15 apparently, more. She was authorized then to see
16 Dr. Joe Jackson over in Camden, as well as Dr.
17 John Johnson down in Charleston; they had
18 identified a cervical problem. During that time,
19 basically, when that transition was occurring was
20 Dr. Jackson and Dr. Johnson, she had another
21 injury in 2009. She then had, additionally, some
22 lumbar low back symptoms. She was then sent to
23 Dr. Riber, who has documented both the neck and
24 the low back. And I believe Ms. Duggans will tell
25 you the neck symptoms got worse after the 2009

1 trauma and Dr. Riber has, again, documented each
2 over the course of the last seven (7) years;
3 basically, he ultimately rated both. He
4 indicated, you know, that she has substantial
5 restrictions; frankly, they are completely
6 incompatible with what her job duties were for
7 those lengthy years with the Department of Mental
8 Health. We have a vocational that confirms that
9 she is disabled. We are seeking a determination
10 of disability, basically, we could go under
11 42-9-30, you know, the subsection dealing with the
12 back because we think that she certainly would
13 qualify for greater than fifty percent (50%); we
14 also believe that she would qualify under 42-9-10,
15 ultimately, either way. She has received
16 medication and injections over the course of years
17 in a responsible way; basically, we think she is
18 entitled to the lifetime medical. Dr. Riber has
19 identified, specifically, what he anticipates they
20 will be, currently it's three (3) medications, as
21 well as intermittent injections; nothing
22 unreasonable there, nothing that looks like it's
23 going to be a big cost driver. Essentially, we've
24 asked for a lump sum because the balance that's
25 owed under the five hundred (500) weeks is

1 relatively low, just in the approximate range of
2 about a hundred forty (14) weeks, give or take.
3 And so, that's really what we're here about and,
4 you know, we obviously want to have -- regardless,
5 of -- of the matters Mr. Gallagher eluded to in
6 the pre-trial, a mode a settlement, we -- you
7 know, we want an enforceable document that in the
8 event things are not provided as they should, that
9 we have an opportunity to be able to remedy that.
10 So, that's basically our position.

11 Commissioner Wilkerson: Okay. Mr.
12 Gallagher, on behalf of your client?

13 Mr. Gallagher: Commissioner, it is our
14 position that -- that Ms. Duggans is at -- is at
15 maximum medical improvement, which I believe we
16 can stipulate to, frankly; it is time to -- to --

17 Commissioner Wilkerson: Do you all have an
18 MMI date that you all --

19 Mr. Gallagher: -- probably August of '16, I
20 think.

21 Mr. Safran: Yes, it's been a good while.

22 Mr. Gallagher: Yes. She was --

23 Commissioner Wilkerson: August of '16?

24 Mr. Safran: Yes, sir.

25 Commissioner Wilkerson: Okay. That's fine.

1 Mr. Gallagher: -- I think that's the --
2 that's when Riber assigned his ratings.

3 Commissioner Wilkerson: Okay. That's fine.
4 I just always like to ask that question.

5 Mr. Gallagher: And so, it -- the case is
6 ripe for -- for resolution. And our position,
7 frankly, is that given the number of weeks that
8 have been paid out, as Mr. Safran eluded to, the
9 balance of compensation due under the statutory
10 cap is -- is limited to some extent and we believe
11 that a -- a permanent partial disability award
12 under 42-9-30 would substantially cover that
13 remaining balance regardless. So, we deny that
14 she is totally disabled. We would stipulate that
15 she would be entitled to in a -- you know, in
16 commensurate with an award under 42-9-30, future
17 medical care under 42-15-60, subsection B, which
18 isn't lifetime medicals; it -- it could be, it's
19 just not automatic that it would entail lifetime
20 medical benefits of -- under 42-15 (B) but it's
21 just not an automatic entitlement to lifetime
22 benefits as -- that one would be entitled to with
23 a -- a corresponding finding of total disability.
24 And that's just -- that's our position for the
25 record. With regard to the mode of settlement,

1 again, I don't -- that's -- that's kind of a
2 practical issue that I don't think is,
3 technically, before you --

4 Commissioner Wilkerson: It's not before me,
5 no.

6 Mr. Gallagher: -- that you have to decide
7 on, you know, who is right or wrong --

8 Commissioner Wilkerson: No, I don't.

9 Mr. Gallagher: -- on that issue.

10 Commissioner Wilkerson: No.

11 Mr. Gallagher: So, I would just submit that,
12 you know, I would acknowledge that there -- there
13 was a path-able way to resolve -- a path to
14 resolve this case but we just couldn't agree on
15 the mode of doing that.

16 Commissioner Wilkerson: Okay. That's fine.
17 That's why we're here. I'm fine with that.
18 Anything else before we take some testimony from
19 Ms. Duggans?

20 Mr. Safran: I don't believe so.

21 Commissioner Wilkerson: Okay. Ma'am, I'm
22 going to have my Court Reporter swear you in;
23 we're going to take a little bit of testimony from
24 you, okay?

25 Ms. Duggans: Okay.

1 whereupon;

2 Deborah Gail Duggans, being duly sworn and cautioned to
3 speak the truth, the whole truth and nothing but the truth,
4 testified as follows:

5 Court Reporter: Please state your full name
6 for the record.

7 Witness: Deborah Gail Duggans.

8 Court Reporter: Thank you, ma'am.

9 Commissioner Wilkerson: Thank you, Ms.
10 Duggans. Please.

11 DIRECT EXAMINATION

12 By Mr. Safran:

13 Q. Ms. Duggans, where do you live?

14 A. I live at 1 Bradley Court, Cayce, South Carolina.

15 Q. Okay. And how old are you?

16 A. Sixty-one (61).

17 Q. Okay. What's the last level of education that you
18 finished?

19 A. Twelfth (12th) grade of high school.

20 Q. Ms. Duggans, before you -- the date that you last
21 worked, basically, where had you worked the better part
22 of your adult life?

23 A. Department of Mental Health.

24 Q. Okay. And how long did you work for them,
25 roughly, over the years?

1 A. Thirty (30) years.

2 Q. All right. What were your jobs there?

3 A. I was a CNA, a Certified Nursing Assistant. At
4 first I was a Mental Health Specialist --

5 Q. Okay.

6 A. -- then I got certified to be a Certified Nursing
7 Assistant.

8 Q. Okay. And just for the record, at -- at the
9 Department of Mental Health were you responsible for
10 dealing with patients more or less on an in-patient
11 basis a great deal?

12 A. Yes.

13 Q. And were those patients ones that had disabilities
14 to some extent?

15 A. Yes.

16 Q. Did those patients require hands-on care?

17 A. Yes.

18 Q. And would that hands-on care involve what we refer
19 to as ADL's?

20 A. Yes.

21 Q. Activities of Daily Living?

22 A. Activities of Daily Living.

23 Q. Okay. And would those ADL's include things like
24 bathing?

25 A. Yes.

1 Q. Having to help them in the bathroom?

2 A. Yes.

3 Q. Moving them in beds?

4 A. Yes.

5 Q. Transferring them from beds to wheelchairs?

6 A. Yes.

7 Q. Assisting them with walking?

8 A. Yes.

9 Q. And when you would do those things would you,
10 basically, become their back, their legs, in some
11 respect?

12 A. Yes.

13 Q. Okay. Was that a regular part of your job?

14 A. Oh, yeah.

15 Q. And, Ms. Duggans, before DMH, what type of work
16 did you do?

17 A. I was in restaurant, fast food; I was at Burger
18 King.

19 Q. Okay. Was that a standing job?

20 A. Well, yeah, it was standing --

21 Q. And were you also --

22 A. -- walking.

23 Q. -- required, basically, to do physical work in
24 that job too?

25 A. No, not really, just --

- 1 Q. Well, I don't mean the same level.
- 2 A. -- not the same level of physical work --
- 3 Q. Right.
- 4 A. -- just more walking.
- 5 Q. Right. But being on your feet a good bit?
- 6 A. Yeah.
- 7 Q. All right. And then, I guess, working in a
- 8 restaurant you pick up what you have to pick up?
- 9 A. Yeah.
- 10 Q. All right. And, again, that is very, very remote
- 11 for you as far as, that's been many, many years ago?
- 12 A. Yeah. Many years ago, yeah.
- 13 Q. Okay. But your career has been with --
- 14 A. Department of Mental Health.
- 15 Q. -- all right. Now, Ms. Duggans, let me ask this.
- 16 Before you had any injuries, either in '07 or '09, were
- 17 you able to fully do those job duties?
- 18 A. Yes.
- 19 Q. And then, you did you have, in '09, an injury that
- 20 started out requiring you to have carpal tunnel
- 21 syndrome or surgery with Dr. Fulton, I believe?
- 22 A. I had that surgery earlier; it was before that.
- 23 Q. Oh, '07, I apologize.
- 24 A. Yeah, '07. Yeah.
- 25 Q. So, that's what led you to have the -- the carpal

1 tunnel with the '07 situation?

2 A. Yeah. That's when I started -- that's when I had
3 the surgery on my right hand.

4 Q. Okay. Now, at some point after that, did you get
5 to see some doctors beyond Dr. Fulton, I believe Dr.
6 Jackson and Dr. Johnson?

7 A. Yeah.

8 Q. And did they identify a neck problem?

9 A. Yes --

10 Q. Okay.

11 A. -- Dr. Johnson did.

12 Q. All right. And about -- during that timeframe
13 getting from Dr. Jackson to Dr. Johnson, you had a
14 second injury in '09?

15 A. Yes.

16 Q. Would you describe the injury, briefly?

17 A. That was the injury that I received when I was
18 assisting a patient to the toilet and from the toilet;
19 he was a male, actually, about six, four (6'4").

20 Q. Okay.

21 A. And I'm five, five (5'5"); so, I was doing the
22 best I could. He usually helped me but on occasion he
23 would lose his gait and that's when the accident
24 occurred.

25 Q. And at least when you were on that date when you

1 got hurt in 2009 --

2 A. Uh-huh.

3 Q. -- you had already gone back to full duty from the
4 previous accident, correct?

5 A. Well, yeah --

6 Q. Okay.

7 A. -- from the carpal tunnel; I did --

8 Q. Exactly.

9 A. -- yeah.

10 Q. So, at the time you had the '09, you were working
11 your full job duties, correct?

12 A. Yes.

13 Q. Okay. After that, what were your -- where were
14 your symptoms and -- and, basically, the parts of your
15 body that were giving you trouble?

16 A. The lower back is what I injured when I was
17 dealing with him.

18 Q. Okay. And in that same injury did you notice
19 afterwards any increase or decrease, either way, in your
20 neck?

21 A. Yeah. The pain got worse in my neck and my
22 shoulders.

23 Q. Okay. Now, you started seeing Dr. Riber after the
24 '09 accident?

25 A. Yes.

1 Q. And during that timeframe he's seen you now, what,
2 seven (7) plus years?

3 A. Yeah, seven (7) plus years.

4 Q. All right. And he's -- you've talked to him and
5 he's addressed both your neck and your low back?

6 A. Yes.

7 Q. Okay. And has there ever been anything where you
8 had to pay for any visits over there?

9 A. No.

10 Q. All right. So, basically, you've been authorized
11 to see him over the time period that he's seen you for
12 both?

13 A. Yes.

14 Q. All right. Now, as of right now, I understand
15 that your treatment protocol is kind of, you know,
16 pretty well set --

17 A. Yes.

18 Q. -- is that fair?

19 A. Yes.

20 Q. All right. Do you take medications --

21 A. Yes.

22 Q. -- prescribed by Dr. Riber?

23 A. Yes.

24 Q. Do you also have injections periodically?

25 A. Yes.

1 Q. All right. And the question arose, I think in
2 some of the records I saw, are you allowed, in terms of
3 your medications, to take them -- do you have to take
4 them every day or are they on an --

5 A. No.

6 Q. -- as needed?

7 A. No, it's as needed.

8 Q. All right. And you actually have at least a
9 background in dispensing medication, don't you?

10 A. Well, no --

11 Q. I mean -- I'm talking about --

12 A. -- not a --

13 Q. -- you would give them to patients, basically,
14 when -- if you had a -- I'm not saying you chose how
15 much to give them but you were aware and kind of worked
16 with them where they would take their medicine?

17 A. -- yes.

18 Q. Okay. And so, I guess, the thing is, is that you
19 know what medicines you're taking?

20 A. Yes.

21 Q. You know when you need them?

22 A. Yes.

23 Q. And is there a -- a negative that you get from
24 taking the medications?

25 A. It makes me drowsy and makes me real sleepy and I

1 can't function; I can't drive.

2 Q. Okay.

3 A. And I have no one at the house to take care of my
4 duties; so --

5 Q. So, basically --

6 A. -- I do them myself.

7 Q. -- you more or less, I guess, monitor and -- and
8 use the medications in order to be able to be active
9 when you need to be?

10 A. Yes.

11 Q. All right. And as a result, do you take the
12 medicine every day?

13 A. No.

14 Q. All right. But do you take prescribed medications
15 regularly, though?

16 A. I take other medications daily.

17 Q. Okay. Well, I guess, my question is this, you
18 get, for instance, Norco?

19 A. Okay.

20 Q. How -- the -- the pain medication?

21 A. Yes.

22 Q. About how many days out of the month do you think
23 you take that?

24 A. About twenty-one (21).

25 Q. Okay. So, most but not all?

1 A. Yeah.

2 Q. All right. You get Mobic?

3 A. (Nodded head in an up-and-down motion).

4 Q. Do you do similar?

5 A. Yes, similar.

6 Q. All right. And you get Zanaflex, similar?

7 A. Yeah, similar.

8 Q. Now, if you don't use all the medicines that you
9 are dispensed on a given visit, do you ask for a refill
10 if you don't need it?

11 A. No.

12 Q. So, you only get them when you need them?

13 A. Yes.

14 Q. And then, you do get shots periodically?

15 A. Yes.

16 Q. All right. And are you satisfied with that
17 medical regimen right now?

18 A. Oh, yes; I am.

19 Q. Okay. Are you happy with Dr. Riber?

20 A. Yes.

21 Q. And do you feel comfortable with what his
22 recommendations are and -- and do you feel that that's
23 the course you want to follow?

24 A. Yeah.

25 Q. All right. Now, you don't have anybody living

1 with you?

2 A. No.

3 Q. All right. Are there things you just have to try
4 to do for yourself around the house?

5 A. Yes.

6 Q. And is it something that is easy or hard to do?

7 A. It depends on my pain -- level of pain at the time
8 and then, I have to do things; so, I really can't take
9 the medicine because I have to pay my own bills and I
10 have to do things in my house.

11 Q. When you say pay your bills, does that mean --
12 involve driving?

13 A. Driving, yes.

14 Q. Okay. And, again, do you have to break down
15 things in the house as far as the work?

16 A. Oh, yeah. Yeah.

17 Q. So, it's your pace?

18 A. Yeah. I can't do my regular cleaning routines
19 like I used to. I can't wash my hair like I used to.
20 It's -- everything has changed.

21 Q. Tell me about as far as the -- the cleaning, what
22 do you -- how have you changed it now?

23 A. Well, I used to could -- as far as cleaning my
24 tub, I used to get down and clean it; now, I have to
25 use a mop.

1 Q. Okay. So, you just have to stand over it?

2 A. I -- yeah, I stand over it and I use a mop --

3 Q. Okay.

4 A. -- and a lot of the reaching I just went to the
5 mop; it's very convenient.

6 Q. Okay. And, again, are things that used to be
7 something that you could do pretty easily, things that
8 now take a good bit of time to do?

9 A. Yeah.

10 Q. So, you have to do it over the course of hours?

11 A. Well, yes.

12 Q. Does it ever have to be over the course of days to
13 do some things?

14 A. Uh-huh. Yeah.

15 Q. Okay.

16 A. I have to break it down now; I do one thing one
17 day, another thing another day and another thing
18 another day.

19 Q. Okay.

20 A. Yeah.

21 Q. And in the past, did you do all those things on
22 one day?

23 A. I used to could do it all in one day.

24 Q. All right. When you try to do things like, you
25 know, sweeping or vacuuming or any of that, how does it

1 affect your pain level?

2 A. Oh, it goes way up.

3 Q. Okay. And I guess the other thing I wanted to ask
4 you about is this. Is because you have to take care of
5 your own things outside of the house, on days where you
6 know you're going to drive, do you hold off on the
7 medications?

8 A. Oh, yeah. Yeah, I have to.

9 Q. Okay. How about bathing yourself; does that
10 change?

11 A. Yeah. That changed, yeah.

12 Q. How -- how is it different?

13 A. It was daily, showers daily. I can't take a bath
14 at all because I can't get out -- in the tub and out of
15 the tub; I can't take those. So, just showers, it used
16 to be daily; now it's, like, four (4) or five (5) times
17 a week.

18 Q. Okay.

19 A. Yeah.

20 Q. Tell me, also, as -- as far as when you mentioned
21 your hair, what's the issue doing your hair now?

22 A. Well, I used to shampoo my hair weekly; now, I'm
23 doing it every two (2) weeks because of the pain in the
24 neck and the arms.

25 Q. Okay.

1 A. And --

2 Q. When you drive, if -- if you have to be out in the
3 car more than a short time, what -- what do you notice?

4 A. -- pain --

5 Q. And where --

6 A. -- in my lower back and my right leg and the --
7 and I can't drive during heavy traffic because of the
8 -- the -- my reaction time is not as good as it used to
9 be --

10 Q. -- okay.

11 A. -- because my leg is not as strong, my right leg
12 is not as strong; so, breaking gets to be difficult --

13 Q. Okay.

14 A. -- sometimes.

15 Q. All right. How about steps?

16 A. Oh, wow. I can't do any of those and I have steps
17 in my house and I just have to -- I come down once a
18 day and I go up once a day.

19 Q. Okay.

20 A. Yeah. And I can't go to -- I used to go to
21 concerts and walk in the parks and stuff; I just can't
22 do that stuff anymore.

23 Q. All right. Now, you can walk for periods of time?

24 A. Yeah.

25 Q. And if you stay up, what happens?

1 A. If I continue to walk, my leg feels like it's
2 going -- it's going to go out, it gets weak and my gait
3 gets unsteady and I just -- I have to sit down.

4 Q. Do you have issues with sleeping?

5 A. Oh, yeah. I sleep no longer -- no more than four
6 (4) hours a night --

7 Q. Okay.

8 A. -- because of my neck. Then I have to get up and
9 do something for about fifteen (15) minutes and then
10 I'll lay back down and finally I'll go back to sleep
11 but I can't sleep long periods anymore.

12 Q. All right. Now, I think you had gone -- it's been
13 about two (2) years ago -- to have an FCE over at the
14 -- the rehab place?

15 A. Yes.

16 Q. And did you -- did you try?

17 A. Yeah.

18 Q. Did you push yourself?

19 A. Yeah.

20 Q. And after it was all over with, did it take a
21 while to get back to your normal; were you hurting?

22 A. Yeah. I went home and took some medicine.

23 Q. Okay. Ms. Duggans, you put thirty (30) years in
24 over with DMH; did --

25 A. Yeah.

1 Q. -- did you hope to stay longer?

2 A. Yeah. I wanted to stay and do the Teri Program
3 but then after the injury I wasn't able to do it.

4 Q. The second injury?

5 A. Yeah, the second injury.

6 Q. Okay. And, again, you know your body and you know
7 what that thirty (30) years in that job involved --

8 A. Yeah.

9 Q. -- can you do that now?

10 A. No.

11 Q. If you could, would you be doing it?

12 A. If I could I would. I loved my job. I loved my
13 patients.

14 Q. Okay.

15 A. I enjoyed it.

16 Q. Now, we asked for a lump sum; I don't know if --
17 if there was any objection to this but let me ask you
18 this. You're trying to buy the place you're in?

19 A. Yeah. I -- well, my landlord gave me an offer, a
20 rent to own --

21 Q. Right.

22 A. -- type offer --

23 Q. Okay.

24 A. -- and she wanted some money down before I get a
25 contract.

1 Q. okay. And so, basically, at least some of the
2 money is going to go towards that?

3 A. Yes.

4 Q. All right. And just for the purposes, you know,
5 you still will have some money coming in from your
6 State Retirement?

7 A. Yes.

8 Q. And I believe we've requested some language to
9 help you with your Social Security set-off?

10 A. Yes.

11 Q. And hopefully you're going to be getting more
12 money from them in that situation?

13 A. Yes.

14 Q. okay. And, again, you -- you are self-sufficient,
15 aren't you?

16 A. A long time, yeah.

17 Q. All right. Nobody that comes to take care of you

18 --

19 A. No.

20 Q. -- nobody that pays your bills --

21 A. No.

22 Q. -- you take care of all that yourself?

23 A. I sure do, yeah.

24 Q. And you're capable of doing that?

25 A. Yes.

1 Q. All right.

2 Mr. Safran: I don't have any other
3 questions. Thank you.

4 CROSS-EXAMINATION

5 By Mr. Gallagher:

6 Q. Ms. Duggans, I'm going to ask you what, if any,
7 problems are you specifically having with your right
8 hand or right wrist related to the carpal tunnel
9 syndrome --

10 A. Well, my right --

11 Q. -- that you had in 2007?

12 A. -- well, my right wrist -- I was diagnosed with
13 carpal tunnel in both wrists but it was worse in the
14 right wrist; so, that's why he did the surgery, Dr.
15 Fulton --

16 Q. Okay.

17 A. -- on the right wrist.

18 Q. And did that surgery resolve all your symptoms?

19 A. No, it did not. In fact, I ended up with
20 Jack-In-The-Box, well, that's what the doctor in Camden
21 told me, Dr. Jackson. The right thumb, it was some how
22 or another the nerve got damaged in the right thumb.
23 So, I did get some relief but I -- then I lost a lot of
24 the strength in my right thumb.

25 Q. And what, if any, problems are you still having

1 today --

2 A. I'm still having --

3 Q. -- are you still having those issues today?

4 A. -- the same issues, yeah.

5 Q. You said earlier that you're having issues with
6 your neck radiating in -- into your arms; is that
7 correct?

8 A. Yes.

9 Q. And were you having those problems as a result of
10 the '07 accident or the '09 accident?

11 A. The '07, the carpal tunnel.

12 Q. I'm talking about the problems in your neck that

13 --

14 A. My neck.

15 Q. -- went down into your arms; was that from '07 or
16 '09?

17 A. '07.

18 Q. okay. And did those problems get worse after '09?

19 A. Yes.

20 Q. And is it both arms or one arm?

21 A. It's both. It's worse in my right arm than it --
22 it was worse in -- worse in my right but I still have
23 problems with both, actually, but it's still bad in my
24 right.

25 Q. Are you having any issues with either of your

1 legs?

2 A. My right leg.

3 Q. And that's a result of the --

4 A. '09 --

5 Q. -- '09 accident?

6 A. -- yes.

7 Q. How far down into your leg does it go?

8 A. All the way down to my big toe.

9 Q. You never had surgery as a result of the '09
10 accident --

11 A. Huh-uh.

12 Q. -- did you?

13 A. No, just injections.

14 Q. When is the last injection you had?

15 A. The last injection I had was in -- let's see if I
16 can remember -- I know it's almost a year; so, I think
17 it was in the last of November or December or something
18 --

19 Q. Did the injections --

20 A. -- the injection.

21 Q. -- help anything?

22 A. Yeah, they help me a lot.

23 Q. What did it help --

24 A. At --

25 Q. -- primarily?

1 A. -- at first, I was getting them, like, three (3)
2 or four (4) times a year and -- and the more I -- the
3 longer -- the more I took them the less I needed them
4 but now I still -- I'm down to, like, once a year now.

5 Q. what did the injections help --

6 A. It helped --

7 Q. -- what aspect of your problem?

8 A. -- it helped my lower back and my right leg.

9 Q. The injection helped your leg?

10 A. Yes.

11 Q. Do you have issues with your leg every day?

12 A. Yes.

13 Q. Is it a constant pain in your leg or burning or --

14 A. It's a --

15 Q. -- pins and needles in your leg?

16 A. -- it's a constant -- it's a constant pain and
17 then I get the twitching sometimes, the -- and the
18 tingles.

19 Q. The medication you're taking is Norco, Zanaflex
20 and --

21 A. Mobic.

22 Q. -- Mobic?

23 A. Yes.

24 Q. Well, did at -- at any point did you ever take a
25 medication called Neurontin; do you remember that --

1 A. I think they --

2 Q. -- or something called Gabapentin?

3 A. -- I remember those but then he took it to -- he
4 changed it from that to the Mobic, I believe it was. I
5 had a couple of medication changes under Dr. Riber.

6 Q. Okay. You were back at full duty at the time of
7 the '09 accident, right?

8 A. Yes.

9 Q. Okay. And you were -- you were out of work from
10 '07 about three (3) or four (4) months; is that about
11 right?

12 A. I was on light duty.

13 Q. Okay. Or you were either out of work or on some
14 sort of light duty and may have gotten some partial
15 benefits for about three (3) or four (4) months?

16 A. Yes.

17 Q. So, it took you about three (3) or four (4) months
18 to get back to normal?

19 A. To get back to normal, meaning what?

20 Q. Meaning back to full duty.

21 A. Oh, yeah.

22 Q. Okay.

23 Mr. Gallagher: All right. That's all
24 the questions I have, Ms. Duggans.

25 Mr. Safran: Just very quickly.

REDIRECT EXAMINATION

By Mr. Safran:

Q. Ms. Duggans, again, I'm just looking at the records from Dr. Riber. Really, from the very outset, you basically had been talking to him, again, about low back, neck --

A. The right --

Q. -- shoulders --

A. -- yeah.

Q. -- and you told him periodically about the leg issue?

A. Yes.

Q. Okay. And he tries to address those with you?

A. Yes.

Q. All right. But, I guess, my point is, is that I don't believe, as I recall, that a good bit of the time after the first injury was not necessarily being out, it was really being on light duty?

A. Yes.

Q. Okay. And when you're on light duty you've got your regular pay on light duty, as I understand it?

A. Yes.

Q. Okay. As far as this current situation, the neck, as you've indicated, after you had the incident with the gentleman, the six foot, four (6'4") gentleman --

1 A. Uh-huh.

2 Q. -- your neck pain was worse after that?

3 A. Yeah.

4 Q. Okay. And so, basically, you know, since you've
5 been seeing Dr. Riber he's really been hearing from you
6 about both of those things?

7 A. Yes.

8 Q. Okay.

9 Mr. Safran: Thank you.

10 Mr. Gallagher: Nothing further.

11 Commissioner Wilkerson: Any other
12 witnesses or --

13 Mr. Safran: No.

14 Commissioner Wilkerson: -- the other
15 side any? Okay.

16 Mr. Gallagher: No, sir.

17 Commissioner Wilkerson: Okay. This
18 concludes our hearing. Ma'am, thank you for
19 being here. I'm going to meet with the
20 attorneys for a few minutes. Thank you.

21 (THERE BEING NO FURTHER QUESTIONS, THE HEARING CONCLUDED AT
22 10:48 A.M.)

23

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE

Be it known that I took the foregoing South Carolina Workers' Compensation Commission Hearing of Deborah G. Duggans, vs. Department of Mental Health;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript of 34 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

Witness my hand and seal this 19th Day of May, 2018.

Gloria G. Davis
Gloria G. Davis
Notary Public for South Carolina
My Commission Expires 12/21/21

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**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER**

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

**Deborah G. Duggans v Dept. of Mental Health
SCWCC: 0921225
Commission Panel: Barden, Taylor, McCaskill; Chair
Order Assigned to Commissioner: Taylor
Court Reporter: Amber Scarborough – 803-252-3445**

David H. Keller
Andrew N. Safran

Defendants/Appellants
Claimant/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Affirm in Part Reverse in Part** the decision and order of the Single Commissioner. Reverse as to credit for payment of prior TTD to the neck based on particular circumstances of the case. Eaddy not applicable. Affirm the commutative as no exception raised.

Mr. Keller please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803.737.5737

Judicial

Transmitted via email mail this 10 October 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Deborah G. Duggans,)
)
Employee,)
)
vs.)
)
South Carolina Department of)
Mental Health,)
)
Employer,)
)
and)
)
South Carolina State Accident Fund,)
)
Carrier.)
_____)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBERS: 0725221 and 0921225

**CLAIMANT'S MEMORANDUM
IN OPPOSITION TO DEFENDANTS'
APPLICATION FOR REVIEW**

STATEMENT OF THE CASE

This is an appeal from the April 25, 2018 Order of the Honorable Avery B. Wilkerson, Jr., which determined: (a) Claimant, Deborah G. Duggans, had been rendered permanently and totally disabled by the consequences of her December 7, 2009 compensable accident; (b) this award was premised upon not only a 50% (+) disability to (loss of use of) her back "regardless of the presence of her neck injury component", but also the "combined consequences of her December 7, 2009 compensable injuries, particularly the back and right leg symptoms"; and (c) she was entitled to receive this award in a lump sum payment amounting to \$23,840.73 as of May 13, 2008.

Shortly thereafter, per Form 30 dated May 9, 2018, Respondent, State Accident Fund, appealed Commissioner Wilkerson's ruling on **two distinct/limited grounds**, maintaining his

lump sum award calculation: (a) “fail[ed] . . . to take into account a creditor or offset for benefits paid on a prior claim against Defendants’ (WCC Claim #0725221)””; and (b) afforded her “greater than 500 weeks of benefits for successive claims within the same employment”

Specifically, the State Accident Fund contends the April 25, 2018 permanent disability award necessarily encompasses permanent disability produced by her **2007 claim**, to the extent it is entitled to credit for 17.5714 weeks of **temporary total disability compensation** paid in connection with this initial claim, despite the facts: (a) the law of this case unquestionably confirms the December 7, 2009 accident also produced a neck injury component; (b) Commissioner Wilkerson explicitly found the disability to her back produced by the December 7, 2009 compensable accident “exceeds 50% **regardless of** the presence of her neck injury component”; (c) he similarly determined “the nature/degree of the **back (lumbar) injury component resulting from this injury (affecting both back and right leg)** are sufficient to, in and of themselves, produce a total loss of earning capacity warranting an award of **permanent and total disability compensation** per Section 42-9-10”; (d) these findings clearly establish **no permanent disability compensation was paid in connection with the 2007 claim**; and (e) inspection of the appealed Order conclusively reveals Ms. Duggans received no permanent disability compensation relative to the 2007 claim. Additionally, the State Accident Fund seeks to advance a commutation argument that exceeds the scope of its Form 30 exceptions.

In this regard, Ms. Duggans respectfully submits a review of the law of this case, in light of the applicable legal authorities, clearly verifies: (a) her permanent disability compensation award was exclusively premised upon the consequences of her December 7, 2009 compensable

accident, particularly her back (lumbar) injury component; (b) she has never received permanent disability compensation attributable to the 2007 injury; (c) the State Accident Fund is not entitled to any further credit/set-off in this instance; (d) it is similarly precluded from advancing any argument as to commutation at this stage of the proceeding; and (e) Commissioner Wilkerson's Order should be affirmed in its entirety.

LAW OF THE CASE

After undergoing an authorized June 12, 2008 right carpal tunnel procedure, Ms. Duggans was: (a) released to "resume 'work without restriction' effective October 1, 2008"; and (b) assigned "a 1% impairment rating to the right upper extremity" by her treating physician. (See, April 25, 2018 Decision and Order, Finding of Fact No. 1).

When she continued to manifest symptoms involving her arm and neck, Ms. Duggans underwent an authorized second opinion orthopaedic evaluation through Dr. Joseph P. Jackson, Jr., who: (a) obtained additional diagnostic studies; and (b) felt "assessment of her cervical symptoms by 'Dr. Johnson down at Southeastern Spine . . . in Charleston' was warranted." (See, April 25, 2018 Decision and Order, Finding of Fact Nos. 2-3).

"Pending scheduling of this appointment, Ms. Duggans, who continued working without restriction, sustained a compensable accident on December 7, 2009." (See, April 25, 2018 Decision and Order, Finding of Fact No. 4). "Approximately three weeks following this injury (December 31, 2009), she underwent an authorized evaluation by Dr. John F. Johnson of Southeastern Spine Institute, who": (a) identified several clinical findings that he believed to be reflective of cervical spine pathology; (b) recommended a cervical injection; and (c) indicated her symptoms were job related. (See, April 25, 2018 Decision and Order, Finding of Fact No. 6).

“Several months later (May 19, 2010), Ms. Duggans began receiving treatment through Dr. Ezra B. Riber of Palmetto Pain Management, LLC, who”: (a) identified both lumbar and cervical symptoms during his initial examination; (b) performed “several injections aimed toward addressing her low back and radiating right leg pain”, but was able to adequately control her cervical symptoms through medication management; (c) determined she had “sustained a 17% whole person impairment due to her causally related lumbar spine component, as well as a 6% whole person impairment as a result of her cervical injury component”; (d) felt her spinal symptoms prohibited Ms. Duggans from engaging in more than limited sedentary to limited light work activities; and (e) indicated “Ms. Duggans will require continued medication management and interventional treatment for her lumbosacral radicular syndrome . . . [, while] her cervical injury . . . [would continue to be treated] with medical management” (See, April 25, 2018 Decision and Order, Finding of Fact Nos. 7-13).

After conducting a vocational assessment, Glen K. Adams, MRC, CRC, CEES concluded: (a) “. . . [n]o stable market remains that will enable Ms. Duggans to resume competitive reemployment”; and (b) “Ms. Duggans would also be classified as totally vocationally disabled from the impact of her December 7, 2009 injury alone.” (See, April 25, 2018 Decision and Order, Finding of Fact No. 17).

Ms. Duggans’ “clear and honest hearing testimony” further established: (a) “despite the presence of ongoing cervical symptoms identified by Dr. Jackson, she had resumed/maintained performance of full duty work activity until experiencing the December 7, 2009 accident”; (b) “this trauma not only created lumbar symptoms, but also aggravated/increased the previously-diagnosed cervical symptoms”; and (c) while her lumbar symptoms had been the focus of Dr.

Riber's treatment, she continued to encounter persistent cervical symptoms that favorably responded to ongoing medical pain management." (See, April 25, 2018 Decision and Order, Finding of Fact No. 18).

After considering all evidence, including this credible testimony, Commissioner Wilkerson found:

(a) the consequences of Ms. Duggans' compensable injuries affect multiple parts of her body (back, right leg and neck); (b) the evidence establishes she has unquestionably been rendered permanently and totally disabled by the combined effects of these multiple injury components; (c) she has likewise experienced a 50%(+) permanent disability to (loss of use of) her back as a result of the consequences of her compensable injuries; (d) **Ms. Duggans has been rendered permanently and totally disabled, through both a loss of earning capacity and 50%(+) permanent disability to the back, based upon the symptoms/pathology/limitations produced by her lumbar injury component alone, regardless of the documented dysfunction attributable to her cervical injury component;** and (e) there is no realistic expectation that her causally related conditions will improve to the extent that she will ever be able to sustain meaningful work activities in the future. (See, April 25, 2018 Decision and Order, Finding of Fact No. 23).

After acknowledging the compensability of her 2007 accident, Commissioner Wilkerson further determined.

. . . After resuming full duty work activities, Ms. Duggans **sustained additional injuries to her back (lumbar and cervical) within the meaning of Section 42-1-160 on December 7, 2009** while performing duties arising out of and within the course and scope of her employment with the South Carolina Department of Mental Health. (See, April 25, 2018 Decision and Order, Conclusion of Law No. 2).

He further concluded:

Following her December 7, 2009 compensable trauma, Ms. Duggans: (a) developed lumbar symptoms that have necessitated

her receipt of extended treatment through Dr. Riber, including multiple interventional procedures in conjunction with use of several prescription medications; (b) also consistently reported with cervical symptoms that were noticeably impacted by this trauma; (c) was forced to seek retirement status due to her physical incapacity to resume the duties incidental to her long time employment with the South Carolina Department of Mental Health; (d) has continued to experience symptoms that materially/negatively affect her ability to engage in various activities of daily living; and (e) has been appropriately/reasonably restricted, per a valid functional capacity evaluation endorsed by Dr. Riber, to the performance of limited sedentary to limited light demand activities. (See, April 25, 2018 Decision and Order, Conclusion of Law No. 3).

He likewise ruled:

In this instance, the relevant evidence confirms: (a) the consequences of Ms. Duggans' December 7, 2009 compensable accident affect multiple body parts; (b) the combination of impairments/limitations stemming from her compensable injury components (especially the back and right leg) prohibit her from resuming the types of work activities she has performed throughout her adult life; (c) her functional limitations, as validated by Dr. Riber, are wholly inconsistent with the physical demands of her relevant past employment; and (d) in view of these undisputed facts, as well as the uncontradicted opinions of Mr. Adams, no reasonably stable market exists (in terms of quality, dependability or quantity of employment options) for the types of services which Ms. Duggans is capable of providing/sustaining.

...

Based upon these facts, I conclude Mr. Duggans: (a) has sustained a 50%(+) permanent partial disability to (loss of use of) her back within the meaning of S.C. Code Ann. Section 42-9-30(21)(2015) as a result of her December 7, 2009 compensable accident; (b) **this degree of residual disability to the back per Section 42-9-30 (21) exceeds 50% regardless of the presence of her neck injury component;** (c) she has likewise been rendered permanently and totally disabled within the meaning of Section 42-9-10 by the combined consequences of her December 7, 2009 compensable injuries, particularly the back and right leg

symptoms; and (d) the nature/degree of the back (lumbar) injury component resulting from this injury (affecting both her back and right leg) are sufficient to, in and of themselves, produce a total loss of earning capacity warranting an award of permanent and total disability compensation per Section 42-9-10. (See, April 25, 2018 Decision and Order, Conclusion of Law Nos. 7-8).

LEGAL ANALYSIS

A. CREDIT CLAIM

“... [A]ll Findings of Fact and law by the Hearing Commissioner became and are the law of this case, except only those within the scope of the exception[s] . . . of” the May 9, 2018 Form 30. Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E. 2d 712, 716 (1940); Hilton v. Flakeboard America Limited, 418 S.C. 245, 71 S.E. 2d 719, 721 (2016). Application of the law of the case doctrine results in a party [being] . . . precluded from re-litigating issues decided in . . . [the prior] order. . . .” Hudson ex. rel. Hudson v. Lancaster Convalescence Center, 407 S.C. 112, 754 S.E. 2d 486, 490 (2014).

Given the limited nature of the State Accident Fund’s exceptions, the law of this case firmly establishes: (a) the 2009 accident produced back, **neck** and right leg injury components; (b) Ms. Duggans “has sustained a 50% (+) permanent partial disability to (loss of use of) her back within the meaning of . . . Section 42-9-30 (21) . . . **regardless of the presence for a neck injury component**”; (c) “she has likewise been rendered permanently and totally disabled within the meaning of Section 42-9-10 by the combined consequences of her December 7, 2009 compensable injuries, **particularly the back and right leg symptoms**”; and (d) “the nature/degree of the back (lumbar) injury component resulting from this injury (affecting

both her back and right leg) are sufficient to, in and of themselves, produce a total loss of earning capacity warranting an award of permanent and total disability compensation per Section 42-9-10.”

Based upon the law of this case, it is equally certain: (a) there was neither permanent injury ascribed to or permanent disability paid for any aspect of the 2007 claim; and (b) all permanent disability compensation Ms. Duggans received stemmed from the back (lumbar) and right leg injury components that were the exclusive products of her December 7, 2009 accident.

In this regard, consideration of Commissioner Wilkerson’s rulings, in light of the South Carolina Workers’ Compensation Act, further confirms the absence of any statutory basis for the State Accident Fund’s credit claim, as: (a) Ms. Duggans sustained neither permanent disability nor permanent injury through military service or other employment (S.C. Code Ann. Section 42-9-150 (2015)); (b) the permanent nature of her December 7, 2009 injury excludes her from the purview of S.C. Code Ann. Section 42-9-160 (2015); and (c) the absence of any determination of permanent injury in connection with the 2007 claim renders S.C. Code Ann. Section 42-9-170 (2015) “immaterial.” Eaddy v. Smurfit-Stone Container Corp., 355 S.C. 154, 584 S.E. 2d 390, 397 (Ct. App. 2003). See also, Harrison v. Owens Steel Company, Inc., 422 S.C. 132, 810 S.E. 2d 433, 439 (Ct. App. 2018) (noting provisions of “sections 42-9-150 to – 170 of the South Carolina Code (2015) . . . would have entitled [employer] . . . to credit for the **permanent disability benefits** it would have paid for [claimant’s] . . . first injury”).

Additionally, inspection of the Eaddy decision verifies: (a) the Court’s acknowledgement of previously paid temporary total disability compensation in connection with prior claims, as well as the employee’s award of permanent and total disability compensation as a result of a later

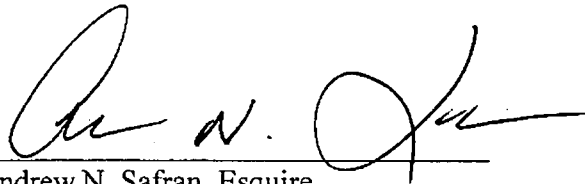
injury of similar nature; (b) affirmance of this subsequent 500 week award, notwithstanding employer's credit claim for prior temporary total disability compensation paid toward the prior claim; and (c) the immateriality of State Accident Fund's current argument.

B. COMMUTATION CONTENTION

"Only issues raised to the Commission within the application for review of the single commission's order are preserved for review." Hilton, 791 S.E. 2d at 719. While the State Accident Fund excepted to Commissioner Wilkerson's appropriate denial of credit for temporary total disability compensation paid following the 2007 accident, it clearly raised no issue as to commutation. In view of this fact, State Accident Fund may not now raise a new issue at this stage of the proceedings.

Accordingly, Ms. Duggans respectfully requests the Appellate Panel to affirm Commissioner Wilkerson's Order in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Andrew N. Safran', written over a horizontal line.

Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
Attorney for Employee/Claimant

September 11, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NUMBERS: 0725221 and 0921225

Deborah G. Duggans,)
)
Employee,)
)
vs.)

CERTIFICATE OF SERVICE
WCC FILE NUMBERS: 0725221 and 0921225

South Carolina Department of)
Mental Health,)
)
Employer,)
)
and)
)
South Carolina State Accident Fund,)
)
Carrier.)
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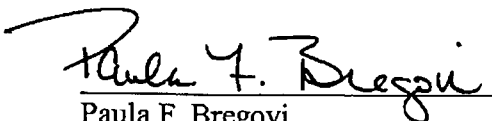
Paula F. Bregovi, paralegal for Andrew N. Safran, certifies that on the 11th day of September, 2018, she served the documents identified below in the following fashion:

Documents: Claimant's Memorandum in Opposition to Defendants' Application for Review

To: VIA E-CASE
The Honorable Amy Bracy
Judicial Director
South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, South Carolina 29201

VIA EMAIL
David H. Keller, Esquire
Turner, Padget, Graham & Laney, P.A.
Post Office Box 1509
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This 11th day of September, 2018.


Paula F. Bregovi
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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

W.C.C. FILE NO.S: 0725221, 0921225

Deborah Duggans,	)	
	)	
Employee/ Claimant,	)	
	)	
vs.	)	
	)	
S. C. Department of Mental Health,	)	
	)	
Employer,	)	
	)	BRIEF OF THE DEFENDANTS/APPELLANTS
AND	)	
	)	
S.C. State Accident Fund,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	
	)	
	)	

STATEMENT OF THE CASE

This matter is before the Commission's Appellate Panel pursuant to the Defendants/Appellants' Form 30, requesting review of Hearing Commissioner Avery B. Wilkerson's April 25, 2018 Decision and Order. A hearing was held on December 14, 2017, in Columbia, South Carolina, to determine the degree of permanent disability and entitlement to future medical treatment, if any.

The Respondent in this case initially alleged right carpal tunnel syndrome due to repetitive trauma on July 16, 2007. She also alleged cervical radiculopathy as a result of the same. In turn, the Appellants provided medical care and treatment in accordance with the Act, first with Dr. David B. Fulton and subsequently with Dr. Joseph P. Jackson, Jr. (Def's APA #9,

216-25; #13, 231-33.) On October 1, 2008, Dr. Fulton placed the Respondent at maximum medical improvement for her right carpal tunnel syndrome and assigned a 1 percent impairment rating. (Def's APA #9, 222.) Later, on September 8, 2009, Dr. Jackson recommended that Respondent undergo an evaluation with Dr. John F. Johnson at Southeastern Spine for her continuing cervical symptoms. (Def's APA #13, 233.)

While this referral was pending, the Respondent alleged additional injuries to the cervical and the lumbar spine as a result of a work-related injury on December 17, 2009. The Appellants subsequently authorized the spine evaluation with Dr. Johnson, who recommended physical therapy and medications. (Def's APA #14, 234-35.) Thereafter, the Appellants provided further treatment for both the cervical and lumbar spine with Dr. Ezra B. Riber of Palmetto Pain Management, which included intermittent injections and medications, but only as needed. (Def's APA #14a, 235a-35g.)

Ultimately, on August 1, 2016, Dr. Riber placed the Respondent at maximum medical improvement, assigning a 17 percent impairment rating to the whole person for the lumbar spine injury and a 6 percent impairment rating to the whole person for the cervical spine injury. At the hearing, the parties agreed to the same date as the time at which Respondent reached maximum medical improvement. (Hr'g Tr. 8:13-9:4.)

Concomitant with providing the above-mentioned medical treatment, the Appellants also paid to Respondent temporary disability benefits in accordance with the Act. First, the Appellants paid temporary disability benefits from June 13, 2008 through October 13, 2008, totaling to 17.5714 weeks of benefits. (WCC Form 18 for WCC File no. 0725221; Clt's APA 3, 13.) Next, the Appellants paid temporary disability benefits from May 3, 2010 through July 9, 2018, totaling to 427.1428 weeks of benefits. (WCC Form 18 for WCC File no. 0921225.)

Respondent's compensation rate is \$294.33. (Hr'g Tr. 4:14; Clt's APA 2, 12.) Together, the Appellants paid to Respondent 444.7142 weeks of temporary disability benefits in the excess of \$130,000.00. (WCC Forms 18 for WCC File no. 0725221 and WCC File no. 0921225.)

Following Respondent's placement at maximum medical improvement, her attorney filed for a hearing alleging permanent and total disability under S.C. Code Ann. § 42-9-10 or, alternatively, under § 42-9-30. (Hr'g Tr. 7:9-8:1.) Respondent requested that any permanent and total disability benefits be paid in lump sum in accordance with James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010). (Hr'g Tr. 7:9-8:1.) Respondent also requested lifetime medical benefits for her spine injuries. (Hr'g Tr. 7:9-8:1.)

Appellants countered that the Respondent should be limited to an award for partial disability to the spine under S.C. Code Ann. § 42-9-30, the Respondent is not entitled to lifetime medical benefits, and any award should take into account a credit for the total weeks of temporary disability benefits already paid by Appellants, including, *inter alia*, the weeks paid since the maximum medical improvement date of August 1, 2016 which exceed a year by the time of the hearing. (Hr'g Tr. 9:5-23.)

At the hearing on December 14, 2017, the parties agreed to consolidate Respondent's 2007 claim (WCC File no. 0725221) and 2009 claim (WCC File no. 0921225) into one hearing to address all issues. (Hr'g Tr. 4:20-5:11.) By Decision and Order dated April 25, 2018, Commissioner Wilkerson concluded that the Respondent was permanently and totally disabled under § 42-9-30(21) due to a loss of use of the spine in excess of 50 percent as a result of her spine injuries. (Dec. & Order, 24-25.) Commissioner Wilkerson further concluded that the Respondent was permanently and totally disabled under § 42-9-10 due to a total loss of earning capacity as a result the combined consequences of her injuries. (Dec. & Order, 25.)

Commissioner Wilkerson ordered that Appellants remain financially responsible for the provision of lifetime medical benefits for causally-related treatment and care for Respondent's spine condition as a result of her July 16, 2017, and December 7, 2009, injuries. (Dec. & Order, 26.) The Commissioner concluded that the payment of the remaining disability compensation award in lump sum was in the Respondent's best interests, and therefore, appropriate under the Act. (Dec. & Order, 21, 26.)

Finally, the Commissioner concluded that the Respondent would have received only 419 weeks of temporary disability benefits as of May 13, 2018, apparently only considering weeks paid following the 2009 date of injury and neglecting to include the first 17.5714 weeks of benefits paid following the 2007 date of injury. (Dec. & Order, 26.) The Commissioner also determined that no commutation is warranted without justification and despite well-accepted discounts routinely applied to lump sum awards. (Dec. & Order, 26.) As a result, the Commissioner ordered that the Appellants pay to the Respondent a lump sum award of \$23,840.73, which represents 81 weeks of benefits undiscounted at Respondent's compensation rate of \$294.33. (Dec. & Order, 26.) On these bases, the Appellants then filed a Form 30 request for judicial review by the Full Commission. (WCC Form 30 dated May 9, 2018.) In turn, this matter was set for review on September 18, 2018, before the Appellate Panel. (WCC Notice of Appellate Hr'g.)

In light of the foregoing, the Appellants respectfully request that the Appellate Panel reverse the Hearing Commissioner's Decision and Order with regard to both his failure to include the first 17.5714 weeks of benefits plainly paid by the Appellants and his failure to apply the discount routinely applied to lump sum awards such as that which he ordered the Appellants to pay in the case here. (Dec. & Order, 26.) Both constitute plain reversible error.

In short, the Respondent is entitled only to an award in the amount of \$16,015.08—not \$23,840.73 as mistakenly ordered.

QUESTIONS PRESENTED

- I. Under the South Carolina Workers' Compensation Act, should the Appellate Panel reverse a Hearing Commissioner's Decision and Order, when the Commissioner completely neglected to include more than 17 weeks of temporary disability benefits already paid in calculating the total weeks outstanding under the statutory cap?
- II. Under the Act, even assuming *arguendo* that the failure to include the total weeks already paid was not error, should the Appellate Panel reverse a Hearing Commissioner's Decision and Order on separate grounds for failure to apply a discount even though discounts are routinely applied to lump sum awards that, as is the case here, exceed 10 weeks?
- III. Under the Act, should the Appellate Panel reverse a Hearing Commissioner's Decision and Order that ordered the Appellants to pay to the Respondent a lump sum award of \$23,840.73, when the correct calculations amount to an award of only \$16,015.08?

ARGUMENT

- I. The Hearing Commissioner's Decision and Order should be reversed because the Commissioner completely neglected to include more than 17 weeks of temporary disability benefits already paid in calculating the total weeks outstanding under the statutory cap.**

The Appellants respectfully request that the Appellate Panel reverse the Hearing Commissioner's decision and order because, by failing to include the first 17.5714 weeks of benefits paid following the 2007 date of injury, the Commissioner granted the Respondent an award exceeding the maximum number of weeks allowed under the statutory cap. But, the Respondent *voluntarily* brought the 2007 claim before the Commissioner at the same time as the 2009 claim. Thus, if the merits of both claims were before, and considered by, the Commissioner, then the weeks of temporary benefits already paid on both must have been considered by the Commissioner too. But, because the Commissioner failed to consider both, the Respondent's award is in excess of five hundred weeks and should be reduced so that it no longer violates the Act.

Pursuant to S.C. Code Ann. §42-9-10, where a Commissioner finds and concludes that a claimant is entitled to an award for permanent and total disability, "[i]n no case may the period covered by the compensation exceed five hundred weeks except." S.C. Code Ann. §42-9-10(A)-(C) (making an exception only in cases where a claimant is "totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage.")

Importantly, this five hundred week statutory cap on the total award allowable for permanent and total disability cases also applies where a Commissioner finds and concludes that a claimant is entitled to an award for the same under §42-9-30(21) for 50 percent or more loss of use of the back. See, e.g., Medlin v. Greenville Cnty., 301 S.C. 411, 412-13, 392 S.E.2d 192,

193 (Ct. App. 1990), *aff'd as modified*, 303 S.C. 484, 401 S.E.2d 667 (1991), (“Once the employee has established the loss of more than fifty percent use of the back [under Section 42-9-30(21)] he is entitled to the award of five hundred weeks of compensation. Under Section 42-9-10 five hundred weeks is the maximum compensation period allowed unless an individual is a paraplegic, a quadriplegic, or has sustained physical brain damage.”).

Here, by Decision and Order dated April 25, 2018 addressing both the 2007 and the 2009 claims, Commissioner Wilkerson concluded that the Respondent was permanently and totally disabled under § 42-9-30(21) due to a loss of use of the back in excess of fifty percent. (Dec. & Order, 24-25.) Commissioner Wilkerson also concluded that the Respondent was permanently and totally disabled under § 42-9-10 due to a total loss of earning capacity as a result the combined consequences of Respondent’s injuries sustained in the 2007 and 2009 claim. (Dec. & Order, 25.) However, pursuant to controlling law, under either or both routes, Respondent is plainly limited to an award for up to, but never more than, five hundred weeks. See Medlin, 301 S.C. at 412, 392 S.E.2d at 193 (reviewing case where claimant was awarded compensation for total and permanent disability after he was found to be permanently and totally disabled as a result of injury to his back under both § 42-9-10 and § 42-9-30(21)). Therefore, that the Commissioner found Respondent was permanently and totally disabled under both § 42-9-10 and § 42-9-30(21), does not justify granting Respondent an award in excess of the statutory cap of five hundred weeks.

Likewise, that Respondent sustained multiple compensable injuries in no way justifies granting her an award for compensation in excess of the statutory cap of five hundred weeks. A claimant’s maximum recovery even for successive injuries is still limited to five hundred weeks by the Act. That is true even if a claimant is found to be permanently and totally disabled after

sustaining additional injuries—his or her award is nevertheless limited to the statutory cap of five hundred weeks. See Medlin, 301 S.C. at 413, 392 S.E.2d at 194 (limiting claimant to award of five hundred weeks despite multiple compensable injuries to the back).

Interestingly enough, here, the Respondent *voluntarily* requested and agreed to the consolidation of the multiple compensable injuries sustained as a result of her 2007 and 2009 claims. (Hr'g Tr. 4:20-5:11.) Thus, the facts, legal issues, and merits of both claims were before the Commissioner at the same time. (Hr'g Tr. 4:20-5:11.) While obviously this consolidation accomplished judicial economy, more importantly for Respondent, the consolidation bolstered her overall claim for permanent and total disability benefits. As stated above, this strategy apparently worked in Respondent's favor given that the Commissioner ultimately concluded that Respondent was permanently and totally disabled under both § 42-9-10 and § 42-9-30(21). (Dec. & Order, 24-25.)

But, if the Respondent brought the merits of both claims before the Commissioner in order to persuade the Commissioner of her permanent and total disability status, then the Commissioner must have also considered the weeks of temporary benefits already paid on both claims too. Nevertheless, the Commissioner only considered the weeks already paid on one of the two claims despite considering the facts of both claims. This resulted in an award to the Respondent in excess of five hundred weeks, which violates the Act.

Importantly, the underlying rationale is that, while a claimant can be entitled to compensation for more than one compensable injury under the Act, a claimant should, at the same time, be prevented from collecting double compensation. See S.C. Code Ann. §42-9-170 (providing that claimants are entitled to compensation for multiple compensable injuries but in no case may the compensation exceed five hundred weeks); Medlin, 303 S.C. 484, 401 S.E.2d

667 (1991) (finding that the loss of use to claimant's back had been fully "written-off" and thus non-existent as far as the Act is concerned); Hopper v. Firestone, 222 S.C. 143, 153, 72 S.E.2d 71, 76 (1952) (analyzing entire context of the Act and discerning legislative intent in limiting compensation in cases of multiple compensable injuries is to prevent double compensation); Duke v. S.C. Dep't of Pub. Safety, No. 0619075, 2010 WL 1248848, at*8 (SCWCC Jan. 12, 2010) (citing the Hopper Court's conclusion that "there was no basis upon which an award for permanent disability or specific loss could be computed" in rejecting claimant's contention that he was entitled to more than 100 percent loss of use because of multiple compensable injuries to a body part). But here, the Respondent was overly compensated in violation of the underlying rationale of the Act.

Specifically, the Appellants paid temporary disability benefits from June 13, 2008 through October 13, 2008, totaling to 17.5714 weeks of benefits. (WCC Form 18 for WCC File no. 0725221; Clt's APA 3, 13.) Next, the Appellants paid temporary disability benefits from May 3, 2010 through July 9, 2018, totaling to 427.1428 weeks of benefits. (WCC Form 18 for WCC File no. 0921225.) Together, Respondent has been paid 444.7142 weeks of temporary disability benefits. (WCC Forms 18 for WCC File no. 0725221 and WCC File no. 0921225.) This leaves 55.2858 weeks outstanding (500 less 444.7142).

However, the Commissioner neglected to include the initial 17.5714 weeks of benefits paid in his calculations and only considered those weeks paid from May 3, 2010 through May 13, 2018.¹ (Dec. & Order, 26.) In turn, he ordered that the Appellants pay to the Respondent a

¹ The Commissioner calculated 419 weeks paid from May 3, 2010 through May 13, 2018. This would leave 81 weeks outstanding. However, by the time of this appeal, Appellants continued to pay benefits through July 9, 2018, reducing the weeks outstanding to only 55.2858 as noted above. This does not change the fact that the Commissioner failed to consider the first 17.5714

lump sum award representing 81 weeks of outstanding benefits. Adjusting the 81 weeks down to account for the weeks Appellants continued to pay Respondent from May 13, 2018 through July 9, 2018, the Commissioner's calculations would still require that, as of today, Respondent must be paid an additional 72.7143 weeks (81 less 8.2857 weeks that passed from May 13, 2018 through July 9, 2018). However, this amount must be adjusted further by reducing the 72.7143 weeks by the more than 17 weeks first paid to the Respondent.

After doing so, only 55.2858 weeks are outstanding, meaning that the Commissioner ordered that the Appellants pay to the Respondent an additional \$5,171.27 that they *already paid*. Clearly then, the \$23,840.73 award to the Respondent is grossly unfair to the Appellants and should have never been ordered by the Commissioner. Therefore, the Appellants respectfully request that the Appellate Panel reverse the Hearing Commissioner's decision and reduce Respondent's award accordingly. Otherwise, Respondent will receive an award in excess of the maximum five hundred weeks allowed in violation of the Act.

II. The Hearing Commissioner's Decision and Order should be reversed on separate grounds for failure to apply a discount even though discounts are routinely applied to lump sum awards that, as is the case here, exceed 10 weeks.

Even assuming *arguendo* that the failure to include the more than 17 total weeks already paid was not error, which it was, the Appellants respectfully request that the Appellate Panel also reverse the Hearing Commissioner's Decision and Order because no discount was applied to the lump sum award even though discounts are routinely applied to lump sum awards just like that in this case. Combined, the Commissioner's failure to include the total weeks already paid and to

weeks of benefits paid and is simply noted here to provide a complete and thorough account for the Appellate Panel's consideration.

apply the discount results in a requirement that the Appellants pay to Respondent \$7,825.65 more than the amount to which she is in fact entitled.

“[S]ection 42-9-301 authorizes the Commission to establish and award lump sum payments. James v. Anne’s Inc., 390 S.C. 188, 201, 701 S.E.2d 730, 736 (2010). Pursuant to the provision, the Commissioner can order the employer pay compensation benefits in lump sum, instead of weekly installments, when the claimant so requests and the Commissioner deems the same not contrary to the claimant’s best interests. S.C. Code Ann. § 42-9-301; Cox v. Mills, 286 S.C. 226, 227, 332 S.E.2d 562, 563 (Ct. App. 1985) (affirming that lump sum award was in claimant’s best interests). Here, the Commissioner found that a lump sum payment was in the Respondent’s best interests upon her request for his consideration of the same. (Dec. & Order, 21, 26.)

However, pursuant to Regulation 67-1605, “[t]he employer’s representative *shall* pay, in lump sum, a settlement or award which is less than one hundred weeks.” Reg. 67-1605(A) (emphasis added). By comparison, “[w]hen a settlement or award is more than one hundred weeks, the Hearing Commissioner *may* order a lump sum payment.” Reg. 67-1605(A) (emphasis added). Thus, the Regulation actually requires that the award be paid in lump sum in this case because the parties and the Commissioner all agree that the total award is less than one hundred weeks. (Dec. & Order, 26.) Therefore, Appellant’s take no issue with the *mode* of payment.

Nevertheless, § 42-9-301 further provides that the lump sum payment “shall be fixed by the Commission, but in no case . . . to exceed, the commutable value of the future installments commuted so as *not to exceed six percent nor to be less than two percent*. S.C. Code Ann. § 42-9-301 (emphasis added). Similarly, Regulation 67-1605 explicitly provides that, “unless the

settlement or award is less than ten weeks, the *insurance carrier receives a discount for payment in lump sum.*” Reg. 67-1605(A) (emphasis added); see also Cox v. BellSouth Telecomms., 356 S.C. 468, 473, 589 S.E.2d 766, 769 (Ct. App. 2003) (interpreting § 42-9-10 to empower the Commission to award lump sum payments where “that the commission should provide for a present day discount for any lump sum payment it awards” was undisputed).

In this case, the discount should apply regardless of whether the Appellate Panel finds the calculations of the Commissioner or of the Appellants more compelling. Indeed, the Commissioner calculated that Appellants had only paid to the Respondent 419 weeks of temporary disability benefits, leaving an outstanding 81 weeks of benefits to be paid. (Dec. & Order, 26.) But, as calculated by Appellants above, only 55.2858 weeks are outstanding as of the date of this Brief for two reasons. First, Appellants continued to pay Respondent from May 13, 2018 through July 9, 2018 requiring that the Commissioner’s calculations be adjusted. (WCC Form 18 for WCC File no. 0921225.) Second, Appellants already paid temporary disability benefits from June 13, 2008 through October 13, 2008, totaling to 17.5714 weeks of benefits which the Commissioner wholly failed to include in his calculations. (WCC Form 18 no. 0725221; Clt’s APA 3, 13.) Thus, under any method of calculation, the award is clearly not “less than ten weeks,” which would preclude the application of any discount in favor of the employer and its carrier under the Regulations.

Accordingly, the Regulations require that “the insurance carrier receive[] a discount for payment in lump sum.” Reg. 67-1605(A) (emphasis added). But, the Commissioner deprived the Appellants of this required discount in his Decision and Order in violation of the Regulation. (Dec. & Order, 26.) The Appellants therefore respectfully request that the Appellate Panel reverse the Hearing Commissioner’s order, at minimum, for this reason.

III. The Hearing Commissioner's Decision and Order should have ordered that Appellants pay a lump sum award of only \$16,015.08.

To correct the Commissioner's erroneous calculations, first, 17.5714 weeks of temporary disability benefits paid by the Appellants from June 13, 2008 through October 13, 2008 should be added to 427.1428 weeks of temporary disability benefits paid by the Appellants from May 3, 2010 through July 9, 2018. (WCC Form 18 for WCC File no. 0725221; WCC Form 18 for WCC File no. 0921225; Clt's APA 3, 13.) This totals to 444.7142 weeks of temporary disability benefits paid to Respondent to date. (WCC Forms 18 for WCC File no. 0725221 and WCC File no. 0921225.) Applying the five hundred weeks maximum cap under §42-9-10, only 55.2858 weeks are left outstanding (500 less 444.7142).

Next, applying the discount required by § 42-9-301 and Regulation 67-1605, the 55.2858 outstanding weeks is reduced to 54.4120. See Net Present Value Table, Weeks 1 through 100, S.C. WORKERS' COMPENSATION COMMISSION, https://wcc.sc.gov/sites/default/files/Documents/Main/Claims/Net_Present_Value_Tables/1-100.pdf (last visited Aug. 14, 2018). At Respondent's compensation rate of \$294.33, this amounts to an award of \$16,015.08—not the \$23,840.73 as mistakenly ordered by the Commissioner. Therefore, Appellants were ordered to pay to Respondent \$7,825.65 more than the amount to which she is in fact entitled.

CONCLUSION

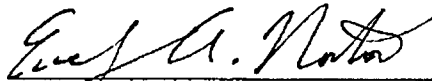
For the foregoing reasons, the Appellants respectfully request that the Appellate Panel reverse and remand the Hearing Commissioner's Decision and Order because the Respondent's award violates the Act by exceeding the maximum number of weeks allowed under the statutory cap. Indeed, the Commissioner completely left out the first 17.5714 weeks of benefits paid following the 2007 date of injury in his calculations.

But, even if violating the five hundred week statutory cap was not sufficient reason for reversing the Commissioner's Decision and Order, Appellants respectfully request that the Appellate Panel still reverse the Hearing Commissioner because no discount was applied to the lump sum award even though discounts are routinely applied to lump sum awards just like that in this case.

In short, the Respondent—at very best—is entitled to an award in the amount of \$16,015.08—not \$23,840.73 as mistakenly ordered. Thus, Appellants were ordered to pay to Respondent \$7,825.65 more than the amount to which Respondent is actually entitled.

Respectfully submitted,


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August 15, 2018

Greenville, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2018, I have caused a true and correct copy of the Defendants/Appellants' Brief to be mailed postage prepaid to the Claimant's attorney addressed as follows:

Andrew N. Safran, Esquire
P.O. Box 12089
Columbia, SC 29211



David H. Keller, Esquire

W.C.C. FILE NO.S: 0725221, 0921225

Defendants.

REPLY BRIEF OF THE
DEFENDANTS/APPELLANTS

Entirely failing to address any of the myriad of cases cited in Appellants' brief, Respondent rests his reply solely upon Eaddy v. Smurfit-Stone Container Corporation in order to dispense with the Appellants' entitlement to a 17.5714 week credit in this case. But, unlike in this case, the court in Eaddy dismissed the claim for a credit because the issue had been abandoned by the employer. 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) ("This court has noted that short, conclusory statements made without supporting authority are deemed

abandoned on appeal and therefore not preserved for our review”). There, the employer failed to cite any case law in support of its assertion thereby abandoning its credit claim. Id. Here, the Appellants made no such mistake. Thus, Eaddy is distinguishable from the case at bar and merely a distraction from the proper analysis.

To be clear, unlike the employer in Eaddy, Appellants point the Appellate Panel’s attention to, e.g., §42-9-10, which provides that where a Commissioner finds and concludes that a claimant is entitled to an award for permanent and total disability, “[i]n no case may the period covered by the compensation exceed five hundred weeks except.” S.C. Code Ann. §42-9-10(A)-(C) (making an exception only in cases where a claimant is “totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage.”). Likewise, an award for permanent and total disability under §42-9-30 also triggers this five hundred week statutory cap on the total award allowable. See, e.g., Medlin v. Greenville Cnty., 301 S.C. 411, 412-13, 392 S.E.2d 192, 193 (Ct. App. 1990), *aff’d as modified*, 303 S.C. 484, 401 S.E.2d 667 (1991), (“Once the employee has established the loss of more than fifty percent use of the back [under Section 42-9-30(21)] he is entitled to the award of five hundred weeks of compensation. Under Section 42-9-10 five hundred weeks is the maximum compensation period allowed unless an individual is a paraplegic, a quadriplegic, or has sustained physical brain damage.”).

In addition to a misplaced reliance upon Eaddy, the Respondent re-emphasized that the Commissioner found that he was permanently and totally disabled under both § 42-9-10 and § 42-9-30. But in so doing, the Respondent wholly failed to appreciate the fact that a permanent and total disability finding under either or both provisions has absolutely no impact on the credit analysis. Again, under controlling law, under either or both routes, Respondent is plainly limited

to an award for up to, but never more than, five hundred weeks. See Medlin, 301 S.C. at 412, 392 S.E.2d at 193 (reviewing case where claimant was awarded compensation for total and permanent disability after he was found to be permanently and totally disabled as a result of injury to his back under both § 42-9-10 and § 42-9-30(21)). Therefore, that the Commissioner found Respondent was permanently and totally disabled under both § 42-9-10 and § 42-9-30(21), does not justify granting Respondent an award in excess of the statutory cap of five hundred weeks.

Finally, the Respondent aims to redirect the Appellate Panel's attention to the apparent severity of the 2009 claim in order to detract attention from the 2007 claim and the more than 17 weeks of benefits already paid thereunder. Respondent wholly fails to acknowledge or provide counter-authority for the established proposition that a claimant's maximum recovery, even for successive injuries, is still limited to five hundred weeks by the Act—even if a claimant is found to be permanently and totally disabled after sustaining additional injuries. See Medlin, 301 S.C. at 413, 392 S.E.2d at 194 (limiting claimant to award of five hundred weeks despite multiple compensable injuries to the back). But here, the Respondent *voluntarily* requested and agreed to the consolidation of the multiple compensable injuries sustained as a result of her 2007 and 2009 claims. (Hr'g Tr. 4:20-5:11.) Thus, by Respondent's own request, the facts, legal issues, and merits of both claims were before the Commissioner at the same time. (Hr'g Tr. 4:20-5:11.)

Importantly, the consolidation bolstered the Respondent's overall claim for permanent and total disability benefits. This strategy worked in Respondent's favor given that the Commissioner ultimately concluded that Respondent was permanently and totally disabled under both § 42-9-10 and § 42-9-30(21), but now Respondent implores the Commission to ignore the

2007 claim and its impact. (Dec. & Order, 24-25.) Colloquially, Respondent wants to have his cake and eat it too.

Respondent, as with any other claimant, should be prevented from collecting double compensation under the Act. See, e.g., S.C. Code Ann. §42-9-170 (providing that claimants are entitled to compensation for multiple compensable injuries but in no case may the compensation exceed five hundred weeks); Hopper v. Firestone, 222 S.C. 143, 153, 72 S.E.2d 71, 76 (1952) (discerning legislative intent in limiting compensation in cases of multiple compensable injuries is to prevent double compensation). But here, if Appellants are not afforded their requested credit, the Respondent will be overly compensated in violation of the underlying rationale of the Act.

II. The issue of whether the Hearing Commissioner's Decision and Order should be reversed on separate grounds for failure to apply a discount even though discounts are routinely applied to lump sum awards has been properly preserved for the Appellate Panel's review.

While “[o]nly issues raised to the Commission within the application for review of the single commission’s order are preserved for review,” Hilton v Flakeboard America Ltd., 418 S.C. 245, 791 S.E.2d 719, 721 (2016), “[o]f course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue,” Herron v. Century BMW, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011). Instead, all that is required is that the issue be “sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge.” Id.

As case law illustrates, this is a far lower bar than that for which the Respondent argues. For example, in Solomon v. W.B. Easton, Inc., it was sufficiently specific enough to file an exception with the Commission stating only that “the facts found by the commission were not

supported by credible evidence.” 307 S.C. 518, 415 S.E.2d 841 (Ct. App. 1992). Likewise in White v. MUSC, the exception “attacking the commission’s findings of fact and conclusions of law” was sufficient to direct the court to the complained of error and determine whether or not the ruling below was erroneous. 355 S.C. 560, 564, 586 S.E.2d 157 (Ct. App. 2003).

Moreover, issues that are “fairly subsumed within” other issues on appeal are also properly preserved for review. Gatewood v. S.C. Dep’t of Corrs., 416 S.C. 304, 320, 785 S.E.2d 600, 609 (2016). Only if not “within the scope” of the appellant’s exception to the Commission do the findings of fact and law by the hearing commissioner become the law of the case.” Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 712 (1952); Green v. City of Columbia, 311 S.C. 78, 80, 427 S.E.2d 685 (Ct. App. 1993).

Here, Appellants did not use the exact word “commutation” in the Form 30 Request for Commission Review. But, case law does not require the exact name of a process or legal doctrine to preserve an issue. Appellants unequivocally raised the issue of the Hearing Commissioner’s error “in his calculation of the Claimant’s net lump sum award.” (Appellant’s Form 30 Addendum.) “Fairly subsumed within” the error in the Commissioner’s calculation is both the issue of his failure to account a credit or offset for the benefits already paid on the prior claim and the failure to account a credit for the discount routinely applied to lump sum awards just like the award in this case. The multifactor error in the Commissioner’s calculations was made “sufficiently clear” and was well “within the scope” of the Appellant’s exception to the Commission’s Decision and Order.

The South Carolina Appellate Court Rules provide only that “[o]rdinarily, no point will be considered which is not set forth in the statement of the issues on appeal.” SCACR, Rule 208(b)(1)(B). But, even [w]hen an issue is not specifically set out in the statements of issues, the

appellate court may nevertheless consider the issue if it is *reasonably clear* from an appellant's arguments." Here, without a doubt, Appellants explicitly raised all issues subsumed within the Hearing Commissioner's error "in his calculation of the Claimant's net lump sum award." The statement of issues on appeal specifically raises the Commissioner's: (1) complete neglect to include more than 17 weeks of temporary disability benefits already paid in calculating the total weeks outstanding under the statutory cap; (2) failure to apply a discount even though discounts are routinely applied to lump sum awards that, as is the case here, exceed 10 weeks; and (3) erroneous order that the Appellants pay to the Respondent a lump sum award of \$23,840.73, when the correct calculations amount to an award of only \$16,015.08. (Brief of the Appellants, p. 5.) Therefore, all issues are preserved for the Appellate Panel's review.

Moreover, the Respondent cannot feign surprise as to Appellant's request that the Appellate Panel reverse the Hearing Commissioner's Decision and Order due to his failure to apply the discount routinely applied to lump sum awards just like the award in this case because the Act and Regulations promulgated thereunder require that the discount be applied. See, e.g., S.C. Code Ann. § 42-9-301 (the lump sum payment "shall be fixed by the Commission, but in no case . . . to exceed, the commutable value of the future installments commuted so as not to exceed six percent nor to be less than two percent."); Reg. 67-1605(A) ("unless the settlement or award is less than ten weeks, the insurance carrier receives a discount for payment in lump sum.").

Respondent's abject failure to so much as acknowledge the plain requirements of § 42-9-301 and Regulation 67-1605 should be deemed an admission that both control in this case. Therefore, the Appellate Panel should reverse so that the same may be applied.

CONCLUSION

For the foregoing reasons, the Appellants respectfully request that the Appellate Panel reverse and remand the Hearing Commissioner's Decision and Order because the Respondent's award violates the Act by exceeding the maximum number of weeks allowed under the statutory cap. The Commissioner completely left out the first 17.5714 weeks of benefits paid following the 2007 date of injury in his calculations.

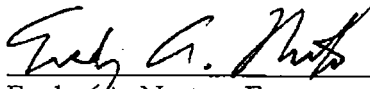
But, even if violating the five hundred week statutory cap was not sufficient reason for reversing the Commissioner's Decision and Order, Appellants respectfully request that the Appellate Panel still reverse the Hearing Commissioner because no discount was applied to the lump sum award even though discounts are routinely applied to lump sum awards just like that in this case as required by § 42-9-301 and Regulation 67-1605.

In short, the Respondent—at very best—is entitled to an award in the amount of \$16,015.08—not \$23,840.73 as mistakenly ordered. Thus, Appellants were ordered to pay to Respondent \$7,825.65 more than the amount to which Respondent is actually entitled.

Respectfully submitted,



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Attorneys for the Employer/Carrier

September 14, 2018

Greenville, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September 2018, I have caused a true and correct copy of the Defendants/Appellants' Brief to be mailed postage prepaid to the Claimant's attorney addressed as follows:

Andrew N. Safran, Esquire
P.O. Box 12089
Columbia, SC 29211


David H. Keller, Esquire

09/08/09 Deborah Duggans DOE

#12831 Orthopaedic Exam

Memo for record:

Addendum to 8/4/09 dictation on Deborah Duggans

I spoke with Mr. Safran today and he had some questions reference my opinions about Mrs. Duggans' activities. He emphasized the fact that she has done life long repetitive lifting of patients over the course of her career at the State Department of Mental Health and has to do a lot of straining. Although, this is outside of my realm of expertise she has a critical amount of cervical stenosis, i.e. 8 mm and normal is around 14 mm and this certainly can contribute to her radicular symptoms down both arms. I think that it ~~would~~ ^{JPJ} be because of the work related history she needs a spine referral to Dr. Johnson down at Southeast Spine down in Charleston to help clarify this. Certainly her c-spine needs to be cleared before she has any arthritis surgery on the right hand or any further surgical intervention for nerve compression at the elbow or in the hands.

I hope that these comments will be helpful to the claims adjuster and subsequent reviewer.

Joseph P. Jackson, Jr., M.D., F.A.C.S.

JPJ/sm

cc: Andrew Safran, Attorney
P. O. Box 12090
Columbia, SC 29211

Noelle Shekitka, Claims Adjuster
P. O. Box 102100
Columbia, SC 29221-5000

SEP 09 2009

DUGGANS, DEBORAH

Patient #263040

December 31, 2009

Ms. Duggans is seen for the first time today at Southeastern Spine Institute. She is a 53-year-old black female who presents with complaints of neck, shoulder, and upper extremity symptoms. The cervical symptoms are predominantly achy with a continuous sensation that runs into her shoulders and upper trapezius region. She has radiating achy pain down the volar lateral aspect of her right upper extremity with numbness and pins-and-needles in both palms. She states these symptoms have been going on for two to three years and appear to be directly correlated with her work. She gets some relief at times with prolonged sitting, lying on her side. Other activities exacerbate her symptoms. She gives a ratio of 75 percent neck pain, 25 percent arm pain. She rates her average pain about a 4-5/10 on the visual analog pain scale. She's missed about a month of work.

FAMILY HISTORY: Positive for arthritis.

REVIEW OF SYSTEMS: Significant for joint pain, muscle strength weakness, headache, change in sensation to the lower extremities, difficulty sleeping, heartburn.

SOCIAL HISTORY: The patient lives in West Ashley, she has a daughter who lives nearby. She does not smoke cigarettes and rarely drinks alcohol.

PAST MEDICAL HISTORY: Significant for carpal tunnel surgery. She takes medicine for hypertension.

ALLERGIES: She is allergic to OxyContin.

PHYSICAL EXAMINATION: She is a middle aged female well nourished, well developed 5'5" tall 200 pounds. She is alert and oriented x3 Cranial nerves II through XII are grossly intact. She has a normal appearing spine to gross inspection. She has a decreased range of motion to the cervical spine virtually all planes secondary to pain. She has tenderness to palpation throughout her cervical spine in the paraspinal region. Upper extremity strength is 5/5, sensation is intact but decreased to light touch. No myelopathic findings. Spurling's maneuver causes worsening bilateral shoulder pain and radiating pain in the right upper extremity.

ASSESSMENT: Rule out cervical radiculopathy.

PLAN : After reviewing an MRI scan which showed some evidence of stenosis at 4-5, 5-6 and 6-7 due to disc osteophyte complex, I think it is reasonable to proceed with a C6-7 CESI with cephalad flow. I want her to also get into formal physical therapy. I have given her some analgesic medication. If she fails to get significant improvement, we will need to get an updated MRI scan to make sure there has not been a worsening of her underlying condition. I will plan on seeing her back in clinic in two to three weeks.

DUGGANS, DEBORAH

Patient #263040

December 31, 2009

Page two

ADDENDUM: AP/lateral views of the cervical spine were obtained. There is no evidence of fracture, dislocation, or soft tissue mass.

I do believe the symptoms she is experiencing are likely most probably to a reasonable degree of medical certainty due to the nature of her job. She has worked as a CNA with residents who are able to do virtually nothing for themselves. She has to help bathe them, dress them, lift them. She has been doing this for apparently 20 years. Those types of activities have caused or worsened her underlying condition to the extent that her body is manifesting these symptoms.

John F. Johnson, M.D.

JFJ/dmp

T- 1/19/10

CC: Andrew N. Safran, Esquire

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0725221
Carrier File # 2007-006125
Carrier Code # 500 SF
Employer FEIN 570000J12

Deborah Duggans
1-A Bradley Court, Cayce, SC 29033
Wk#:0 - Home#:(803) 708-4657

DEPT OF MENTAL HEALTH
2414 Bull Street, Columbia, SC 29202

Preparer's name: April Edwards (803) 896-5915

State Accident Fund, Insurance Carrier

1. Date of injury: 07/16/2007

month day year

2. Total Weeks of Compensation Paid: 17.57143

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: tt From: 06/13/2008

To: 10/13/2008

4. Date of First Payment: 04/08/2008

month day year

5. Total Amount Paid (a) Compensation: \$ 5,171.80

(b) Medical (Include Nursing, Hospital Drugs, Etc.): \$ 31,941.80

6. Informal Conference is Requested: () yes (x) no
(check one)

7. Use these lines to send a memo to the Commission:

RECEIVED

JUL 20 2007

April Edwards (803) 896-5915
Employer's Representative Phone #

07/17/2017
Date

SC WORKERS' COMPENSATION

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request and informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

WCC FORM # 18 REV. DATE 3/96

18

PERIODIC REPORT

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JAN 06 2020
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Aisha G. Taylor, Commissioner
Susan S. Barden, Commissioner
H. Gene McCaskill, Commissioner

W.C.C. FILE NOS.: 0725221 and 0921225

APPELLATE CASE NO.: 2019-000393

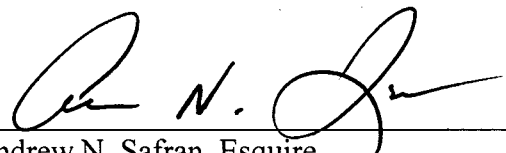
Deborah G. Duggans, Employee, ...APPELLANT.

v.

South Carolina Department of Mental Health, Employer, and State Accident
Fund, Carrier, ...RESPONDENTS.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the foregoing Record on Appeal contains all material
proposed to be included in the Record and no other material.


Andrew N. Safran, Esquire
Post Office Box 12089
Columbia, South Carolina 29211
803-256-6689

Attorney for Appellant

January 6, 2020
Columbia, South Carolina