

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Sep 20 2021

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, Claimant Respondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

MEMORANDUM OF RESPONDENT REGARDING APPEALABILITY

BACKGROUND

This appeal arises from a Vacate Order issued by Commissioner Barden on August 17, 2021. (Ex. 1). The Vacate Order withdrew a 14-Day Order of Dismissal & Order to Show Cause, hereinafter "Order of Dismissal", issued by Commissioner Barden on July 21, 2021. (Ex. 2). The Order of Dismissal was issued because the Respondent failed to appear at a hearing scheduled on July 13, 2021 to address a Form 21 filed by the Appellants that raised two issues. (Ex. 3). The first issue was: "Address suspension, termination, or reduction of temporary disability payments for any cause. . . . The basis for the termination / suspension is Claimant was terminated for cause. Suitable work would have been available had she not been terminated." The second issue was: "Request Credit for Overpayment of temporary compensation pursuant to §42-9-210." These two

issues were the only issues raised by the Form 21 and the Form 21 does not list a requested outcome being the dismissal of the underlying workers' compensation case.

The Dismissal Order states: "I find Claimant has fourteen (14) days from service of this order by the Commission, to provide good cause in writing for her failure to show for the scheduled hearing. If Claimant fails to provide good cause, this matter is automatically dismissed with prejudice." (Ex. 2, ¶ 7-8). The Claimant received notice of the Dismissal Order when she hired the undersigned on August 10, 2021 and a copy was e-mailed to him on August 12, 2021 by the Appellants' attorney. The undersigned promptly filed "Claimant's Reply to Order of Dismissal & Order to Show Cause" on August 12, 2021. (Ex. 4). Commissioner Barden then issued her Vacate Order on August 17, 2021 and this appeal followed.

APPEALABILITY

South Carolina Code §42-17-50 governs appeals from a ruling by a single Commissioner and states:

If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.

That code section is the only code section that governs appeals from an order of a single Commissioner to the Appellate Panel of the Commission. The Appellant filed a Form 30 on August 20, 2021 and the Appellate Panel has not yet heard the appeal. (Ex. 5). Because the Appellant Panel has not heard the issues raised in the Form 30 and issued its order the current appeal filed with this Court is premature.

In addition to the pending Form 30 there is also an issue of whether the orders issued by Commissioner Barden are even appealable. The case of Levi v. Northern

Anderson County EMS, and Berkshire Hathaway Homestate Ins. Co., 409 S.C. 374, 762 S.E.2d 44 (Ct. App., 2014), dealt with the appealability of an order issued by a single Commission that denied a motion to dismiss the claim because the Claimant had accepted money from the at fault driver in an automobile accident that gave rise to the workers' compensation claim. The denial of the motion to dismiss was appealed to the Appellant Panel and it reversed the single Commissioner's ruling and dismissed the claim based on the settlement of the third party action.


The Court of Appeals analyzed whether the ruling by the single Commissioner qualified as an "award" under §42-17-50 that could be appealed to the Appellant Panel.

The Court concluded that:

A plain reading of the statute supports that appeals from the single commissioner to the Appellate Panel must be from final orders as well. The denial of a motion to dismiss has been consistently held not to be a final decision. That principle should also apply in the workers' compensation context. Accordingly, we vacate the Appellate Panel's order and remand this matter to it for it to enter an order vacating Employer's appeal to it. *Id.* at 385, 50.

CONCLUSION

The current appeal to this Court is improper for two reasons. There is currently a Form 30 filed by the Appellant with the Commission that has not been heard. The second reason the appeal is not properly before this Court is that the Levi case makes it clear that an order by a single Commissioner that does not qualify as a "final decision" is not immediately appealable to the Appellant Panel and accordingly would not be appealable to this Court.



William Ceth Land
LAND PARKER WELCH LLC
S.C. Bar No. 13490
Post Office Box 138
Manning, South Carolina 29102
(803) 435-8894
Attorney for Respondent

September 20, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, ClaimantRespondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

EXHIBIT 1

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1821956

SHERRY L. FLOYD,

Employee,

Claimant,

vs.

MCLEOD HEALTH,

Employer,

AND

MCLEOD HEALTH SELF INSURED C/O
ANTUM RISK

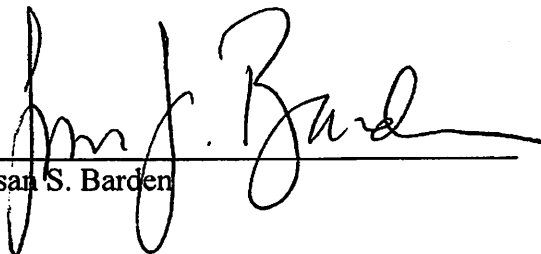
Carrier,

Defendants.

VACATE
ORDER

The 14-Day Order served July 21, 2021 is hereby vacated, and the matter is reset for hearing August 24th, 2021.

IT IS SO ORDERED.



Susan S. Barden

August 17, 2021

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 Barbara Skarbek on August 17, 2021

Order served via email:

William Ceth Land
ceth@lpwlawfirm.com

Walter H. Barefoot
Walt.barefoot@mgclaw.com

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, ClaimantRespondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

EXHIBIT 2

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1821956

SHERRY L. FLOYD,

Employee,

Claimant,

vs.

MCLEOD HEALTH,

Employer,

AND

MCLEOD HEALTH SELF INSURED C/O
ANTUM RISK

Carrier,

Defendants.

14-DAY
ORDER OF DISMISSAL &
ORDER TO SHOW CAUSE

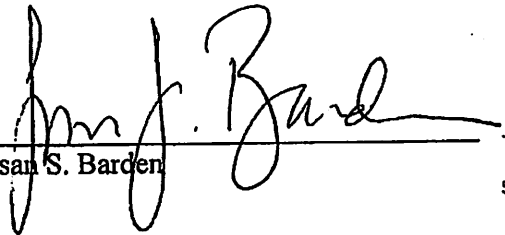
THIS MATTER was scheduled to be heard before the undersigned Commissioner on July 13, 2021, upon the filing of Defendants' Form 21 Request for Hearing. Claimant is pro-se, and Defendants are represented by Walter H Barefoot. Claimant was provided proper notice of the hearing and failed to show at the scheduled hearing time. Defendants timely appeared at the hearing. Defendants moved that this matter be dismissed with prejudice due to the claimant's failure to prosecute the claim. Based on the foregoing, I make the following findings:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter of the claim.
2. Claimant was provided proper notice of the Form 21 Hearing set for July 13, 2021 in Florence, South Carolina.
3. At the call of the case, Claimant failed to show.

4. After waiting 15 minutes after the time scheduled for the hearing the Claimant had still failed to show.
5. Mr. Barefoot checked both the waiting area and parking lot and could not locate the Claimant.
6. I find Claimant received proper notice of the hearing.
7. I find Claimant has fourteen (14) days from service of this order by the Commission, to provide good cause in writing for her failure to show for the scheduled hearing.
8. If Claimant fails to provide good cause, this matter is automatically dismissed with prejudice.

IT IS HEREBY ORDERED that this claim is dismissed with prejudice unless, within fourteen (14) days of service of this Order by the Commission, this claimant is able to show good cause by adequate proof, in writing, for her failure to appear at the hearing.

IT IS SO ORDERED.


Susan S. Barden
sion

July 21, 2021 -----

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 Barbara Skarbek on July 21, 2021

Order served via USPS:

Sherry Floyd
1279 Conestoga St
Manning, SC 29102

Walter H. Barefoot
McAngus Goudelock & Courie
PO Box 7489
Florence, SC 29502

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, ClaimantRespondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

EXHIBIT 3

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov



WCC File # 1821956
Carrier File # MCLH-09431
Carrier Code #
Employer FEIN #

Claimant's Name: Sherry L. Floyd SSN: 251-35-8764 Employer's Name: McLeod Health
1279 Conestoga Street Post Office Box 100551
Address: Manning, South Carolina 29102 Address: Florence, South Carolina 29501
Home Phone # (803) 460-9002 Work Phone # Insurance Carrier: McLeod Health Self Insured c/o Antum Risk
Preparer's Name: Walter H. Barefoot Law Firm: McAngus Goudelock & Courie Phone Number: (843) 519-1801

The date of injury reported on Form 12A is: 12/31/2018.

Check appropriate section(s). The Employer's Representative requests a hearing to:

Stop payment of compensation. Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

Claimant reached maximum medical improvement on (m/d/yyyy) (copy of medical report must be attached).
Compensation payments are current as of (m/d/yyyy) and shall continue until otherwise ordered or until Form 17 is signed by the claimant.
A Form 17 was offered and refused on (m/d/yyyy).

I. Address suspension, termination, or reduction of temporary disability payments for any cause.
a. At any time pursuant to § 42-9-260(E).
b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

The basis for the termination/ suspension is Claimant was terminated for cause. Suitable work would have been available had she not been terminated.

III. Determine if compensation is due pursuant to § 42-9-10, § 42-9-20 or § 42-9-30 and, if so, in what amount, based on the following grounds:

Claimant reached maximum medical improvement on (m/d/yyyy) (copy of medical report must be attached).

IV. Request Credit for Overpayment of temporary compensation pursuant to § 42-9-210.

V. Determine amount of compensation for claims involving a fatality.
a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

VI. Mediation
a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
b. Mediation is required pursuant to Reg. 67-1802.
c. Mediation is requested by consent for the Parties pursuant to Reg. 67-1803.
d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Sherry L. Floyd
address 1279 Conestoga Street, Manning, South Carolina 29102 on the 11th day of May 20 21.
by first class postage certified mail personal service.
A \$50.00 filing fee and updated Form 18 is required.

Preparer's Signature: Walter H. Barefoot
Title: Attorney for Employer/Carrier
Email: walt.barefoot@mgclaw.com
Date: May 11, 2021

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or jud@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-211, 67-504, 67-505, 67-506; and 67-510.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, ClaimantRespondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

EXHIBIT 4

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1821956

SHERRY L. FLOYD)	
Claimant,)	
)	
VS.)	CLAIMANT'S REPLY TO
)	ORDER OF DISMISSAL &
MCLEOD HEALTH,)	ORDER TO SHOW CAUSE
Employer,)	
)	
AND)	
)	
MCLEOD HEALTH SELF INSURED,)	
C/O ANTUM RISK,)	
Carrier,)	
Defendants.)	

The Claimant requests Commissioner Barden rescind her "14-Day Order of Dismissal & Order to Show Cause" issued on July 21, 2021, hereinafter "Order", for the reasons set forth herein and in the Affidavit of Sherry L. Floyd. (Ex. 1).

1. As set forth in the Claimant's affidavit, she was unaware of the hearing on July 13, 2021 because she had been residing with an elderly relative and was not collecting the mail sent to her home address. The Claimant did not receive notice of the draft of the Order until approximately August 9, 2021 and did not receive notice of the signed Order until it was e-mailed to the undersigned when she retained him on August 12, 2021.
2. The Defendants filed a Form 21 on May 11, 2021 selecting Items II and IV on the Form. (Ex. 2). Item II on the Form 21 states: "II. Address suspension, termination, or reduction of temporary disability payment for any cause. . . (b) After the one-hundred-fifty day period has expired pursuant to §42-9-260(F), R. 67. 505 and R.

67-506. The basis of the termination/suspension is Claimant was terminated for cause. Suitable work would have been available had she not been terminated."

Item IV is also selected and states: "IV. Request credit for overpayment of temporary compensation pursuant to §42-9-210."

3. The Defendants did NOT select items I or III on the Form 21 that both deal with the determination of compensation after the Claimant has reached maximum medial improvement. The Defendants did not select these two items because the Claimant had not reached MMI and was still being treated by Dr. Patrick K. Denton for her total right shoulder arthroplasty as demonstrated by the May 26, 2021 office note. (Ex. 3). Dr. Denton refers the Claimant to physical therapy, pain management, and a functional capacity exam. Dr. Denton schedules the Claimant's next appointment to occur after the FCE is completed and sets her work restrictions as "No use of the right upper extremity."
4. Dr. Denton next saw the Claimant on August 2, 2021 and set the following restrictions "1. No overhead lifting 2. No pushing over 15 pounds. 3. No pulling over 50 pounds. These are permanent restrictions." (Ex. 4). (Claimant's attorney has requested the complete records, but only has access to the "Release to School/Work Form" that is attached.)
5. The Defendants are limited to the relief they requested in the Form 21. The Defendants only selected Items II and IV on the Form 21; therefore, the only relief that the Commission could grant at the hearing on July 13, 2021 was the termination of temporary disability payments and credit for any overpayment. However, the Order issued on July 21 dismisses an admitted claim at a time when

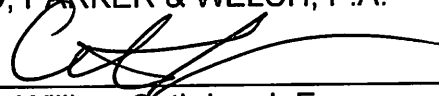
the Claimant is still receiving treatment from the authorized treating physician, Dr. Denton and has not been deemed to be at MMI.

6. The proper action that should have been taken at the July 13 hearing is found in R. 67-608, "Failure to Appear at a Hearing", that states: "The Commission may issue an order assessing a fine of up to one hundred dollars against a party who being properly served a hearing notice fails to appear at a scheduled hearing." The regulation does NOT allow for the dismissal of the claim with prejudice.
7. It would be a violation of the Claimant's due process rights to dismiss this admitted claim for failure to appear at a hearing where the ONLY issue that could have been addressed was the termination of temporary total compensation and credit for overpayment.
8. The Claimant was unrepresented at the time of the July 13 hearing, did not have notice of the hearing, did not have notice of the proposed Order dismissing her case until August 9, 2021, and did not have notice of the signed Order dismissing her case until she retained the undersigned and a copy of the signed Order was e-mailed to the undersigned by the attorney for the Defendants on August 12, 2021. The dismissal of this claim with prejudice is a draconian punishment for failure to appear at the hearing that was only scheduled to address termination of temporary disability payments.

The Claimant respectfully asks that the Commissioner to rescind her Order issued on July 21, 2021 and issue an Order that grants the only relief that was requested by the Defendants, that is the termination of temporary total compensation.

LAND, PARKER & WELCH, P.A.

BY:



William Ceth Land, Esq.
Post Office Box 138
29 South Mill Street
Manning, South Carolina 29102
803-435-8894

Manning, South Carolina

August 12, 2021

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1821956

SHERRY L. FLOYD)
Claimant,)
)
VS.)
)
MCLEOD HEALTH,)
Employer,)
)
AND)
)
MCLEOD HEALTH SELF INSURED,)
C/O ANTUM RISK,)
Carrier,)
Defendants.)

EXHIBIT

1

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1821956

SHERRY L. FLOYD)	
Claimant,)	
)	
VS.)	
)	AFFIDAVIT OF
MCLEOD HEALTH,)	SHERRY L. FLOYD
Employer,)	
)	
AND)	
)	
MCLEOD HEALTH SELF INSURED,)	
C/O ANTUM RISK,)	
Carrier,)	
Defendants.)	

PERSONALLY APPEARED BEFORE ME, SHERRY L. FLOYD, who being duly sworn deposes and says:

During my workers' compensation case I have relied on Crystal White with McLeod to tell me what to do if I ever had a question about my case. The workers' compensation case manager, Michelle, would call me to tell me where to be and what to do. I relied heavily on these two people during my case to make sure I was doing everything I was supposed to do. I have never had a workers' compensation claim before, so it was nice to have these two ladies helping me. I never felt like anything bad was going to happen to me with them helping me.

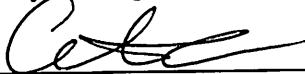
In March of 2021 I moved in with my elderly aunt because she was all alone. After I moved in with my aunt, I had my daughter get my workers' compensation checks from my mailbox and deposit them for me. All my bills are paid by draft, so the workers' compensation check was the only important mail I received. She would put the rest of my mail in my house.

I went to an appointment with Dr. Denton on Monday, August 2, and I called Crystal White on Thursday, August 5, to find out what would happen next since Dr. Denton was done with treating me and released me back to work with restrictions. She said I would need to speak to Mattie Mitchum with Genix to find out what would happen next. On Friday, August 6, I called Mattie and she said that I would have to talk to the Workers' Compensation Commission since I didn't come to court. This was the first I had heard of any "court".

I did not understand why they were talking about "court" when everything was going fine with my case. I called Ceth Land on Monday, August 9, so he could help me understand what they were talking about. He told me to get all my paperwork together and come to his office on Wednesday, August 10. My paperwork was at my home, so I went there and collected everything I had and went through my mail to see if there was anything new. This is when I found the paperwork about the hearing on July 13 and the Order that was issued after the hearing.

I am asking that my case not be dismissed when the only reason I didn't know about the hearing was that I was helping my elderly aunt and relying on two people that had been helpful throughout my workers' compensation case.

SWORN to before me this 12
Day of August, 2021.



Notary Public for S.C.
My Commission Expires: 10/9/28



Sherry L. Floyd

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1821956

SHERRY L. FLOYD)
Claimant,)
)
VS.)
)
MCLEOD HEALTH,)
Employer,)
)
AND)
)
MCLEOD HEALTH SELF INSURED,)
C/O ANTUM RISK,)
Carrier,)
Defendants.)

EXHIBIT

2

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803) 737-5700 www.wcc.sc.gov



WCC File # 1821956
Carrier File # MCLH-09431
Carrier Code #
Employer FEIN #

Claimant's Name: Sherry L. Floyd SSN: 251-35-8764 Employer's Name: McLeod Health
Address: 1279 Conestoga Street Post Office Box 100551
Manning, South Carolina 29102 Florence, South Carolina 29501
Home Phone # (803) 460-9002 Work Phone # Insurance Carrier: McLeod Health Self Insured c/o Antum Risk
Preparer's Name: Walter H. Barefoot Law Firm: McAngus Goudelock & Courie Phone Number: (843) 519-1801

The date of injury reported on Form 12A is: 12/31/2018.

Check appropriate section(s). The Employer's Representative requests a hearing to:

Stop payment of compensation. Claimant has reached maximum medical improvement and Claimant continues to receive temporary compensation payments. The employer's representative requests a hearing pursuant to § 42-9-260(D) to stop payment of temporary compensation. A hearing requested pursuant to this section must be held within sixty days of the date of the request.

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a. At any time pursuant to § 42-9-260(E).
b. After the one-hundred-fifty day period has expired pursuant to § 42-9-260(F), R.67-505 and R.67-506.

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a. Payment of unpaid balance of compensation when employee dies pursuant to § 42-9-280.
b. Amount of compensation for death of employee due to accident pursuant to § 42-9-290.

Mediation
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b. Mediation is required pursuant to Reg. 67-1802.
c. Mediation is requested by consent for the Parties pursuant to Reg. 67-1803.
d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Failure to respond pursuant to Reg. 67-208 B in writing or by submission of a Form 22 may result in ordered mediation pursuant to Reg. 67-1801 B.
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Sherry L. Floyd
address 1279 Conestoga Street, Manning, South Carolina 29102 on the 11th day of May 20 21.
by first class postage certified mail personal service.
A \$50.00 filing fee and updated Form 18 is required.

Preparer's Signature: Walter H. Barefoot
Attorney for Employer/Carrier: walt.barefoot@mgclaw.com
Title:
Email:
Date: May 11, 2021

Questions about the use of this form should be directed to the Judicial Department at 803-737-5675, or jud@wcc.sc.gov or mediation@wcc.sc.gov. Refer to Regulations 67-211, 67-504, 67-505, 67-506; and 67-510.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1821956

SHERRY L. FLOYD)
Claimant,)
)
VS.)
)
MCLEOD HEALTH,)
Employer,)
)
AND)
)
MCLEOD HEALTH SELF INSURED,)
C/O ANTUM RISK,)
Carrier,)
Defendants.)

EXHIBIT

3

FLOYD, SHERRY DOB: 01/01/1963 (58 yo F) Acc No. e1169823 DOS: 05/26/2021

McLeod
Physician Associates

FLOYD, SHERRY
58 Y old Female, DOB: 01/01/1963
Account Number: e1169823
1279 CONESTOGA ST, MANNING, SC-29102-6791
Home: 803-460-9002
Guarantor: FLOYD, SHERRY Insurance: YORK RISK
SERVICE/ SEDGWICK WC
PCP: Michael Sorrell, FNP
Appointment Facility: McLeod Orthopaedics Florence

05/26/2021

follow up progress note: Patrick K. Denton, MD

Reason for Appointment

1. XRAY///6 WKS F/U RT TOTAL SHOULDER DOS 9/22/20

History of Present Illness

Constitutional:

Patient returns today for a follow-up of her right shoulder symptoms. She is now 8 months status post right total shoulder arthroplasty. She continues to complain of right shoulder pain and states that she has now had pain in her shoulder for three years. She is very tearful today. She had no improvement with injection of the shoulder or physical therapy. Labs were normal and CT arthrogram was unremarkable. She reports that she is unable to type due to her right shoulder pain.

History obtained from the patient today.

Current Medications

Taking

- Sucralfate 1 GM Tablet 1 tablet on an empty stomach Orally Twice a day
 - Protonix(Pantoprazole Sodium) 40 MG Tablet Delayed Release 1 tablet Orally Twice a day
 - Adderall(Amphetamine-Dextroamphetamine) 30 MG Tablet 1 tablet Orally Twice a day
 - Effexor XR(Venlafaxine HCl ER) 150 MG Capsule Extended Release 24 Hour 1 capsule with food Orally Once a day
 - Trazodone HCl 100 MG Tablet 1 tablet at bedtime Orally Once a day
 - Estradiol 1 MG Tablet 1 tablet Orally Once a day
 - Ibuprofen 200 MG Tablet 1 tablet with food or milk as needed Orally Three times a day
 - Alprazolam 0.25 MG Tablet Disintegrating 1 tablet Orally three times a day
 - Clonazepam 0.5 MG Tablet 1 tablet Orally Twice a day prn
 - Amphetamine-Dextroamphetamine 30 MG Tablet 1 tablet Orally Twice a day, Notes: To be filled on or after 3/8/20. Scripts verified on 2/14/20.
 - Zocor(Simvastatin) 40 MG Tablet 1 tablet in the evening Orally Once a day
 - Mag Citrate Liquid prn
 - CO-Q10
 - Skelaxin(Metaxalone) 800 MG Tablet 1 tablet Orally BID
- Not-Taking/PRN
- Percocet(oxyCODONE-Acetaminophen) 5-325 MG Tablet 1 tablet as needed Orally every 4-6 hrs, Notes: prn
 - Cyclobenzaprine HCl 5 MG Tablet 1 tablet at bedtime as needed Orally Once a day
 - Norco(Acetaminophen-HYDROcodone) 5-325 MG Tablet 1 tablet as needed Orally every 4 - 6 hrs
- Medication List reviewed and reconciled with the patient

Past Medical History

Chronic GERD.
Epigastric abdominal pain.
Nausea.
Decreased appetite.
History of Helicobacter pylori infection.

Progress Note: Patrick K. Denton, MD 05/26/2021

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

FLOYD, SHERRY DOB: 01/01/1963 (58 yo F) Acc No. e1169823 DOS: 05/26/2021

History of irritable bowel syndrome.
 History of partial colectomy.
 Family history of colon cancer.
 Generalized anxiety disorder.
 ADD (attention deficit disorder) without hyperactivity.
 Hyperlipidemia, unspecified hyperlipidemia type.

Surgical History

Appendectomy 1973
 Right Shoulder Surgery w/ Pin Placement 1981
 Hysterectomy 1986
 Partial Colectomy - patient reports due to "sluggish bowel/IBS" 2000
 Cholecystectomy 2004
 Colonoscopy 2/13/2006
 EGD 4/29/2009
 Colonoscopy 3/30/2010
 EGD/Colonoscopy 9/20/2013
 right total shoulder arthroplasty Dr. Denton- workers comp 09/22/2020

Family History

Father: deceased, diagnosed with Heart Disease
 Mother: deceased 41 yrs
 Maternal Grand Mother: Colon Cancer, diagnosed with Cancer
 Siblings: Brother - Colon Cancer, diagnosed with Cancer
 1 daughter(s) .

Social History

Tobacco Use:

Smoking

Are you a: *never smoker*

Allergies

SULFA
 Morphine Sulfate

Hospitalization/Major Diagnostic Procedure

See surgical history

Review of Systems

General/Constitutional:

Fever no . Chills no. Fatigue no. Weight change no.

Gastrointestinal:

Abdominal pain no. Constipation no. Diarrhea no. Nausea no. Vomiting no.

Musculoskeletal:

Difficulty in Walking no. Muscle stiffness no. Joint pain no. Joint stiffness no. Joint swelling no. Muscle cramping no.

Skin:

Rash no. Blisters no. Changes in finger or toenails no. Incisional problems no. Non-healing wound no. Hot to touch/feverish feeling no.

Neurologic:

Numbness no. Involuntary movements no. Tingling/numbness no. Weakness no.

Vital Signs

Wt 172, Wt-kg 78.02, Ht 64, Ht-cm 162.56, BMI 29.52, BSA 1.88 M.

Examination

Progress Note: Patrick K. Denton, MD 05/26/2021

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

FLOYD, SHERRY DOB: 01/01/1963 (58 yo F) Acc No. e1169823 DOS: 05/26/2021

General Examination:

On examination of the right shoulder today the patient has 135 degrees of forward flexion.

Assessments

1. Primary osteoarthritis, right shoulder - M19.011 (Primary)
2. History of total replacement of right shoulder joint - Z96.611

I, Deborah Martin, attest that the documentation entered is accurate and reflects the physician's communication to the patient. I Patrick Denton, M.D., hereby attest that the documentation recorded by the scribe accurately reflects the service I personally performed and the decisions made by me.

Treatment

1. Primary osteoarthritis, right shoulder

Notes: Patient has had no improvement in her right shoulder symptoms despite injection and physical therapy. Recommend referral to Pain Management as well as a depression screening and a functional capacity evaluation. Patient can continue working with no use of her right upper extremity at this time.

The above findings and recommendations were discussed with the patient's case manager, Michelle Rossi, RN, BSN of Genex.

Referral To:Physical Therapy

Reason:#FUNCTIONAL CAPACITY EXAM

Referral To:PAIN MANAGEMENT

Reason:PAIN MANAGEMENT |ORDER GIVEN TO NCM

2. History of total replacement of right shoulder joint

IMAGING: SHOULDER-RT/2 VIEW MINIMUM (73030)

Notes :Turner,Misty 05/26/2021 02:23:06 PM EDT > done Martin,Deborah 05/27/2021 08:08:27 AM EDT > AP and Y views of the right shoulder taken today show stable stemless hardware with multiple retained hardware from previous stabilization procedure.

Referral To:Physical Therapy

Reason:#FUNCTIONAL CAPACITY EXAM

3. Others

Clinical Notes:

I have reviewed the review of systems, past medical, family, and social history as well as vital signs. Appropriate changes made as needed. Although it has been reviewed by me, it still may contain transcription errors.

Referral To:PAIN MANAGEMENT

Reason:PAIN MANAGEMENT |ORDER GIVEN TO NCM

Visit Codes

99213 Officeoutpatient visit est Office.

Procedure Codes

73030 Xray exam of shoulder Office
99361 CASE MGMT Office

Follow Up

AFTER FCE

Progress Note: Patrick K. Denton, MD 05/26/2021

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

FLOYD, SHERRY DOB: 01/01/1963 (58 yo F) Acc No. e1169823 DOS: 05/26/2021



Electronically signed by PATRICK DENTON, MD on 05/27/2021 at 04:24 PM EDT
Sign off status: Completed

McLeod Orthopaedics Florence
1005 East Cheves St
FLORENCE, SC 29506-2777
Tel: 843-777-7900
Fax: 843-777-7925

Progress Note: Patrick K. Denton, MD 05/26/2021

Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

McLeod
Physician Associates

McLeod Orthopedics Florence
1005 East Cheves St
FLORENCE SC 29508-2777
Ph: 843-777-7900 Fax: 843-777-7825

Release To School Work Form

NAME: Sherry Floyd DATE: 05/28/2021

ADDRESS: 1279 CONESTOGA ST MANNING SC 29102-6791

Patient was seen in our office today for a scheduled appointment.

Diagnosis:

Release by: WDFK on 05/28/2021

Restrictions:

- | | | |
|--|--|---|
| <input type="checkbox"/> No restrictions | <input type="checkbox"/> No running | <input type="checkbox"/> No contact sports |
| <input type="checkbox"/> No jumping | | |
| <input type="checkbox"/> No lifting | | |
| <input type="checkbox"/> No overhead work | <input type="checkbox"/> Right <input type="checkbox"/> Left | |
| <input type="checkbox"/> Right-hand work only | <input type="checkbox"/> Left-hand work only | |
| <input type="checkbox"/> No repetitive bending | <input type="checkbox"/> No repetitive stooping | |
| <input type="checkbox"/> No constant standing | <input type="checkbox"/> No constant walking | <input type="checkbox"/> No constant stair climbing |
| <input type="checkbox"/> No prolonged sitting | | |
| <input type="checkbox"/> No climbing | | |
| <input type="checkbox"/> Sedentary Only | | |
| <input type="checkbox"/> No lower body | <input type="checkbox"/> No upper body | |
| <input type="checkbox"/> No pivoting | <input type="checkbox"/> No twisting movements | |
| <input type="checkbox"/> Other | | |

Instructions:

NO USE OF RIGHT UPPER EXTERMITY

Recheck Vbt: **AFTER PCE**

Electronically signed by: Patrick K. Denton, MD

Physician's Signature

PA's Signature

05/28/2021
Date

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1821956

SHERRY L. FLOYD)
Claimant,)
)
VS.)
)
MCLEOD HEALTH,)
Employer,)
)
AND)
)
MCLEOD HEALTH SELF INSURED,)
C/O ANTUM RISK,)
Carrier,)
Defendants.)

EXHIBIT

4

McLeod
Physician Associates

McLeod Orthopaedics Florence
1005 East Cheves St
FLORENCE SC 29506-2777
Ph: 843-777-7900 Fax:843-777-7925

Release To School Work Form

NAME: SHERRY FLOYD DATE: 08/02/2021

ADDRESS: 1279 CONESTOGA ST MANNING SC 29102-6791

Patient was seen in our office today for a scheduled appointment.

Diagnosis: DEGENERATIVE JOINT DISEASE RIGHT SHOULDER

Release to: work on 08/02/2021

Restrictions:

- | | | |
|--|--|--|
| <input type="checkbox"/> No restrictions | <input type="checkbox"/> No running | <input type="checkbox"/> No contact sports |
| <input type="checkbox"/> No jumping | | |
| <input type="checkbox"/> No lifting | | |
| <input type="checkbox"/> No overhead work | <input type="checkbox"/> Right <input type="checkbox"/> Left | |
| <input type="checkbox"/> Right-hand work only | <input type="checkbox"/> Left-hand work only | |
| <input type="checkbox"/> No repetitive bending | <input type="checkbox"/> No repetitive stooping | |
| <input type="checkbox"/> No continual standing | <input type="checkbox"/> No continual walking | <input type="checkbox"/> No continual stair climbing |
| <input type="checkbox"/> No prolonged sitting | | |
| <input type="checkbox"/> No climbing | | |
| <input type="checkbox"/> Sedentary Only | | |
| <input type="checkbox"/> No lower body | <input type="checkbox"/> No upper body | |
| <input type="checkbox"/> No pivoting | <input type="checkbox"/> No twisting movements | |
| <input type="checkbox"/> Other | | |

Instructions:

1. NO OVERLIFTING LIFTING 2. NO PUSHING OVER 15 POUNDS 3. NO PULLING OVER 50 POUNDS THESE ARE

PERMANENT RESTRICTIONS.

Recheck Visit: PRN

Electronically signed by: Patrick K.
Denton, MD



Physician's Signature

PA's Signature

08/02/2021
Date

Powered By eClinicalWorks LLC.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, ClaimantRespondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

EXHIBIT 5

South Carolina Workers' Compensation

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1821956
Carrier File #: MCLH-09431
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Sherry L. Floyd SSN: 251-35-8764 Employer's Name: McLeod Health
Address: 1279 Conestoga Street Post Office Box 100551
Manning, South Carolina 29102 Address: Florence, South Carolina 29501
Home Phone: (803) 460-9002 Work Phone: _____ Insurance Carrier: McLeod Health Self Insured c/o Antum Risk
Preparer's Name: Walter H. Barefoot Law Firm: McAngus Goudelock & Courie Preparer's Phone Number: (843) 519-1801

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 12/31/2018 (m/d/yyyy)

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

SEE ATTACHED

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

Mediation

- a. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to William Ceth Land, Esquire
address Land Parker Welch LLC, Post Office Box 138, Manning, South Carolina 29102 on the 20th day of August 20 21.
by first class postage certified mail personal service electronic service.

Walter H. Barefoot Attorney for Employer/Carrier walt.barefoot@mgclaw.com August 20, 2021
Preparer's Signature Title Email Date

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

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

**SHERRY L. FLOYD, Employee, Claimant v. MCLEOD HEALTH, Employer, and
MCLEOD HEALTH SELF INSURED c/o ANTUM RISK, Carrier, Defendants.**

WCC 1821956

FORM 30 ATTACHMENT – GROUNDS FOR REVIEW

1. Did the Hearing Commissioner err as a matter of fact and law by issuing the August 17, 2021 Vacate Order, vacating the 14-Day Order of Dismissal & Order to Show Cause, filed and served on July 21, 2021, as the time to appeal or otherwise challenge the 14-Day Order expired on August 9, 2021, depriving the Workers' Compensation Commission of jurisdiction, appellate or otherwise, to rescind the Hearing Commissioner's automatic dismissal of Claimant's claim with prejudice?
2. Did the Hearing Commissioner err as a matter of fact and law by failing to find that, as the time to appeal the 14-Day Order of Dismissal & Order to Show Cause, filed and served on July 21, 2021, expired on August 9, 2021, the Commission no longer has jurisdiction, pursuant to *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547 (2011), to grant Claimant the relief she sought in her Claimant's Reply to Order of Dismissal & Order to Show Cause? Pursuant to *Allison*, "the Commission lacks the authority to extend the fourteen days permitted for filing of an appeal from the decision of a single commissioner." 394 S.C. at 188-189, 714 S.E.2d at 549.
3. Did the Hearing Commissioner err as a matter of fact and law by failing to find that Reg. 67-215(B), which precludes the Commission from considering a motion involving the merits including but not limited to a motion for dismissal, logically and necessarily precludes Claimant's Reply to Order of Dismissal & Order to Show Cause, as a motion seeking rescission of an order dismissing a claim with prejudice for failure to comply with the Commission rules and appear at a hearing for which Claimant had timely notice is a motion involving the merits?
4. Did the Hearing Commissioner err as a matter of fact and law by failing to find that, to the extent Claimant's Reply to Order of Dismissal & Order to Show Cause is construed as a motion for rehearing of the 14-Day Order of Dismissal & Order to Show Cause, such motions for rehearing are not proper before the Hearing Commissioner pursuant to *Rhame v. Charleston County Sch. Dist.*, 412 S.C. 273, 278 n.3, 772 S.E.2d 159, 162 n.3 (2015) ("a motion for rehearing is proper before the Appellate Panel and not the single commissioner")?



WALTER H. BAREFOOT
MCANGUS GOUDELOCK & COURIE, L.L.C.
Post Office Box 7489
1452 West Evans Street, Suite 102
Florence, South Carolina 29501
(843) 519-1800
Attorneys for the Employer/Carrier

Florence, South Carolina
August 20, 2021

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Sep 20 2021

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Susan S. Barden

Appellate Case No. 2021-000932

Sherry L. Floyd, ClaimantRespondent,

v.

McLeod Health, Employer, and
McLeod Health Self Insured c/o Autumn Risk, Carrier Appellants,

PROOF OF SERVICE

I hereby certify that due and proper service of the documents described below was made on the 20TH day of September 2021, e-mailed and by depositing a true copy of same in the United States mail at Manning, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon and addressed to:

Walter Hilton Barefoot, Esquire
P.O. Box 7489
Florence, SC 29502
Walt.Barefoot@mgclaw.com
Attorney for Appellant

Helen F. Hiser, Esquire
P.O. Box 650007
Mount Pleasant, SC 29465
helen.hiser@mgclaw.com
Attorney for Appellant

DESCRIPTION OF DOCUMENTS:

**Memorandum of Respondent Regarding Appealability
Exhibits 1-4**



William Ceth Land
LAND PARKER WELCH LLC
S.C. Bar No. 13490
Post Office Box 138
Manning, South Carolina 29102
(803) 435-8894
Attorney for Respondent

September 20, 2021

RECEIVED

Sep 20 2021

SC Court of Appeals

LAND PARKER WELCH LLC
ATTORNEYS AT LAW
POST OFFICE BOX 138
MANNING, SOUTH CAROLINA 29102

JOHN C. LAND, III
NELSON R. PARKER
J. CALHOUN LAND, IV
RICCI LAND WELCH
WILLIAM CETH LAND

29 SOUTH MILL STREET
TELEPHONE: 803-435-8894
FACSIMILE: 803-435-8362
Email: ceth@lpwlawfirm.com

September 20, 2021

VIA SC Courts E-Filing & E-Mail ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

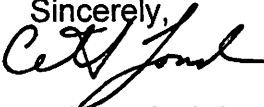
Re: Sherry L. Floyd vs. McLeod Physicians Association and McLeod Health Self
Insured c/o Antum risk
Date of Accident: December 31, 2018
WCC File No: 1821956
Claim No: MCLH-09431 Appeal No: 2021-000932

Dear Ms. Kitchings:

Please find enclosed Memorandum of Respondent Regarding Appealability with Exhibits 1 – 4. I am by copy of this letter serving the same on Walter H. Barefoot, Esquire and Helen F. Hiser, Esquire, attorneys for the Appellants.

If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

William Ceth Land

WCL/sr
Encls.

Cc: Walter H. Barefoot, Esquire (walt.barefoot@mgclaw.com)
Helen F. Hiser, Esquire (helen.hiser@mgclaw.com)