

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

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SC Court of Appeals

Dana L. Dixon,)
)
Employee/Appellant,)
vs.)

WCC FILE NO: 1712879

APPELLATE
S.C. Department of Mental Health,)
)
Employer,)
)
and)
)
State Accident Fund,)
)
Carrier,)
)
Defendants/Respondents)
_____)

FULL COMMISSION

PANEL ORDER

HEARING DATE: June 8, 2020, in Columbia, South Carolina.

APPEARANCES: Claimant/Appellant appeared Pro Se.

Defendants/Respondents represented by M. Stephen Stublely, Esquire of Columbia, South Carolina.

PANEL: Commissioner Gene McCaskill, Chair
Commissioner Aisha Taylor
Commissioner R. Michael Campbell, II

FILED: _____ January 6, 2021 _____

STATEMENT OF THE CASE

This matter comes before the Full Commission Appellate Panel (“Panel”) via appeal by the Claimant from the Single Commissioner’s Order dated June 12, 2019. This was an admitted claim in which Ms. Dixon suffered admitted injuries to her right arm on January 31, 2017 while adjusting a resident who was seated in a wheelchair. She received medical treatment for that injury from Carolina Occupational Healthcare and Carolina Physical Therapy. On September 5, 2017, Appellant’s then attorney, Benjamin Cruse, filed a claim on Appellant’s behalf via a Form 50 in which Appellant alleged only an injury to the right hand as a result of her January 31, 2017 accident. In February 2018, Appellant requested to terminate the employee-client relationship with Mr. Cruse, and he was relieved as her counsel by Order of the Commission on March 15, 2018. Appellant subsequently filed a Form 50 requesting a hearing, which was the subject of the above hearing, dated November 27, 2018, in which she alleged an injury to, and sought treatment for, her right shoulder.

In response, Respondents filed a Form 51 denying injury to Appellant’s right shoulder, and instead asserting that the injury was to Appellant’s right arm. In support of their denial that Appellant sustained a compensable injury to her right shoulder, Respondents pointed to the fact that the previous 50 filed in the claim alleged only an injury to the right hand.

A hearing was set on Appellant’s Form 50 on March 7, 2019. At the start of the hearing, Respondents requested a postponement of the hearing as they had not received subpoenaed records from a number of medical providers identified by Appellant during her deposition on February 22, 2019. This includes the provider who treated Appellant following a subsequent motor vehicle accident that occurred after her January 31, 2017 work accident. Appellant objected to this request

due to the fact that she is currently living in a transitional home in North Carolina and has limited access to transportation. In light of this objection, the Single Commissioner denied Respondents' request for a postponement. Appellant was the only witness to testify at the hearing.

Following the hearing, the Single Commissioner issued an Order on June 12, 2019 in which he reached the following conclusions of fact and law

1. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.
2. The South Carolina Workers' Compensation Commission has subject matter and personal jurisdiction over all the parties and matters before this Commissioner; all parties having received proper notice of the hearing held set for March 7, 2019.
3. Venue is proper set in Richland County, South Carolina.
4. The Claimant's average weekly wage is \$449.34, which a resulting compensation rate of \$299.57.
5. On January 31, 2017, the Claimant suffered an admitted accident while moving a resident that occurred while she was in the course and scope of her employment with the South Carolina Department of Mental Health.
6. In her initial report of injury to the employer, the Claimant stated that the injury she sustained was to her right forearm.
7. Defendants admitted an injury to the right arm and provided medical care and treatment for her right arm, including her elbow, and right hand with Carolina Occupational Healthcare, LLC and Carolina Physical Therapy.
8. Claimant was discharged from care for those injuries on March 23, 2017, at which time she was released to return to work full duty.
9. During the time Claimant was in treatment, Defendants did not authorize any treatment for Claimant's right shoulder.
10. Claimant had a preexisting injury to her right shoulder which necessitated surgery prior to her January 31, 2017 work accident.
11. Claimant's initial Form 50 in this claim, which was filed in September 2017 and did not request a hearing, alleged injury to the right hand only.
12. Claimant's second Form 50, which was filed *pro se* by Claimant in November 2018 and is the subject of the above hearing, alleged injury to the right shoulder only.

13. The right shoulder was never an admitted body part.
 14. The record does not contain any statements by any medical provider that any injury to Claimant's right shoulder was caused or exacerbated by her January 31, 2017 work accident.
 15. Based on the greater weight of the evidence, I would find that Claimant's request for treatment for the right shoulder is denied. The shoulder was never an accepted body part by the State Accident Fund, and they have been deprived of an opportunity to have causation accurately addressed by a physician due to Claimant's delay in alleging an injury to her right shoulder as a result of her January 31, 2017 work accident and in requesting treatment for this alleged injury. Therefore, Claimant's request for treatment is barred under the South Carolina Workers' Compensation Act.
1. Pursuant to S.C. Code Ann. §42-1-130, the Claimant was a covered employee at the time in question and under S.C. Code Ann. §42-1-140, the Defendant employer was a covered employer under the Act.
 2. Pursuant to S.C. Code Ann. §42-1-160, Claimant suffered injury to her right arm by compensable accident in the course and scope of her employment.
 3. Pursuant to S.C. Code Ann. §42-9-35, where there is evidence of a preexisting injury or condition, (A) The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury. Claimant has not met her burden under this statute.
 4. Pursuant to S.C. Code Ann. §42-15-60, Defendants shall provide medical treatment to effect a cure or give relief for such time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.
 5. S.C. Code Ann. §12-15-20 governs the notice that must be provided by an injured worker to his or her employer following an accident.
 6. Claimant has failed to establish that she sustained a compensable injury to her right shoulder as a result of her January 31, 2017 work accident. As such, her request for treatment for her right shoulder in the present claim is denied.

Concluding in the Commissioner finding that the Appellant failed to establish that she sustained a compensable injury to her right shoulder as a result of her January 31, 2017. Therefore, the Single Commissioner denied Appellant's request for treatment for her right shoulder.

On or around June 24, 2019, Appellant filed a Form 30, ostensibly seeking to appeal the decision of the Single Commissioner. The Appellant also seems to argue that medical records submitted by the Respondents that were obtained through subpoenas issued for her ongoing 2016 workers compensation claim should not have been considered since they were issued in relation to this specific SCWCC claim number. In addition to her Form 30, Appellant filed a document that was construed as a Motion for Additional Evidence, which was denied by the Full Commission in Judicial Conference.

STANDARD OF REVIEW

Under the South Carolina Workers Compensation Act, the Panel is the ultimate finder of fact and arbiter of the claim and is not bound by a single commissioner's findings of fact and conclusions of law. *See Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (SC 1989). The Panel is empowered to make its own findings and conclusions consistent or inconsistent with those of the single commissioner. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162 (SC 1992). Upon review of a single commissioner's Order and award, the Panel may "reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." S.C. Code §42-17-50. Finally, when the facts of a case are undisputed, the issue of claim compensability becomes a matter of law. *Jordan v. Dixie Chevrolet*, 218 S.C. 73, 61 S.E.2d 654 (1950).

SUMMARY OF THE EVIDENCE

At the hearing before the Single Commissioner, the Commission's file and APA submissions were made a part of the record without objection. Appellant was further advised of

her right to counsel by the Single Commissioner and elected to proceed with the hearing *pro se*. (Tr. p. 4, lines 8-12) Appellant appeared and testified that she was born on January 15, 1967. (Tr. p. 17, lines 8-9) Appellant testified that she is currently living in a transitional home for women in Charlotte, North Carolina. (Tr. p. 17, lines 14-16)

At the time of the injury in question in this claim, Appellant testified that she was working for Respondent South Carolina Department of Mental Health ("SCDMH"). (Tr. p. 17, lines 21-25; p. 18, lines 5-8) Appellant testified that she thinks she started working for SCDMH on November 17, 2016. (Tr. p. 18, lines 9-13) Her official title with SCDMH was Human Services Assistant, but her position was as a Certified Nursing Assistant ("CNA"). (Tr. p. 21, lines 3-9; p. 22, lines 5-11) Appellant testified that she has been doing CNA-type work off-and-on for 33 years. (Tr. p. 22, lines 12-20) She is still maintaining her CNA license. (Tr. p. 22, lines 21-25; p. 23, line 1)

Prior to the injury that is the subject of the present claim, Appellant testified that she previously had two workers' compensation claims. (Tr. p. 24, lines 9-13) She previously injured her right shoulder, requiring surgery, while she was working for Alvin S. Glenn Detention Center. (Tr. p. 24, lines 15-25; p. 25, lines 1-6) Appellant testified that she thinks this claim was in 2002 or 2003 and that it settled. (Tr. p. 25, lines 3-9) Appellant also testified about another accident that she thinks happened in 2000 in which she popped her Achilles tendon while she was working for Veolia Transportation. (Tr. p. 25, lines 10-25; p. 26, lines 1-3) This claim was settled as well. (Tr. p. 26, lines 13-15) Appellant testified that she was represented by counsel in both of those claims. (Tr. p. 26, lines 16-17)

Appellant testified as to the facts of her work-related accident which is the subject of the present claim. This accident occurred on January 31, 2017 while Appellant was acting within the

course and scope of her employment with SCDMH. Appellant testified that she was making her rounds and had a list of residents she had to get up. (Tr. p. 26, lines 18-21) She got one of her residents up, bathed and clothed. (Tr. p. 26, lines 22-25; p. 27, line 1) Appellant went to sit the resident back in her wheelchair but the resident was holding onto the bed frame. (Tr. p. 27, lines 1-6) Appellant came behind the resident and used both of her arms to sit her back in her chair. (Tr. p. 27, lines 1-6) Appellant testified that she felt something in her right arm pop. (Tr. p. 27, lines 6-9)

Appellant testified that she then went and notified her supervisor of what happened and completed and signed a report of injury form. (Tr. p. 27, lines 10-17) Appellant testified that, in completing that form, she indicated that the injury was to the right forearm, but testified that she does not know the different parts of the arm. (Tr. p. 27, lines 23-25; p. 28, lines 1-4) Appellant acknowledged that she has a CNA license, and has been working as a CNA off-and-on for 30 years. (Tr. p. 28, lines 8-13)

After the incident on January 31, 2017, Appellant testified that she received treatment from a doctor with Carolina Occupational Health. (Tr. p. 28, lines 21-23) That doctor took an x-ray of her wrist, gave her a brace for her hand, and eventually sent her to physical therapy. (Tr. p. 29, lines 2-10) The doctor also gave her some Naproxen and placed her on light duty restrictions. (Tr. p. 29, lines 11-14) Appellant testified that her employer was able to accommodate those restrictions and she continued to work on modified duty. (Tr. p. 29, lines 15-18)

Appellant was released from Carolina Occupational Health on March 23, 2017. (Tr. p. 29, lines 19-23) Appellant testified that she went to C.W. Williams Community Health for treatment for her right shoulder in March 2018, but acknowledged that she did not provide copies of any records from that treatment to Respondents. (Tr. p. 30, lines 4-11) Appellant further testified that

she had an MRI in the weeks prior to the hearing and was given a prescription for Gabapentin by C.W. Williams Community Health. (Tr. p. 30, lines 15-23) Neither the report from this MRI nor any records from any treatment after March 23, 2017 were submitted into evidence at the March 7, 2019 hearing.¹ Appellant testified that she did not contact Respondents or request a hearing with the Workers' Compensation Commission to seek additional treatment after she was released by Carolina Occupational Health, nor did she feel the need to contact the Respondents to advise them that she was continuing to have problems with her arm or shoulder. (Tr. p. 31, lines 5-11; p. 32, lines 3-8) Appellant further testified that she requested a change in workers' compensation doctors, but made that request to the doctor's office, and not to Respondents. (Tr. p. 35, lines 2-10)

Appellant testified that she was in a subsequent car accident in March 2017 in which a man hit her on the passenger side of her car and broke her light. (Tr. p. 35, lines 11-15) She testified that she likely went to Providence Northeast Hospital for treatment following that accident. (Tr. p. 35, lines 16-21) She settled her claim with regard to that accident. (Tr. p. 35, lines 24-25; p. 26, line 1) Appellant further testified concerning a number of jobs she has held since she left employment with SCDMH and has been living in Charlotte. (Tr. p. 36, lines 2-22)

In the Report of Injury completed by Appellant regarding her January 31, 2017 accident, Appellant indicated that she injured her "right forearm" while "trying to help resident sit back in her wheelchair." (Defendants Exhibit A) That same day, Appellant received medical treatment from Dr. John Hynes with Carolina Occupational Healthcare, LLC. (Defendants' APA p. 1) The records from that visit indicate that Appellant complained of a new injury to her right arm and sets forth that Appellant stated she strained her right hand, wrist, and forearm assisting a patient into

¹ Appellant did not submit any APA submissions to the Single Commissioner or to Defendants either ahead of or at the March 7, 2019 hearing.

her wheelchair. (Defendants' APA p. 1) Dr. Hynes examined Appellant's right arm and wrist. (Defendants' APA p. 1) He noted that Appellant held her right arm protectively and complained of pain with minimal flexion and extension, especially in the 4th and 5th fingers. (Defendants' APA p. 1) Appellant also voiced significant pain when her right wrist was palpated. (Defendants' APA p. 1) Appellant was also only able to minimally flex and extend her wrist due to voice pain, and also indicated pain when flexing and extending her digits versus resistance. (Defendants' APA p. 1) Dr. Hynes ordered x-rays of Appellant's wrist which showed no fracture. (Defendants' APA p. 1-3) He diagnosed Appellant with a right hand/wrist/forearm strain. (Defendants' APA p. 2) Dr. Hynes prescribed Naproxen and a brace, recommended ice for the injuries, and released Appellant to work with modified duty restrictions. (Defendants' APA p. 2)

At Appellant's follow up with Dr. Hynes on February 8, 2017, Appellant stated that her right forearm and hand had improved since her prior visit, but that she was still having some pain in her ventral forearm as well as in her 4th and 5th fingers with flexion. (Defendants' APA p. 4) Again, Dr. Hynes noted that Appellant had mild, diffuse right ventral forearm tenderness and mild pain with flexion versus resistance. (Defendants' APA p. 4)

At her next follow up on February 17, 2017, Appellant saw Dr. Thomas Motycka, who noted that Appellant's complaints at that time concern her right upper extremity from her elbow distally, but that she complained of three distinct types of problems: cubital tunnel syndrome, trigger finger, and tennis elbow. (Defendants' APA p. 6) Dr. Motycka in his assessment opined that Appellant had right elbow lateral epicondylitis and advised her to take the over the counter NSAID of her choice and to apply heat to all areas. (Defendants' APA p. 7) He ordered an x-ray of the elbow and kept her on modified duty restrictions. (Defendants' APA p. 7-8) Dr. Motycka

also referred Appellant to physical therapy for the right elbow lateral epicondylitis. (Defendants' APA p. 9)

Appellant returned to see Dr. Hynes on February 24, 2017. (Defendants' APA p. 10) Dr. Hynes noted that Appellant "[s]tates pain in [right] shoulder now. Somewhat difficult historian, hard to obtain cohesive history. States difficulty raising [right] arm. Points to anterior aspect [right] shoulder. Also voices some mild pain [right] shoulder, wrist is improving. No numbness, weakness in [right] hand." (Defendants' APA p. 10) Dr. Hynes further notes that the examination of Appellant was "very inconsistent" and that it was "[h]ard to pinpoint anatomical area of pain." (Defendants' APA p. 10)

During her physical therapy appointment on February 27, 2017, Appellant complained of right shoulder pain to her physical therapist, but Appellant noted her understanding that it was not covered by workers' compensation. (Defendants' APA p. 21) Appellant again complained of right shoulder pain to Dr. Hynes on March 6, 2017, at which point Dr. Hynes noted that Appellant had a prior right rotator cuff surgery. (Defendants' APA p. 12) Appellant again complained of pain in her right wrist. (Defendants' APA p. 12) Dr. Hynes ordered an MRI of Appellant's shoulder on March 6, 2017, but this was denied by Respondents. (Defendants' APA p. 13-14, 16)

Appellant last saw Dr. Hynes on March 23, 2017, at which time Dr. Hynes noted that Appellant's right wrist was "fine." (Defendants' APA p. 15) Appellant advised Dr. Hynes that she was having no problem with her forearm or elbow. (Defendants' APA p. 15) She was having occasional pain in her ventral right wrist with direct pressure. (Defendants' APA p. 15) She was having no paresthesia or sensory/motor changes. (Defendants' APA p. 15) Appellant was discharged from treatment and released to return to work full duty. (Defendants' APA p. 16) Dr. Hynes' records reflect that Appellant again mentioned right shoulder pain, but that Appellant's

shoulder injury was not accepted by Respondents as part of Appellant's workers' compensation claim. (Defendants' APA p. 16).

In Appellant's brief, she submits a number of "questions," but these questions appear to contain her disagreement with the contents of her medical records and the handling of her claim, but do not assert specific error by the Single Commissioner. Ultimately, her contention in her brief appears to be that the Single Commissioner did not review the evidence in the claim in reaching his decision. As support for this claim, the Appellant makes a number of claims concerning her medical complaints and care throughout her claim which are wholly unsupported by the medical evidence in the record. Ultimately, it is clear that the Single Commissioner reviewed all evidence presented to him and properly ruled that Appellant failed to establish that she sustained a compensable injury to her right shoulder and properly denied her request for treatment for her right shoulder.

The Appellant contends in her brief that her primary medical problem throughout her claim has been her right shoulder. However, her initial report of injury specifically states that she injured her forearm while assisting a patient. This is further supported by the records from Appellant's treatment at Carolina Occupational Healthcare. In those records, both Dr. Hynes and Dr. Motycka reference specific complaints about Appellant's wrist and forearm, including limitations with respect to Appellant's movement of her wrist and fingers.

Further, while Appellant contends in her brief that she complained of her shoulder at every doctor's visit, Dr. Hynes clearly notes that the first time the Appellant ever complained to him of shoulder pain was on February 24, 2017, which was her fourth time seeing the doctors at Carolina Occupational Healthcare. Dr. Hynes further noted at that time that Appellant was a difficult historian and that he had a hard time obtaining a cohesive history and further that his examination

of her was very inconsistent. During all the previous visits, the medical records reflect that Appellant's complaints were confined to her arm below her elbow, and all treatment rendered was to address those complaints.²

As noted by Dr. Hynes, and confirmed by Appellant in her testimony, Appellant had a preexisting injury to her right shoulder which necessitated a prior right rotator cuff surgery. Since Appellant had a preexisting injury to her right shoulder, Appellant was required to establish that her work accident aggravated this condition. Pursuant to S.C. Code Ann. §42-9-35, where there is evidence of a preexisting injury or condition:

(A) The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury.

Appellant has not met her burden under this statute. There is no opinion within the record that Appellant's January 31, 2017 work accident aggravated her preexisting injury to her right shoulder. Ultimately, there is no evidence or medical opinion at all within the record that Appellant sustained any injury to her right shoulder as a result of her January 31, 2017 work accident.³

² Appellant testified at the hearing that the records from Occupational Healthcare contain made up information and that the treating physician "popped a pill" when he came in to evaluate her, these are entirely unsubstantiated allegations and wholly inconsistent with the information contained within the medical records submitted as Defendant's APA submissions. There is nothing within the record before the Commission to suggest that the treating physicians acted in any way inappropriately in their care of Appellant, or that any portion of their medical records is fabricated. Further, this allegation was made for the first time more than two years after Appellant's injury, and there is no evidence to suggest that Appellant raised concerns regarding the treatment she was receiving to Defendants at the time she was receiving this treatment. While Appellant alleges in her brief that she requested a second opinion with her nurse case manager and adjuster with Defendant State Accident Fund, she specifically testified at the hearing that she did not request any change of her provider with the Defendants, and that she did not request any further treatment from Defendants following her release from Occupational Healthcare.

³ Appellant references a recent MRI that she claims shows a torn rotator cuff. However, this MRI was taken more than 2 years after her date of injury, after she testified, she has worked a number of other jobs in the interim. Additionally, this MRI report was not submitted into evidence. Should the Commission decide to consider this evidence, Defendants would also request that they have the opportunity to supplement their evidence with the records obtained through their subpoenas referenced at the hearing before the Single Commissioner.

Further, during her treatment with Carolina Occupational Healthcare and Carolina Physical Therapy, Appellant expressed her understanding that the shoulder was not an accepted part of her workers' compensation claim. After she was released from care on March 23, 2017, the next apparent communication with Respondents about her claim came on September 5, 2017, when Appellant's then attorney, Benjamin Cruse, filed a claim on Appellant's behalf via a Form 50 in which Appellant alleged only an injury to the right hand as a result of her January 31, 2017 accident. Appellant contends that she terminated Mr. Cruse because he listed what she claims is the wrong body part on her Form 50. The Order terminating Mr. Cruse's representation of Appellant was filed by the Workers' Compensation Commission on March 15, 2018. Nevertheless, Appellant did not file a Form 50 alleging injury to her right shoulder until November 27, 2018, more than eight months after Mr. Cruse was relieved as counsel, and more than a year after the first Form 50 was filed alleging only an injury to Appellant's right hand. Therefore, Appellant's first apparent request for treatment to her shoulder came almost two years after the date of injury, and more than a year and a half after she was released from care. As such, Respondents were deprived of an opportunity to have a doctor timely address whether any injury to Appellant's shoulder was causally related to her work accident.

Finally, the Appellants position that any medical records obtain from a separate, ongoing workers compensation claim against the same Defendants has no merit as the subpoenas for the records were properly served pursuant to Regulation 67-214 of the South Carolina Workers' Compensation Commission.

FINDINGS OF FACT CONCLUSIONS OF LAW

This matter was heard by the Panel at a Review Hearing on June 8, 2020. After careful consideration of Briefs from the parties, able arguments by counsel, and review of the evidentiary Record and applicable law, the Panel concludes that the Hearing Commissioner's Order dated June 12, 2019 must be **AFFIRMED IN FULL**, Claimant's claim for medical and compensation benefits, and all other relief under the Act for her right shoulder, is hereby **DENIED**. Specifically, the Panel is entering the following Findings of Fact and Conclusions of Law in support of its determination ⁴:

1. All the parties of these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, to date.
2. The South Carolina Workers' Compensation Commission has subject matter and personal jurisdiction over all the parties and matters before this Commissioner; all parties having received proper notice of the hearing held set for March 7, 2019.
3. Venue is proper set in Richland County, South Carolina.
4. The Claimant's average weekly wage is \$449.34, which a resulting compensation rate of \$299.57.
5. On January 31, 2017, the Claimant suffered an admitted accident while moving a resident that occurred while she was in the course and scope of her employment with the South Carolina Department of Mental Health.
6. In her initial report of injury to the employer, the Claimant stated that the injury she sustained was to her right forearm.

⁴ Since the essential facts of this case are undisputed as reflected in the Statement of the Case, the Panel has dispensed with an immaterial recitation of the evidence of the case. See Jordan v. Dixie Chevrolet *supra*.

7. Defendants admitted an injury to the right arm and provided medical care and treatment for her right arm, including her elbow, and right hand with Carolina Occupational Healthcare, LLC and Carolina Physical Therapy.
8. Claimant was discharged from care for those injuries on March 23, 2017, at which time she was released to return to work full duty.
9. During the time Claimant was in treatment, Defendants did not authorize any treatment for Claimant's right shoulder.
10. Claimant had a preexisting injury to her right shoulder which necessitated surgery prior to her January 31, 2017 work accident.
11. Claimant's initial Form 50 in this claim, which was filed in September 2017 and did not request a hearing, alleged injury to the right hand only.
12. Claimant's second Form 50, which was filed *pro se* by Claimant in November 2018 and is the subject of the above hearing, alleged injury to the right shoulder only.
13. The right shoulder was never an admitted body part.
14. The record does not contain any statements by any medical provider that any injury to Claimant's right shoulder was caused or exacerbated by her January 31, 2017 work accident.
15. Based on the greater weight of the evidence, we would find that Claimant's request for treatment for the right shoulder is denied. The shoulder was never an accepted body part by the State Accident Fund, and they have been deprived of an opportunity to have causation accurately addressed by a physician due to Claimant's delay in alleging an injury

to her right shoulder as a result of her January 31, 2017 work accident and in requesting treatment for this alleged injury. Therefore, Claimant's request for treatment is barred under the South Carolina Workers' Compensation Act.

15. Pursuant to S.C. Code Ann. §42-1-130, the Claimant was a covered employee at the time in question and under S.C. Code Ann. §42-1-140, the Defendant employer was a covered employer under the Act.
16. Pursuant to S.C. Code Ann. §42-1-160, Claimant suffered an injury to her right arm by compensable accident in the course and scope of her employment.
17. Pursuant to S.C. Code Ann. §42-9-35, where there is evidence of a preexisting injury or condition, (A) The employee shall establish by a preponderance of the evidence, including medical evidence, that: (1) the subsequent injury aggravated the preexisting condition or permanent physical impairment; or (2) the preexisting condition or the permanent physical impairment aggravates the subsequent injury. Claimant has not met her burden under this statute.
18. Pursuant to S.C. Code Ann. §42-15-60, Defendants shall provide medical treatment to effect a cure or give relief for such time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty.
19. S.C. Code Ann. §12-15-20 governs the notice that must be provided by an injured worker to his or her employer following an accident.
20. Medical records obtained by the Defendants were obtained through the properly served subpoenas pursuant to Regulation 67-214 of the South Carolina Workers Compensation Act and were properly submitted.


21. Claimant has failed to establish that she sustained a compensable injury to her right shoulder as a result of her January 31, 2017 work accident. As such, her request for treatment for her right shoulder in the present claim is denied.

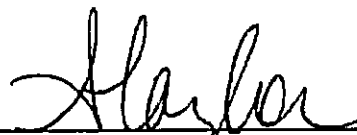
CONCLUSION AND ORDER

For all the aforementioned reasons, it is **ORDERED, ADJUDGED, AND DECREED** that the Hearing Commissioner's Decision and Order dated June 12, 2019 is hereby **AFFIRMED IN FULL** and Claimant's claim for compensation and medical benefits, and all other relief under the Act for the right shoulder, are hereby **DENIED**.

IT IS SO ORDERED!

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION:


Commissioner Gene McCaskill


Commissioner Aisha Taylor


Commissioner Mike Campbell

Order Served via E-Mail:

Dana Dixon Danadixon247@gmail.com	M. Stephen Stubley Speed, Seta, Martin, Trivett & Stubley sstubley@speed-seta.com
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Order Served via USPS:

Dana Dixon 181 Stabler Farm Road St. Matthews, SC 29135	M. Stephen Stubley Speed, Seta, Martin, Trivett & Stubley P.O. Box 11669 Columbia, SC 29211
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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 January 6, 2021