

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

Dana Dixon,)
)
Appellant,)
vs.)
)
SC Department of Mental Health,)
)
Employer,)
)
and)
)
State Accident Fund,)
)
Carrier,)
)
Respondents.)
_____)

WCC FILE NO: 1623303

FULL COMMISSION APPELLATE
PANEL ORDER

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SC Court of Appeals

HEARING DATE: February 22, 2021, in Columbia, South Carolina.

APPEARANCES: Claimant/Appellant, Dana Dixon, *pro se*.
M. Stephen Stublely, Esquire, Attorney for
Defendants/Respondents.

PANEL: Commissioner Aisha Taylor, Chair
Commissioner T. Scott Beck
Commissioner Avery B. Wilkerson, Jr.

FILED: May 26, 2021

STATEMENT OF THE CASE

This matter comes before the Full Commission Appellate Panel ("Panel") via appeal by the Appellant from the Hearing Commissioner's Order dated November 3, 2020. This was an admitted claim in which Ms. Dixon suffered admitted injuries to her back, neck and jaw on December 22, 2016, after being struck by a patient while assisting them into bed. (Tr. p. 26, lines 18-20) She received medical treatment for that injury from Palmetto Health Richland emergency room on December 23, 2016. (Respondents' APA p.65-67) She was released from care the same day and Appellant received no additional authorized medical care for this accident. (Respondents' APA p.67) During March of 2017 Appellant was involved in a motor vehicle accident. (Respondents' APA p.34-53).

On September 7, 2017, Appellant's then attorney, Benjamin Cruse, filed a claim on Appellant's behalf via a Form 50, not requesting a hearing, in which Appellant alleged an injury to the back, neck and jaw. 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, while advised of her right to counsel, proceeded pro se. Appellant subsequently filed a Form 50 February 26, 2019 seeking treatment for her jaw, neck and back. This was past the statutory period for treatment and lapse for an injury and Appellant has provided no evidence which would allow for any of the exceptions to the rule. SC Code § 42-15-60 (2012).

Appellant filed a Form 50 July 8, 2019 requesting a hearing. Following the hearing on October 28, 2019, the parties entered into a Consent Order due to no Form 20 being filed. Appellant again filed a Form 50 requesting a hearing on January 8, 2020. The hearing before the Single Commissioner occurred on June 12, 2020.

Following the hearing, the Single Commissioner issued an Order on November 3, 2020 in which she reached the following findings of fact and conclusions of law:

Findings of Fact:

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 June 12, 2020.
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 December 22, 2016, the Claimant suffered an admitted accident while assisting 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 back, neck and jaw.
7. Defendants admitted an injury to the jaw, neck, and back pain and provided medical care and treatment.
8. The Claimant was seen at the Palmetto health Richland emergency room on December 23, 2016. The notes reflect that the Claimant was struck on the jaw at work the previous day and that she had neck, jaw and back pain. The physician's assessment was muscle spasm, and the Claimant was discharged with no recommendations of further care.
9. Claimant received no authorized medical treatment following December 23, 2016.
10. Subsequently claimant was involved in a motor vehicle accident in March 2017.
11. On March 3, 2017 claimant presented to Providence Hospital. (Defendants APA p.34, p.53) The notes reflect that the Claimant reported that she had

been in a MVA days before her visit. X-rays were obtained of the Claimant's cervical and thoracic spine as a result of her symptoms.

12. No medical evidence was presented to suggest to a reasonable degree of medical certainty that the current request for medical treatment was causally related to the December 22, 2016 injury.
13. Claimant filed a Form 50 (Notice of Claim) on September 7, 2017.
14. A form 50 (Hearing Request) was filed on February 26, 2019.
15. Claimant currently requests treatment for her back.
16. The Claimant provides a note by a physician into the record (Claimants APA p. 52), but the July 17, 2017 note does not reference the date of the workplace assault or the motor vehicle accident.
17. The July 17, 2017 note from Dr. Saunders (Claimants APA p. 52) includes no indication of reviewing records and makes no mention of prior injuries.
18. The note provided by Dr. Saunders (Claimants APA p. 52) is not stated to a degree of reasonable medical certainty as required by Section §42-15-60.
19. Based on the greater weight of the evidence, I would find that Claimant's request for treatment for the back is denied. The period for which back pain could be claimed has lapsed due to a lack of treatment and no objective medical evidence has been submitted to prove any outstanding issue is causally related to her December 22, 2016 work accident. Therefore, Claimant's request for treatment is barred under the South Carolina Workers' Compensation Act.

Conclusions of Law:

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 jaw, neck and back by compensable accident in the course and scope of her employment.
3. Pursuant to S.C. Code Ann. §42-15-60 (A), The employer shall provide medical, surgical, hospital and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgement 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. This standard was reiterated upon in *Hartzell v. Palmetto Collision, LLC* (S.C. App. 2016) 419 S.C, 87m 796 S.E.2d 145, which limited the period to 10 weeks and that the commission's decision to extend compensation must be based upon the heightened standard of medical evidence required by statute.

4. While Claimant does provide a note from Dr. Saunders (Claimants APA p. 52) the note does not reach the standard of reasonable medical certainty as required by Section §42-15-60.
5. The undersigned cannot provide an opinion that is the equivalent to a medical opinion. *Burnette v. City of Greenville* (S.C. App. 2012) 401 S.C. 417, 737 S.E.2d 200. Therefore, the undersigned cannot relate the complaint/ condition to either accident.
6. 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.
7. Claimant has allowed her treatment to lapse beyond the statutory period without providing sufficient medical evidence that any ongoing back pain is the result of her December 22, 2016 work accident. As such, her request for treatment for her back in the present claim is denied.

Concluding in the Single Commissioner finding that the Appellant failed to establish that she sustained a compensable injury to her back as a result of her December 22, 2016 injury. Therefore, the Single Commissioner denied Appellant's request for treatment for her back.

On or around November 19, 2019, Appellant filed a Form 30, ostensibly seeking to appeal the decision of the Single Commissioner. In addition to her Form 30, Appellant filed a document that was construed as a Motion for Additional Evidence regarding a single page document entitled "Employer/Supervisor notification" dated 2/3/2017, which was granted by the Full Commission immediately prior to the Full Panel Hearing.

STANDARD OF REVIEW

Under the South Carolina Workers Compensation Act, the Full Commission Appellate 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). Finally, 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. Claimant was further advised of her right to counsel by the undersigned and elected to proceed with the hearing *pro se*. (Single Comm. Tr. p. 4, line 14- p. 5, line 12). Claimant also produced an unnumbered stack of documents which had not been presented prior to the hearing. (Single Comm. Tr. P. 5, lines 9-12).

At the time of the injury in question in this claim, Claimant testified that she was working for Defendant South Carolina Department of Mental Health ("SCDMH"). (Single Comm. Tr. p. 17, lines 21-25; p. 18, lines 5-8) Claimant testified that she started working for SCDMH on December 2, 2016. (Single Comm. Tr. p. 10, line 18). Claimant testified that she has been doing CNA-type work off-and-on, starting in October 1988. (Single Comm. Tr. p. 24, lines 24-25). She maintains both her CNA and CDL licenses. (Single Comm. Tr. p. 29, lines 11-12).

Prior to the December 22, 2016 injury, Claimant testified that she had "never, since 1988, I've never had a workers' comp claim" (Single Comm. Tr. p. 37, lines 8-10). However, that claim is refuted by the Claimants ISO report, which shows several prior workers compensation claims.

(Defendant's APA p.77-78 and 80-87). Claimant testified as to the facts of her work-related accident which is the subject of the present claim. This accident occurred on December 22, 2016 while Claimant was acting within the course and scope of her employment with SCDMH. Claimant testified that she was injured by a resident she had never sat with before during a one-on-one. (Single Comm. Tr. p. 10, lines 23-24). She stated that a male resident attacked her. (Single Comm. Tr. p. 26, lines 18-20).

Claimant testified that, she went to Richland Memorial Hospital on 12/23/16 for medical treatment, was diagnosed with a muscle spasm and received no forms while there, save for a medical excuse from Palmetto Richland (Single Comm. Tr. p. 2, lines 5-11; p. 15, lines 10-12; p. 27, lines 18-19). Claimant had no follow-up medical visits for this injury¹. (Defendants' APA p. 65-67).

Claimant testified that she was in a car accident during March of 2017, though she provided several varying recollections of the accident (Single Comm. Tr. p. 19, lines 9-11; Tr. p. 23, lines 21-25; Tr. p. 30, lines 17-20 and Tr. p. 40, lines 3-5). She testified that went to the hospital on March 7, 2017 (Single Comm. Tr. p. 29, lines 16-17) She complained of pain in her neck and lower back. (Defendants' APA p. 34) X-rays of the back showed mild endplate degenerative changes. (Defendants' APA p. 37) The Claimant filed an insurance claim for bodily injury resulting from the accident. (Defendants' APA p. 72) There are no follow-up medical treatments for the back injury on record following the x-ray. Claimant presented no evidence or witnesses to support a causal relationship between the December 22, 2016 injury and any current back issues that may currently exist.

¹ Appellant made several allegations that the records from 12/23/2016 provided that she needed additional medical treatment. However, there is no evidence in the record to support this allegation. Contrarily, the records from Providence Hospital related to her March 2017 MVA, more than three (3) months after her work injury, note that Appellant "will be discharged home to follow up with PCP." (Defendants' APA p. 55).

Prior to the start of the Full Panel Hearing, Claimant was again advised of her right to counsel by the undersigned and elected to proceed with the hearing *pro se*². (Tr. p. 3, lines 16-25). Regarding the submission of evidence³, the Panel ruled on Appellant's Motion to Add a single page document to the record related to her light-duty status. (Tr. p. 4, lines 1-12). Respondents withdrew their previously stated objection, and the document was admitted to the record. (Tr. p. 4, lines 13-24). Claimant spent the majority of her argument narrating a version of the facts of the claim, failing to point to any evidence in the record to support a causal relationship between the December 22, 2016 injury and any current back issues that may currently exist. When asked by the Panel in what way the facts and statements she made hurt her claim, Appellant was unable to point to any evidence in the record, other than to state that she believed the transcript produced from the hearing before the single Commission was inaccurate. (Tr. p.7-8, lines 20-25; 1-19). Therefore, Appellant has failed to satisfy the burden of proof in the case.

FINDINGS OF FACT

This matter was heard by the Panel at a Review Hearing on February 22, 2021. 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 November 3, 2020 must be **AFFIRMED** and Appellant's claim for compensation and

² It is important to note that Appellant has been repeatedly, at every step in the litigation process, been advised of her right to counsel, and continues to elect *pro se* representation. As such, Appellant's failure to understand the procedures and law that encompasses the litigation process does not sway the outcome of the decision on the merits of Appellant's claim. (Tr. p. 12, lines 12-19).

³ Save the single document admitted without objection by the Commission at the Full Panel hearing, the record before the Full Panel is limited to the Single Commissioner's file and APA submissions determined at the hearing before the Single Commissioner.

additional medical treatment, and all other relief under the Act, is hereby DENIED. Specifically, the Panel is hereby entering the following Findings of Fact in support of its determination:

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 June 12, 2020.
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 December 22, 2016, the Claimant suffered an admitted accident while assisting a resident that occurred while she was in the course and scope of her employment with the South Carolina Department of Mental Health.
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7. Defendants admitted an injury to the jaw, neck, and back pain and provided medical care and treatment.
8. The Claimant was seen at the Palmetto health Richland emergency room on December 23, 2016. The notes reflect that the Claimant was struck on the jaw at work the previous day and that she had neck, jaw and back pain. The physician's assessment was muscle spasm and the Claimant was discharged with no recommendations of further care.
9. Claimant received no authorized medical treatment following December 23, 2016.
10. Subsequently claimant was involved in a motor vehicle accident in March 2017.

1. On March 3, 2017 claimant presented to Providence Hospital. (Defendants APA p.34, p.53). The notes reflect that the Claimant reported that she had been in a MVA days before her visit. X-rays were obtained of the Claimant's cervical and thoracic spine as a result of her symptoms.
12. No medical evidence was presented to suggest to a reasonable degree of medical certainty that the current request for medical treatment was causally related to the December 22, 2016 injury.
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19. Based on the greater weight of the evidence, we would find that Claimant's request for treatment for the back is denied. The period for which back pain could be claimed has lapsed due to a lack of treatment and no objective medical evidence has been submitted to prove any outstanding issue is causally related to her December 22, 2016 work accident. Therefore, Claimant's request for treatment is barred under the South Carolina Workers' Compensation Act.

CONCLUSIONS OF LAW

Accordingly, as provided by the S.C. Code Ann. §42-17-40, it is the determination and finding of this Panel:

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 jaw, neck and back by compensable accident in the course and scope of her employment.
3. Pursuant to S.C. Code Ann. §42-15-60 (A), The employer shall provide medical, surgical, hospital and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgement 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. This standard was reiterated upon in Hartzell v. Palmetto Collision, LLC, (S.C. App. 2016) 419 S.C, 87m 796 S.E. 2d 145, which limited the period to 10 weeks and that the commission's decision to extend compensation must be based upon the heightened standard of medical evidence required by statute.
4. While Claimant does provide a note from Dr. Saunders (Claimants APA p. 52) the note does not reach the standard of reasonable medical certainty as required by Section §42-15-60.
5. The undersigned cannot provide an opinion that is the equivalent to a medical opinion. Burnette v. City of Greenville, (S.C. App. 2012) 401 S.C. 417, 737 S.E.2d 200. Therefore, the undersigned cannot relate the complaint/ condition to either accident.


6. 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.
7. Claimant has allowed her treatment to lapse beyond the statutory period without providing sufficient medical evidence that any ongoing back pain is the result of her December 22, 2016 work accident. As such, her request for treatment for her back 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 November 3, 2020 is hereby **AFFIRMED** and Appellant's claims for compensation and additional medical treatment, and all other relief under the Act, are hereby **DENIED**.

SO ORDERED!

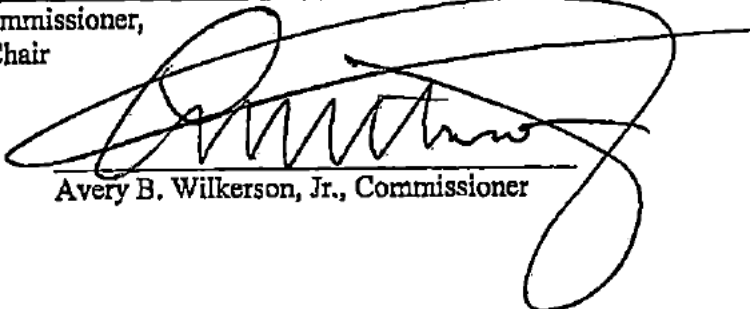
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION



Commissioner Aisha Taylor
Aisha Taylor, Commissioner



T. Scott Beck, Commissioner,
Appellate Panel Chair



Avery B. Wilkerson, Jr., Commissioner

Columbia, SC _____, 2021

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 May 26, 2021