

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Denitra Brooks, )  
Employee/Claimant, )  
-vs- )  
Amazon.com.DEDC, LLC )  
Employer, )  
and )  
American Zurich Insurance Insurance Co. )  
Insurance Carrier, )  
Defendants. )

BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION  
COMMISSION

**FULL COMMISSION  
ORDER**

W.C.C. FILE NO. 1720042

**RECEIVED**

APR 23 2020

**SC Court of Appeals**

**HEARING: COLUMBIA, SOUTH CAROLINA**  
**DATE: FEBRUARY 10, 2020**  
**APPEARANCES: JOHN D. CLARK FOR CLAIMANT, DENITRA BROOKS.**  
**CHRISTOPHER MINGLEDORFF FOR**  
**EMPLOYER/CARRIER.**  
**PURPOSE OF HEARING: TO DETERMINE THE ISSUES SET FORTH IN FORM 30**

**PROCEDURAL HISTORY**

Claimant filed a Form 50 request for hearing seeking a finding of compensability to Claimant's neck and low back. Defendants timely filed a Form 51 denying compensability to Claimant's neck and low back. On February 6, 2019, a hearing was held before Commissioner Melody L. James. On June 4, 2019 Commissioner James issued an order with the below findings of facts:

**FINDING OF FACTS**

1. The injury was described by Claimant as a shoulder pop while she was moving boxes. After her break, when to she returned to work, her shoulder popped again. (Defendant APA 32).
2. Dr. McFadden treated Claimant's right shoulder, including repair of the Claimant's right

shoulder.

3. Claimant has not met her burden of proof that the lower back was injured as a result of the December 3, 2017 event.
4. Dr. McFadden does not issue an opinion as to a neck or back injury. (Records of Dr. McFadden; Deposition of Dr. McFadden, including p. 11).
5. Claimant saw Dr. Peelle on June 28, 2018 for lower back pain. (Claimant APA 32). Dr. Peelle does not relate the lower back pain to the accident. (Medical Record and Deposition of Dr. Peelle). At his deposition, Dr. Peelle testified that it is highly unlikely that the lower back pain is related to the event. (Deposition of Dr. Peelle at p. 28-30).
6. Claimant saw Dr. Peelle on July 13, 2018 for neck pain. (Claimant APA 36 AND Deposition of Dr. Peelle at p. 6). Dr. Peelle's record indicates there are no focal or structural causes. Moreover, Dr. Peelle did not believe there was any cervical pathology that would require treatment. In his note, he related the neck pain to the shoulder, and discussed with Claimant that her neck strain is likely due to inactivity, posture, and the sling that was worn after her right shoulder surgery.
7. In his deposition, Dr. Peelle explained how the muscles of the shoulder are attached to the neck and thoracic spine. (Deposition of Dr. Peelle at p. 15 and 23). Dr. Peelle opined the neck pain was from the recovery from the shoulder surgery. Dr. Peelle testified that it was his opinion that there was not a discernible injury to her neck at the time of the accident. (APA 15). Moreover, Dr. Peelle indicated that the inactivity and the wearing of a sling potentially, as one explanation, caused pain in her neck. (Deposition 15-16). His opinion was that the Claimant probably did not have a separate injury to her cervical spine at the time of the event. (Deposition of Dr. Peelle at p. 24).
8. Claimant has not met her burden she had an injury or aggravation to her neck related to the

event. Dr. Peelle states that there is not a discernible injury her cervical spine, and that the sling and shoulder recovery could “potentially” cause neck pain, or is “one explanation.” Dr. Peelle is the sole medical opinion, and a review of his deposition is insufficient to relate the Claimant’s neck. The Commission cannot issue an opinion that would be the equivalent of a medical opinion. Barnette v. City of Greenville.

9. Even if the neck was separately related, an evaluation has been performed and there is no further treatment recommended to a reasonable degree of medical certainty. Section 42-15-60. The sole medical opinion with regards to the neck is that of Dr. Peelle. Dr. Peelle opines Claimant would be at MMI, and there is not any further medical care needed. (Defendant APA p. 30 and Deposition of Dr. Peelle at p. 6-16).

The Single Commissioner also issued an order with the below rulings of law:

#### **RULINGS OF LAW**

Accordingly, as provided in South Carolina Code of Laws, (1976 as amended), Section 42-17-40, it is the determination of this Commissioner:

1. Under § 42-1-160, Claimant did not sustain an injury by accident, arising out of and in the course of her employment to her lower back.
2. Under § 42-1-160, Claimant did not sustain an injury by accident, arising out of and in the course of her employment to her neck.
3. Even if the neck were compensable, then no further medical treatment is recommended to a reasonable degree of medical certainty.

#### **ORDER**

In an Appellant Review, the Appellant Panel shall, pursuant to S.C. Code Ann. Section 42-15-50, review the award, weigh the evidence as presented at the initial hearing, and if good grounds

be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner.

Counsel for Claimant and Defendants appeared at the scheduled hearing to present oral arguments on behalf of their parties.

The following are found as fact:

1. The injury was described by Claimant as a shoulder pop while she was moving boxes. After her break, when she returned to work, her shoulder popped again. (Defendant APA 32).

2. Dr. McFadden treated Claimant's right shoulder, including repair of the Claimant's right shoulder.

3. Claimant has not met her burden of proof that the lower back was injured as a result of the December 3, 2017 event.

4. Dr. McFadden does not issue an opinion as to a neck or back injury. (Records of Dr. McFadden; Deposition of Dr. McFadden, including p. 11).

5. Claimant saw Dr. Peelle on June 28, 2018 for lower back pain. (Claimant APA 32). Dr. Peelle does not relate the lower back pain to the accident. (Medical Record and Deposition of Dr. Peelle). At his deposition, Dr. Peelle testified that it is highly unlikely that the lower back pain is related to the event. (Deposition of Dr. Peelle at p. 28-30).

6. Claimant saw Dr. Peelle on July 13, 2018 for neck pain. (Claimant APA 36 AND Deposition of Dr. Peelle at p. 6). Dr. Peelle's record indicates there are no focal or structural causes. Moreover, Dr. Peelle did not believe there was any cervical pathology that would require treatment. In his note, he related the neck pain to the shoulder, and discussed with Claimant that her neck strain is likely due to inactivity, posture, and the sling that was worn after her right shoulder surgery.

7. In his deposition, Dr. Peelle explained how the muscles of the shoulder are attached to the neck and thoracic spine. (Deposition of Dr. Peelle at p. 15 and 23). Dr. Peelle opined the neck pain was from the recovery from the shoulder surgery. Dr. Peelle testified that is was his opinion that there was not a discernible injury to her neck at the time of the accident. (APA 15). Moreover, Dr. Peelle indicated that the inactivity and the wearing of a sling potentially, as one explanation, caused pain in her neck. (Deposition 15-16). His opinion was that the Claimant probably did not have a separate injury to her cervical spine at the time of the event. (Deposition of Dr. Peelle at p. 24).

8. Claimant has not met her burden she had an injury or aggravation to her neck related to the event. Dr. Peelle states that there is not a discernible injury her cervical spine, and that the sling and shoulder recovery could “potentially” cause neck pain, or is “one explanation.” Dr. Peelle is the sole medical opinion, and a review of his deposition is insufficient to relate the Claimant’s neck. The Commission cannot issue an opinion that would be the equivalent of a medical opinion. Barnette v. City of Greenville.

9. Even if the neck was separately related, an evaluation has been performed and there is no further treatment recommended to a reasonable degree of medical certainty. Section 42-15-60. The sole medical opinion with regards to the neck is that of Dr. Peelle. Dr. Peelle opines Claimant would be at MMI, and there is not any further medical care needed. (Defendant APA p. 30 and Deposition of Dr. Peelle at p. 6-16).

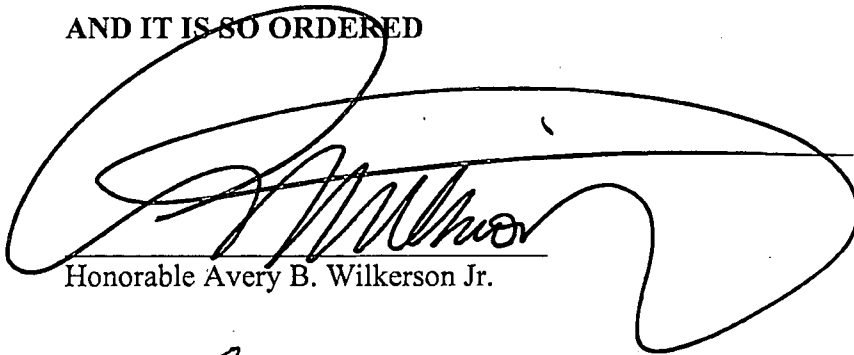
The following is found as law as provided in South Carolina Code of Laws, (1976 as amended), Section 42-17-40, it is the determination of this Appellate Panel:

1. Under § 42-1-160, Claimant did not sustain an injury by accident, arising out of and in the course of her employment to her lower back.

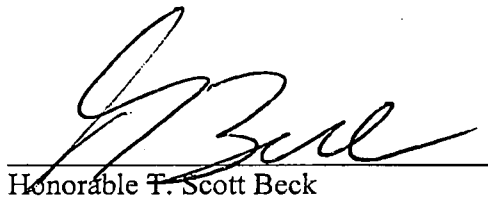
2. Under § 42-1-160, Claimant did not sustain an injury by accident, arising out of and in the course of her employment to her neck.
3. Even if the neck were compensable, then no further medical treatment is recommended to a reasonable degree of medical certainty.

Having heard oral arguments on behalf of the parties, considered the briefs and viewed the record as a whole, the Appellant Panel **AFFIRMS IN FULL**.

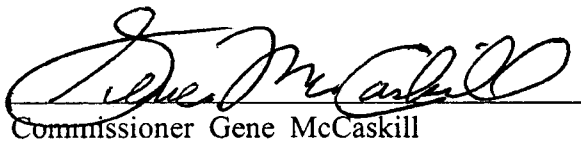
**AND IT IS SO ORDERED**



Honorable Avery B. Wilkerson Jr.



Honorable T. Scott Beck



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 Valerie D. Deller on April 9, 2020**

**Order Served via E-Mail:**

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**Order Served via USPS:**

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