DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL
W.C.C. FILE NO. 1515209

Ana Rodriguez Galvan,

Employee/Claimant/Respondent,

v.

Griffin Stafford North Charleston,
Defendant Employer,

and

Accident Fund General Insurance Company c/o Accident Fund Insurance Company of America and Hartford Accident & Indemnity Co.;
Defendant Carriers/Respondents.

and

Employers Preferred Insurance Co.
Defendant Carrier/Appellant

Appellate Panel Review held in Columbia, South Carolina
on November 19, 2019 per notices timely
and properly served on all parties in interest
May 4, 2021

APPEARANCES:

Employee/Claimant/Respondent: Michael J. Jordan, Esquire, of Steinberg Law Firm, of Charleston on behalf of Claimant.

Defendant/Respondent: Regan A. Cobb, Esquire, of Holder Padgett Littlejohn + Prickett, of Mount Pleasant on behalf of Griffin Stafford North Charleston and Accident Fund General Insurance Company c/o Accident Fund Ins. Co. of America.

Defendant/Respondent: Lynnley D. Ross, Esquire of Willison, Jones, Carter & Baxley, P.A., of Mt. Pleasant on behalf of Griffin Stafford North Charleston and Hartford Accident & Indemnity Co.

Defendant/Appellant: Kathryn Fiehrer Walton, Esquire of Wood Law Group, LLC, of Charleston on behalf of Griffin Stafford North Charleston and Employers Preferred Insurance Co.

STATEMENT OF THE CASE

A hearing was held before Commissioner T. Scott Beck on April 23, 2019 to determine issues as set forth on the parties' Forms 50/51.

Defendant Employers Preferred objected to the Claimant's Supplemental APA submission that was provided on April 14, 2019 in citing Regulation 67-612. They assert although Claimant referenced Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (Ct. App. 1996) the report was not specifically identified and is not timely submitted. This objection was overruled on the basis that on Defendant Employers Preferred's decision to decline to depose Dr. Pappas regarding his opinion(s).

Claimant requested an Order providing an award of medical treatment, specifically surgery as recommended by Dr. Pappas and Dr. McCoy. Claimant requested the issue of compensability to her neck be held in abeyance pending the outcome of her right shoulder surgery. In addition, Claimant requested the issue of permanency for her right shoulder also be left in abeyance. Claimant requested an Order from the Commission that one of the Carriers provide surgery; however, it was her position that the need for this surgery is related to the original injury and that Carrier/Defendant Employers Preferred has the burden to demonstrate a new injury has occurred. Claimant contended her minor physical employment responsibilities upon returning to work in 2016 consisted of (1) opening and closing drawers and (2) folding wash cloths and hand towels only, which does not meet the requirements of a work injury or a repetitive trauma injury. Claimant relied on the

medical opinions of Dr. Pappas (see APA pages 107 and 107A), the opinion of Dr. Friedman who states that everything relates back to the original injury, and the specific testimony of Dr. McCoy which supports her position (see APA page 219) where he states that her symptoms directly relate to her work injury of 2015 and (see APA page 372) where he states the need for her surgery currently relates back to her original injury. In addition to those expert opinions, the Claimant also maintained she did not further injure her shoulder after her work accident.

Defendant Employers Preferred denied they are responsible for the Claimant's current surgery based on Claimant being at maximum medical improvement on September 28, 2016. Further, their position regarding Dr. McCoy's testimony, as referenced on APA page 390, is that both of his depositions, and pursuant to the logic in Geathers v 3V, Inc., 371 S.C. 570, 641 S.E.2d 29 (2007), the Claimant sustained an aggravation of her right shoulder condition after reaching maximum medical improvement sufficient to break the chain of causation. Defendant Employers Preferred disputed any responsibility for further medical treatment and relied on Dr. McCoy's testimony that he located a new rotator cuff tear that was neither present on the first MRI nor at the time of her first surgery and he opined this new tear likely occurred two to three months prior to the MRI on December 12, 2017 due to the retraction. Further, when asked about mechanism of injury, Defendant Employers Preferred asserted Dr. McCoy specifically testified that he had to assume it was the Claimant's repetitive work activities and/or some type of acute incident that she didn't pay much attention to at the time. Defendant Employers Preferred asserts that the testimony of Dr. McCoy and his comparison of

the three MRIs is directly in line with the analysis of *Geathers*, supra; therefore, based on a new accident by the Claimant they are not responsible for any further treatment.

Defendant Accident Fund asserted they are not responsible for Claimant's surgery and Claimant's need for ongoing medical treatment is the responsibility of Defendant Employers Preferred. Defendant Accident Fund relied on Claimant's testimony that she has not sustained any injury after her initial work injury of October 9, 2015. In addition, Claimant testified in her depositions that she has not had a worsening of her medical condition, that her new supervising role is even less demanding and she opts to use her left arm when necessary. Further, she does not engage in physical activity that would cause a worsening or aggravation of her symptoms. Defendant Accident Fund asserted the Claimant was deposed three times and stood by this testimony. Also, Defendant Accident Fund argued that their defense is supported by Dr. McCoy's testimony that even though he might have testified he believes a new tear is present, during his last deposition of April 4, 2019 (see APA page 432) when asked about the current tear he testified the Claimant's current tear is in the same supraspinatus tendon where he performed surgery. Further, Dr. McCoy testified it was his opinion to a reasonable degree of medical certainty that the surgical necessity of the current tear is causally related to the accident of October 9, 2015 if the tear is in the same tendon, as he believes it is, and if there had been no new accident. Last, when Dr. McCoy was asked whether this new tear was there for two months before MRI scan or four months since we do not do MRI scans every month or even six months then was it still his opinion that no

matter when the new tear showed up that it was causally related to the injury that occurred on October 9, 2015, and he answered yes it's causally related to the original injury to a reasonable degree of medical certainty. Defendant Accident Fund further asserted that their position is bolstered by Dr. Pappas, whose opinion indicates that more likely than not, to a reasonable degree of medical certainty, her current shoulder symptoms are due to her original injury, or, alternatively, results from a continuum following her surgery that was necessitated by the original injury because her rotator cuff tear was incompletely addressed during surgery.

Also, Defendant Accident Fund relied on the medical opinion of Dr. Friedman who stated in his report that the Claimant's current symptoms are related to the original accident of October 9, 2015. Based on all the above, Defendant Accident Fund asserted that Defendant Employers Preferred have not met their burden to demonstrate a break in the chain to cause Defendant Accident Fund to be responsible; and, that the Claimant's need for medical treatment is either due to the original injury and the tear is related to the original injury or even if it's a new tear that it is the natural progression resulting from the original accident that has never resolved.

Defendant Hartford took the position that the Claimant's subjective symptoms increased such that the Claimant sought out additional medical care in September 2017 prior to Hartford's coverage for the additional treatment and that a tear existed in December 2017 that the doctor stated had been present prior to the start of their coverage. Defendant Hartford relied on the Claimant's testimony that she has not been using her right hand at work to open drawers and that she cannot

remember the last time she used her right hand to open drawers. Defendant Hartford further asserted that even if the Claimant did open drawers, it did hurt and that, of course, it hurt as there's a full thickness tear that needs surgery which is correlation and not causation so either Employers Preferred or Accident Fund is responsible for providing medical benefits.

Claimant requested that her authorized treating physician either be Dr. Pappas or Dr. Schaaf who is in practice with Dr. McCoy, as Dr. McCoy no longer performs surgeries.

Commissioner Beck filed the Decision and Order on August 20, 2019 issuing the following determinations:

FINDINGS OF FACT

The undersigned Commissioner has thoroughly reviewed all of the testimony and evidence contained in the record and, after due consideration of the claim and defenses, the following Findings of Fact, as required under § 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

1. *Claimant sustained an admitted injury by accident arising out of and in the course and scope of her employment on October 9, 2015 to her right shoulder.*
2. *The issue of compensability to Claimant's neck as alleged from the accident on October 9, 2015, is in abeyance pending the surgical outcome of the right shoulder. In addition, the issue of any permanency to the right shoulder is in abeyance at this time.*

3. *Defendant Employers' objection to the questionnaire of Dr. Pappas is overruled as I afforded Defendant Employers the opportunity to depose Dr. Pappas before proceeding with the hearing and they declined the opportunity to depose Dr. Pappas. and they declined.*
4. *Claimant underwent right shoulder surgery as a result of the accident on October 9, 2015, by Dr. McCoy in February of 2016.*
5. *Claimant was released at MMI by Dr. McCoy on September 28, 2016, for her right shoulder.*
6. *Claimant returned to work for the Employer after her surgery with Dr. McCoy and continues to work for the Employer currently.*
7. *Claimant returned back to Dr. McCoy for further treatment in September of 2017 and as a result of an MRI in December of 2017, Dr. McCoy has recommended Claimant undergo another right shoulder surgery.*
8. *The question for the hearing is which Carrier is responsible for Claimant's current right shoulder surgery.*
9. *The fact that Claimant was placed at MMI for her right shoulder by Dr. McCoy on September 28, 2016 (APA p. 390) is dispositive of nothing.*
10. *I find Claimant's current condition to her right shoulder is not the results of Post Injury Repetitive Trauma nor Acute Intervening Injury.*
11. *Based upon the greater weight of the credible evidence, to include, the Claimant's testimony, opinions of Dr. Pappas and opinions of Dr.*

McCoy, I find Claimant's current condition emanates from her original injury of October 9, 2015.

12. *Claimant is not at MMI for her right shoulder injury of October 9, 2015.*
13. *Defendant Employers Preferred Insurance Company is responsible for ongoing medical care for Claimant's right shoulder recommended by Dr. Pappas and Dr. McCoy.*
14. *Based on Dr. McCoy no longer performing surgery and Claimant's request, Dr. Pappas is designated as the Authorized Treating Physician.*
15. *Based upon finding Defendant Employers Preferred Insurance Company being responsible for Claimant's right shoulder medical care, Defendant Accident Fund Insurance Company of America and Defendant Hartford Accident & Indemnity Company are released from the claim.*

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. *That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;*
2. *That S.C. Code Ann. § 42-1-160 is applicable in defining injury;*

3. *That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards;*
4. *Under S.C. Code Ann. § 42-1-160, the Claimant sustained an admitted injury to her right shoulder in an accident arising out of the course and scope of her employment on October 9, 2015;*
5. *Based upon the greater weight of the credible evidence, to include, the Claimant's testimony, opinions of Dr. Pappas and opinions of Dr. McCoy, I find Claimant's current condition emanates from her original injury of October 9, 2015.*
6. *Based upon the greater weight of the credible evidence, I find Claimant is not at maximum medical improvement for her right shoulder injury of October 9, 2015.*
7. *Based upon the greater weight of the credible evidence, Defendant Employers Preferred Insurance Company is responsible for ongoing medical care for Claimant's right shoulder with Dr. Pappas.*

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED AND DECREED *that the Employers Preferred Insurance Company is responsible for ongoing medical care for Claimant's right shoulder recommended by Dr. Pappas and Dr. McCoy; and it is further*

ORDERED, ADJUDGED AND DECREED *that Defendant Accident Fund Insurance Company of America and Defendant Hartford Accident & Indemnity Company are released from the claim; and it is further;*

ORDERED, ADJUDGED AND DECREED *that the issue of compensability for Claimant's neck and permanency to the right shoulder are in abeyance.*

AND IT IS SO ORDERED!

Following the filing of Commissioner Beck's Decision and Order, Defendant Employers Preferred filed a WCC Form No. 30 appeal. In the WCC Form No. 30 Application for Review, the Appellant raised the following issues on appeal from the Hearing Commissioner to the Appellate Panel of the Commission:

1. *Did the hearing Commissioner err in ruling and finding that the objection to a supplemental questionnaire from Dr. George Pappas should be included in the record in violation of South Carolina Code and Regulation 67 – 612 when the document was mailed to the parties on April 14, 2019 prior to the April 23, 2019 hearing and was not identified on the Claimant's Form 58 Prehearing Brief in accordance with Morgan V JPS Auto, 321 SC 201, 476 S.E.2d 457 (Ct. App. 1996)?*

2. *Did hearing Commissioner err in finding as a fact and concluding as a matter of law that the Claimant is not at maximum medical improvement for her right shoulder injury occurring on October 9, 2015 when the greater weight of the evidence in the record, including the opinions of Dr. James McCoy, Dr. Richard Friedman and Dr. Bright McConnell, indicates that the Claimant reached maximum medical improvement for the October 9, 2015 injury to her right shoulder?*

3. *Did hearing Commissioner err in not finding and concluding that the Claimant has reached maximum medical improvement for the October 9, 2015 right shoulder injury and addressing any related permanent*

disability benefits for the loss of use of the right shoulder based upon the greater weight of evidence in the record and the applicable law?

4. *Did the hearing Commissioner err in finding as a fact and concluding as a matter of law that Employers Preferred Insurance Company is responsible for ongoing medical care for the Claimant's right shoulder after the Claimant had a one year lapse in treatment after reaching maximum medical improvement for the October 9, 2015 injury and sustaining a new rotator cuff tear?*

5. *Did hearing Commissioner err in finding as a fact and concluding as a matter of law that the Claimant's current condition emanates from the original October 9, 2015 injury when the greater weight of the evidence in the record indicates that the Claimant suffered an intervening injury or repetitive trauma to her right shoulder sufficient to break the chain of causation from the October 9, 2015 injury and that the Claimant sustained an aggravation of her right shoulder condition?*

6. *Did the hearing Commissioner err in finding as a fact and concluding as a matter of law that Dr. George Pappas, the Claimant's IME physician, shall be the new treating physician authorized by Employers Preferred Insurance Company when the Defendant shall be entitled to select a treating physician if the previous authorized treating physician has retired from providing a portion of medical treatment?*

Based on Defendant/Appellant Employers Preferred Insurance Company's Brief to the Appellate Panel, the Appellant consolidated her appeal to three (3) issues: (1) "Does the greater weight of evidence in the record and the applicable law suggest that the Claimant reached MMI for her October 9, 2015 injury by accident and that Employers Insurance shall not be responsible for the Claimant's ongoing medical treatment for the worsening of her condition after she reached MMI?" (2) "Does the application of South Carolina Code Ann. Regulation 67-612 and *Morgan v. JPS Auto.*, 321 S.C. 201, 476 S.E.2d 257 (Ct. App. 1996), suggest that the supplemental questionnaire from Dr. George Pappas should be excluded from the evidentiary record?" And, (3) "Did the Single Commissioner err in finding that the

Claimant's IME physician, Dr. George Pappas, shall be the new authorized treating physician due to the prior authorized treating physician retiring from surgical practice?" Accordingly, these issues raised in the Appellant's brief were the only issues before the Appellant Panel on November 19, 2019, and all other issues are deemed to have been waived as a matter of law.

First, the Appellant argued in their brief that the Claimant reached maximum medical improvement for her October 9, 2015 injury and that the Appellant shall not be responsible for the Claimant's ongoing treatment for the worsening of her condition after she was placed at maximum medical improvement by the treating physician. The Appellant relied upon the deposition testimony of Dr. McCoy and his comparison of the Claimant's MRIs. following the October 9, 2015 injury and the December 12, 2017 MRI after the Claimant had been placed at maximum medical improvement on September 28, 2016. The Appellant cited Dr. McCoy's testimony that the December 12, 2017 MRI showed a new acute tear that likely occurred 2-3 months prior to the December 12, 2017 MRI. The Appellant argued that the new tear likely occurred due to repetitive type work or something such as pulling on a stuck door per Dr. McCoy's testimony. As support for the dispute over providing further medical treatment, the Appellant cited Dr. McCoy's testimony that the current tear is not a reoccurrence of the October 9, 2015 injury but is an entirely new finding that either resulted from an acute incident or repetitive activities. The Appellant cites that the Claimant testified on August 14, 2018 that movement at work such as opening drawers and folding small towels two hours per day worsens her pain. The Appellant argues that this timeline for the

occurrence of the new rotator cuff tear correlates with the Claimant seeking medical treatment after a one-year lapse. At the time of the subsequent tear and MRI, the Employer was insured by Accident Fund. Therefore, the Appellant argues that the insurer on risk at the time of the second injury should be solely liable for the worsening of the Claimant's right shoulder condition. The Appellant relies upon the analysis in *Geathers*, supra, to maintain that the last injurious exposure rule should apply in the Claimant's situation. The Appellant goes on to argue the Claimant reached maximum medical improvement and that Dr. McCoy's testimony should be provided greater weight because he has treated the Claimant in the past. In light of the argument that the Claimant reached maximum medical improvement, the Appellant further requested the Commission issue a determination of permanency based upon the impairment ratings that were provided. The Appellant additionally states they are not responsible for any ongoing medical treatment owed to the Claimant and relies upon the Form 14B of Dr. McCoy.

Second, the Appellant asserts the supplemental questionnaire from Dr. George Pappas should be excluded from the record. The Appellant relies on Regulation 67-612 and *Morgan v. JPS Auto*, 321 SC 201, 476 S.E.2d 257 (Ct. App. 1996) in asserting that the supplemental questionnaire was not timely submitted

Third, the Appellant argues the Claimant's IME physician, Dr. George Pappas, should not be the new authorized treating physician for the Claimant's right shoulder problems. Ultimately, the Appellant requests the Decision and Order of the hearing Commissioner be reversed and/or modified.

The Claimant/Respondent, in turn, argues the Claimant has not reached maximum medical improvement and requires surgery in order to reduce her symptoms. The Claimant/Respondent relies upon the statement of Dr. George Pappas who went so far as to state "the patient has **clearly** not reached maximum medical improvement (MMI)" (emphasis added). Further, even Dr. McCoy has stated the Claimant/Respondent should undergo surgery, which clearly means she has not reached maximum medical improvement. The Claimant/Respondent goes on to argue her current symptoms and need for ongoing medical treatment result from her original work injury, and that the Appellant has failed to prove there was a break in the chain of causation. The Claimant/Respondent's current condition is neither the result of a post injury repetitive trauma accident nor is her current condition due to any intervening injury, and, therefore, according to the *Geathers* decision, the Appellant should remain responsible for her ongoing treatment. Next, the Claimant/Respondent argues the supplemental report of Dr. Pappas was timely and properly submitted, and that the Appellant had an opportunity to take the deposition of Dr. Pappas before going forward with the hearing before Commissioner Beck. Last, the Claimant/Respondent argues the Commissioner has the discretion to assign Dr. George Pappas as the authorized treating physician. Further, the Claimant/Respondent maintains the fact that because Dr. Pappas has an actual plan for the Claimant/Respondent's current symptoms, he is in the best position provide for her treatment and care and therefore should be her authorized treating physician.

Defendant/Respondent Accident Fund Insurance Company asserted they are not responsible for the Claimant/Respondent's medical treatment, including surgery. Defendant Accident Fund relies upon the Claimant/Respondent's testimony that she has not sustained any injury after her initial work accident of October 9, 2015. Defendant/Respondent Accident Fund further argues the responsibility of the Claimant/Respondent's ongoing medical treatment falls upon the original responsible party, the Appellant, because they have not met their burden to demonstrate a new accident under the *Geathers* case. Specifically, in this case, there is not a second distinct accident to break the causal chain. In fact, all of the Claimant's testimony, including multiple depositions and also during the hearing, shows that she has not experienced any new intervening accident to her right shoulder since her original accident on October 9, 2015. In all three depositions of the Claimant and in her hearing testimony, Claimant testified she has not experienced a new accident to her right shoulder. Furthermore, Claimant does not have a post-injury repetitive trauma. Claimant's new role with the Employer is as a supervisor. As a supervisor, Claimant has consistently testified that she avoids using her right arm, using her left arm to fold clothes and close drawers. Currently, Claimant testified that she does not use her right arm at all. Therefore, it is impossible for her to have a post-injury repetitive trauma. Defendant Accident Fund argued Dr. McCoy's testimony was that the Claimant's supraspinatus tear was causally related to the October 9, 2015 work accident. Defendant/Respondent Accident Fund went on to state the opinions of Dr. Pappas and Dr. Friedman were that the Claimant/Respondent's current symptoms were

related to her original work accident of October 9, 2015 and therefore the responsibility of the Appellant. Specifically, Dr. Pappas opined that more likely than not to a reasonable degree of medical certainty her current shoulder symptoms are due to her original injury or alternatively result from a continuum following that surgery that was necessitated by the original injury because her rotator cuff tear was incompletely addressed during surgery. Further, Dr. Friedman specifically opined Claimant's current symptoms are related to her work injury of October 9, 2015. Therefore, Defendant/Respondent Accident Fund asserts the Hearing Commissioner did not err in holding Defendant/Appellant Employer's Preferred responsible for the additional medical treatment and releasing Defendant/Respondent Accident Fund from the claim.

Defendant/Respondent The Hartford argued the Claimant/Respondent's testimony was conclusive that her symptoms and pain were the same before her surgery and all the way through the date of the hearing and, therefore, the responsibility of the Appellant. The Hartford went on to argue there was no evidence the Claimant/Respondent sustained a new injury under any circumstance during their period of coverage of the Employer in this matter.

The Appellant filed a Reply Brief maintaining the Claimant/Respondent's MRI showed a new rotator cuff tear and therefore they have met their burden under the *Geathers* case.

DISCUSSION

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the award, weigh the evidence as presented at the initial hearing

and, if good grounds be shown therein, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Based upon a review of the foregoing, the Panel has determined that the Hearing Commissioner did not err in his finding that the Appellant, Employers Preferred, failed to meet their burden of proof that the Claimant sustained a new injury sufficient to break the chain of causation. The Panel has determined that the Hearing Commissioner did not err in his finding that the Appellant, Employers Preferred, was responsible for the Claimant's ongoing medical treatment.

Given that the Claimant testified she did not sustain any other on the job injury and that the work duties alleged to have caused a repetitive accident did not actually cause her increased pain or symptoms, the Hearing Commissioner did not err in determining the Claimant's symptoms emanated from her work accident of October 9, 2015. We agree with the Hearing Commissioner that the Claimant did not sustain a new repetitive trauma or acute accident and therefore her symptoms emanate from her original work accident.

Concerning the Appellant's argument that the supplemental report from Dr. Pappas should not be admitted into evidence, the Hearing Commissioner did not err in allowing the report into evidence. First, the Appellants were provided the opportunity to depose Dr. Pappas and ask him about the substance of the report to which they declined. Second, the Claimant/Respondent cited Morgan v. JPS Automotives, supra, in her Prehearing Brief and submitted the supplemental report in line with the analysis in the case.

Provided that Dr. Pappas has provided a plan of treatment for the

Claimant/Respondent, he is in a position to take over her treatment, and the Hearing Commissioner did not err in deciding that he will be the authorized treating physician moving forward.

Accordingly, the greater weight of the evidence in the record supports the Hearing Commissioner's findings of fact and there was no error of law. The Appellate Panel hereby AFFIRMS the Hearing Commissioner's Decision and Order in its entirety.

FINDINGS OF FACT

The Appellate Panel has thoroughly reviewed all of the testimony and evidence contained in the record and, after due consideration of the claim and defenses, the following Findings of Fact, as required under § 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

1. Claimant sustained an admitted injury by accident arising out of and in the course and scope of her employment on October 9, 2015 to her right shoulder.

2. The issue of compensability to Claimant's neck as alleged from the accident on October 9, 2015, is in abeyance pending the surgical outcome of the right shoulder. In addition, the issue of any permanency to the right shoulder is held in abeyance at this time.

3. Appellant's objection to the questionnaire of Dr. Pappas is overruled as they were afforded the opportunity to depose Dr. Pappas regarding the supplemental submission before proceeding with the hearing and they declined this opportunity.

4. Claimant underwent right shoulder surgery as a result of the accident on October 9, 2015, by Dr. McCoy in February of 2016.

5. Claimant was released at MMI by Dr. McCoy on September 28, 2016, for her right shoulder.

6. Claimant returned to work for the Employer after her surgery with Dr. McCoy and continues to work for the Employer currently.

7. Claimant returned to Dr. McCoy for further treatment in September of 2017 and as a result of an MRI in December of 2017, Dr. McCoy has recommended Claimant undergo another right shoulder surgery.

8. The question before the Appellate Panel is which Carrier is responsible for Claimant's current right shoulder surgery and ongoing treatment.

9. The fact that Claimant was placed at MMI for her right shoulder by Dr. McCoy on September 28, 2016 (APA p. 390) is dispositive of nothing, as she received a surgical recommendation after this date.

10. The Claimant's current condition to her right shoulder is not the result of a post-injury repetitive trauma or an acute intervening injury and the Appellant has failed to meet the burden of proof to establish either scenario under *Geathers*.

11. Based upon the greater weight of the credible evidence, to include the Claimant's testimony, opinions of Dr. Pappas and opinions of Dr. McCoy, the Claimant's current condition emanates from her original injury of October 9, 2015.

12. Claimant has not reached maximum medical improvement for her right shoulder injury of October 9, 2015.

13. Defendant Employers Preferred Insurance Company is responsible for ongoing medical care for Claimant's right shoulder recommended by Dr. Pappas and Dr. McCoy.

14. Based on the fact that Dr. McCoy is no longer performing surgery and per the Claimant's request, Dr. Pappas is designated as the Authorized Treating Physician.

15. Based upon finding that Defendant Employers Preferred Insurance Company is responsible for Claimant's medical treatment for her right shoulder, Respondent Accident Fund Insurance Company of America and Respondent Hartford Accident & Indemnity Company are released from the claim.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the Appellate Panel as follows:

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;

2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury;

3. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards;

4. Under S.C. Code Ann. § 42-1-160, the Claimant sustained an admitted injury to her right shoulder in an accident arising out of the course and scope of her employment on October 9, 2015;

5. Based upon the greater weight of the credible evidence, to include the Claimant's testimony, opinions of Dr. Pappas and opinions of Dr. McCoy, the Claimant's current condition emanates from her original injury of October 9, 2015.

6. Based upon the greater weight of the credible evidence, the Claimant has not reached maximum medical improvement for her right shoulder injury of October 9, 2015.

7. The Claimant/Respondent's supplemental report from Dr. Pappas is admitted into evidence and the decision to do so is in line with the analysis in Morgan v. JPS Automotives, supra.

8. Based upon the greater weight of the credible evidence, Defendant Employers Preferred Insurance Company is responsible for ongoing medical care for Claimant's right shoulder with Dr. Pappas.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby,

ORDERED, ADJUDGED AND DECREED that the Employers Preferred Insurance Company is responsible for the ongoing medical care of the Claimant's right shoulder recommended by Dr. Pappas and Dr. McCoy; and it is further;

ORDERED, ADJUDGED AND DECREED that Dr. Pappas is the Claimant's authorized treating physician for her right shoulder; and it is further;

ORDERED, ADJUDGED AND DECREED that Defendant Accident Fund Insurance Company of America and Defendant Hartford Accident & Indemnity Company are released from the claim; and it is further;

ORDERED, ADJUDGED AND DECREED that the issue of compensability for Claimant's neck and permanency to the right shoulder are in abeyance.

AND IT IS SO ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION

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

Commissioner Aisha Taylor

The Hon. Aisha Taylor, Commissioner

Commissioner Mike Campbell r

Order Served via E-Mail:

Lynnley D. Ross Wilson, Jones, Carter, Baxley ldross@wjlaw.net Regan A. Cobb Holder, Padgett, Littlejohn, & Pickett, LLC rcobb@hplplaw.com	Kathryn Fiehrer Walton Wood law Group Kate@woodgroupllc.com Matthew J. Fultz Wood Law Group matt@woodgroupllc.com Michael J. Jordan The Steinberg Law Firm, LLP mjordan@steinberglawfirm.com

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 May 4, 2021