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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2021-000932

Sherry L. Floyd, Employee..... Respondent,

v.

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

**APPELLANTS' MEMORANDUM
ON APPEALABILITY**

In response to this Court's request for a Memorandum of Appealability, Appellants McLeod Health and McLeod Health Self Insured c/o Antum Risk hereby submit their Memorandum on Appealability. A brief summary of the facts and the unique procedural posture involved in this case is necessary to understand the basis for and propriety of this appeal.

RELEVANT BACKGROUND

Respondent Sherry Floyd, Claimant below, injured her shoulder at work on December 31, 2018. Appellants began providing medical treatment, including a total shoulder arthroplasty performed in September 2020. (Exh. A, APA pp. 1-5).

On March 3, 2020, Claimant was discharged by McLeod for cause. (*See* Exh. B, APA pp. 34, 37, 41-42, 48, 65-67).

On November 23, 2020, Dr. Denton released Claimant back to work with no use of her right upper extremity. (Exh. A, APA pp. 1-5).

On May 11, 2021, Appellants filed a Form 21, seeking to terminate temporary disability payments on the basis that “Claimant was terminated for cause. Suitable work would have been available had she not been terminated.” (Exh. C, Form 21, filed May 11, 2021).

The matter was set for hearing before Commissioner Susan S. Barden on July 13, 2021. (Exh. D, Notice of Hearing, dated May 28, 2021). The Notice of Hearing was mailed to Claimant, who was proceeding *pro se*, at the address listed as the official address listed for her with the South Carolina Workers’ Compensation Commission, (Exh. C), her medical records, (*see* Exh. A, APA pp. 1-5), and her unemployment file. (*See* Exh. B, APA pp. 25-28, 93-97). Appellants duly filed a Form 58, Pre-Hearing Brief and APA submissions. (Exh. E, Form 58 with list of APA submissions).

Claimant failed to appear at the July 13, 2021 hearing. Consequently, Commissioner Barden issued a 14-Day Order of Dismissal & Order to Show Cause on July 21, 2021, noting that counsel for Appellants timely appeared for the July 13, 2021 hearing and requested that the matter be dismissed with prejudice due to Claimant’s “failure to prosecute the claim.” Commissioner Barden found that Claimant had been provided proper notice of the hearing and gave her “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.” In addition, Commissioner Barden held that “If Claimant fails to provide good cause, this matter is automatically dismissed with prejudice.” The ordering paragraph states that “**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.” (Exh. F, 14-Day Order of Dismissal & Order to Show Cause, filed July 21, 2021) (“14-Day Order”).

Pursuant to the Commission’s regulations, when the Commission serves an order via first class mail, five days are added to the date of mailing. S.C. Code Reg. § 213(A)(2). Allowing for the additional five (5) days, Claimant’s response to the 14-Day Order was due on August 9, 2021. However, Claimant did not file either a response with the Hearing Commissioner or an appeal to the Full Commission by that date. Per the 14-Day Order, Claimant’s claim for workers’ compensation benefits was automatically dismissed with prejudice. It is Appellants’ position that the Commission lost any jurisdiction over this claim at that point.

Nonetheless, three days after the deadline to respond or appeal to the Full Commission had expired, Claimant, who had obtained legal counsel, filed a Claimant’s Reply to Order of Dismissal & Order to Show Cause. Attached to Claimant’s Reply was an affidavit explaining that she had been living with an elderly relative and that her daughter was getting her workers’ compensation checks for her, which Claimant claimed “was the only important mail” she received, and the other mail was simply placed in the house. Claimant acknowledged that she was receiving her workers’ compensation checks, which were deposited into her account. (Exh. G, Claimant’s Reply to Order of Dismissal & Order to Show Cause, filed August 12, 2021).

Although Appellants had 10 days in which to respond to Claimant's Reply, pursuant to S.C. Code Reg. § 67-215(F), Commissioner Barden ruled before the 10 days expired, and before Appellants had a chance to respond.

Despite the prior 14-Day Order that provided for automatic dismissal of Claimant's claim if she failed to provide an explanation in writing demonstrating good cause with adequate proof for failing to attend the July 13, 2021 hearing, Commissioner Barden issued a Vacate Order on August 17, 2021. In that Order, Commissioner Barden vacated the 14-Day Order and reset the matter for hearing on August 24, 2021. (Exh. H, Vacate Order filed August 17, 2021).

Appellants timely appealed the Vacate Order to this Court.

ARGUMENT

The unique procedural posture of this appeal provides the exception to the rule that, ordinarily, an appeal of a Hearing Commissioner decision must be taken first to the Full Commission. *See Janhrette v. Union Camp Paper Corp.*, 293 S.C. 59, 60, 358 S.E.2d 704, 705 (1987), *citing Riddle v. Fairforest Finishing Co.*, 198 S.C. 419, 426, 18 S.E.2d 341, 344 (1942). Indeed, given the unique posture of this case, the Workers' Compensation Act itself provides for a limited exception. That is, an "award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact." S.C. Code Ann. § 42-17-60. Section 42-17-40, of course, provides for the initial review by the "commission or any of its members" who hears the parties and determines "the dispute in a summary manner." Thus, a decision by a Hearing Commissioner, "if not reviewed in due time," is conclusive and binding on

all questions of fact. In addition, Section 42-17-60 also provides that, “either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals.” S.C. Code Ann. § 42-17-60.

Application to the Full Commission must be made “within fourteen days from the date when notice of the award shall have been given.” S.C. Code Ann. § 42-17-50. The Commission’s regulations confirm that “[t]he fourteen day period is jurisdictional.” S.C. Code Reg. § 67-701(A); *see also Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 188-189, 714 S.E.2d 547, 549 (2011) (affirming that “the fourteen day period is jurisdictional” and cannot be extended by the Commission). Where a party fails to file an appeal to the Full Commission within this 14-day window, the Commission loses appellate jurisdiction and cannot hear any late-filed appeals. *Id.* 394 S.C. at 188, 714 S.E.2d at 549.

Any ruling by a Hearing Commissioner that is not timely appealed to the Full Commission, right or wrong, becomes and is the law of the case. *See, e.g., Transportation Ins. Co. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691-692 (2010) (a finding by a Hearing Commissioner that is not timely appealed to the Full Commission results in the Hearing Commissioner’s finding becoming the law of the case); *Reese v. CCI Constr. Co.*, 334 S.C. 600, 604, 514 S.E.2d 144, 145 (Ct. App. 1999) (ruling not appealed to the appellate panel “right or wrong, it is the law of the case”). Here, the Hearing Commissioner issued the 14-Day Order directing Claimant to file a written response with “adequate proof” of good cause good cause for her failure to show for the July 13, 2021 hearing. In addition, Commissioner Barden held that “If Claimant

fails to provide good cause, this matter is **automatically dismissed with prejudice.**” (Exh. F, 14-Day Order) (emphasis added). After the August 9, 2021 deadline passed with no response from Claimant¹ or, critically, no appeal of the 14-Day Order to the Full Commission, the 14-Day Order became final. Given that Claimant’s claim was dismissed with prejudice, the 14-Day Order became the law of the case and both Commissioner Barden and the Commission lacked any jurisdiction, appellate or otherwise, to review or alter that order.²

A dismissal with prejudice “operates as an adjudication on the merits terminating the action and concluding the rights of the parties.” *Freeman v. McBee*, 280 S.C. 490, 493, 313 S.E.2d 325, 327 (Ct. App. 1984), *citing Ottinger v. Chronister*, 13 N.C. App. 91, 96, 185 S.E.2d 292, 295 (1971) (“[t]he legal import of the words ‘with prejudice’ as applied to a judgment of dismissal is to terminate the action operating as res judicata and barring any further prosecution by the plaintiff of the same cause of action”). Thus, on

¹ The belated Response filed by Claimant’s counsel on August 12, 2021 can be viewed, at best, as a motion for rehearing or reconsideration, which is not proper before a Hearing Commissioner. *See 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”).

² Because the 14-Day Order became final and automatically dismissed Claimant’s claim with prejudice, this case is fundamentally and factually distinguishable from *Levi v. Anderson County EMS*, 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014), where the issue was whether a Hearing Commissioner decision denying a motion to dismiss was a final order for purposes of appealing to the Full Commission. Finding that the denial was similar to a denial of a motion for summary judgment, which is not immediately appealable, this Court held that it was not. 409 S.C. at 382, 384 n.4, 762 S.E.2d at 48, 50 n.4. Here, in substantive and meaningful contrast, the 14-Day Order dismissed Claimant’s claim with prejudice, which constitutes an “award” as that term is defined by *Black’s Law Dictionary* 164 (10th ed. 2014), and became the law of the case and unreviewable by the Full Commission as of August 9, 2021. Thus, the Hearing Commission had no authority to issue the Vacate Order and the Commission lacks jurisdiction to review it. Appellants have no legally viable option other than to appeal to this Court.

August 9, 2021, once the 14-Day Order became final and no longer subject to review by the Commission, neither the Hearing Commissioner nor the Commission had jurisdiction to consider Claimant's excuse for not presenting at the July 13, 2021 hearing or any other issue regarding the merits of her claim.³

As was the case in *Collins v. Sigmon*, 299 S.C. 464, 385 S.E.2d 835 (1989), the unique posture of this case suggests that normal rules of appealability do not readily resolve that issue. Instead, where Appellants are faced with the choice of appealing to the Full Commission, which they contend lacks appellate jurisdiction to hear the appeal, or file a timely appeal with this Court with the risk that this Court will deem the appeal to be an impermissible interlocutory one, they had little option but to file appeals with both forum. Given the preclusive effect of the 14-Day Order's dismissal with prejudice, both the Hearing Commissioner and the Full Commission are without jurisdiction to consider the merits of this case, which is barred by *res judicata*. At a minimum, this Court should hear this appeal to clarify the effect of an unappealed dismissal with prejudice by the Commission.

Despite Appellants' position that the dismissal with prejudice operated to divest the Commission of any further jurisdiction over this claim, given this Court's precedent in *Janhrette* and *Riddle*, they filed a timely appeal of the August 17, 2021 Vacate Order

³ While it is understandable that the Hearing Commissioner may have been sympathetic to Claimant for missing the deadline to either respond or appeal because she was proceeding *pro se*, "a party has a duty to monitor the progress of [his] case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers Ins. Co. of Florida*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Moreover, the South Carolina Supreme Court has stated that a *pro se* litigant "who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003).

with the Commission at the same time they filed their appeal with this Court. (Exh. I, Form 30, filed August 30, 2021). If the Commission lacks jurisdiction to hear this appeal, and this Court declines to consider it, Appellants will be forced to litigate the merits of a claim that is barred by *res judicata*. The fundamental purpose of *res judicata*, however, is “to ensure that ‘no one should be twice sued for the same cause of action.’” *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012), quoting *Judy v. Judy*, 393 S.C. 160, 173, 712 S.E.2d 408, 414 (2011); see also *South Carolina Pub. Interest Found. v. Greenville County*, 401 S.C. 377, 386, 737 S.E.2d 502, 507 (Ct. App. 2013) (“[t]he doctrine [of *res judicata*] flows from the principle that *public interest* requires an end to litigation and no one should be sued twice for the same cause of action”).

Finding that this appeal is properly before this Court is consistent not only with Sections 42-17-40 and 42-17-60 of the Workers’ Compensation Act, but also with Section 1-23-380 of the Administrative Procedures Act, which provides in pertinent part, that “[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.” S.C. Code Ann. § 1-23-380. Being forced to litigate a claim that is barred by *res judicata* places Appellants in the untenable position where the final decision of the administrative agency would not provide an adequate remedy. As a result, this Court should find that, under the unique circumstances and procedural posture of this case, the Vacate Order is immediately appealable because, once Claimant’s claim was dismissed with prejudice, the Commission lost appellate jurisdiction to hear Appellants’ challenge, and Appellants should not be forced to litigate a claim that is barred by *res judicata*.

CONCLUSION

For the reasons stated herein, this Court should hold that this appeal is properly before the Court.

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, LLC

September 20, 2021

s/Helen F. Hiser

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*Attorneys for Appellants McLeod Health and
McLeod Health Self Insured c/o Antum Risk*

FLOYD, Sherry DOB: 01/01/1963 (57 yo F) Acc No. e1169823 DOS: 11/23/2020

McLeod
Physician Associates

Floyd, Sherry
57 Y old Female, DOB: 01/01/1963
Account Number: e1169823
1279 CONESTOGA ST, MANNING, SC-29102-6791
Home: 803-460-9003
Guarantor: Floyd, Sherry Insurance: YORK RISK
SERVICE/ SEDGWICK WC
PCP: AMBER N BALLENTINE
Appointment Facility: McLeod Orthopaedics Florence

11/23/2020

Post Op: Patrick K. Denton, MD

Reason for Appointment

1. XRAY// 6 WEEKS FOLLOW UP TSA RIGHT SHOULDER DOS 09/22/20

History of Present Illness

Constitutional:

Patient returns today in follow-up now 2 months status post right total shoulder arthroplasty. She is progressing well with physical therapy twice a week. She complains of tightness in her right shoulder and pain radiating up into her neck on the right. She has started having migraines which she attributes to these symptoms. She has been seen by a neurologist who is trying different medications.

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
- Percocet(oxyCODONE-Acetaminophen) 5-325 MG Tablet 1 tablet as needed Orally every 4-6 hrs, Notes: prn
- Cyclohexaprine HCl 5 MG Tablet 1 tablet at bedtime as needed Orally Once a day

Not-Taking/PRN

- 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.
History of irritable bowel syndrome.
History of partial colectomy.

Progress Note: Patrick K. Denton, MD 11/23/2020
Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

<https://somlhtapp.clinicalweb.com/mobilecdnc/jsp/catalog/xml/printChartOptions.jsp?enco...> 12/7/2020

FLOYD, Sherry DOB: 01/01/1963 (57 yo F) Acc No. e1169823 DOS: 11/23/2020

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 1/29/2009
Colonoscopy 3/30/2010
EGD/Colonoscopy 9/20/2013
right total shoulder arthroplasty Dr. Denton 09/22/2020

Family History

Father: deceased, diagnosed with Heart Disease
Mother: deceased 41 yrs
Maternal Grand Mother: Colon Cancer, Cancer
Siblings: Brother - Colon Cancer, Cancer
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, NSA 1.88 M.

Progress Note: Patrick K. Denton, MD 11/23/2020
Note generated by eClinicalWorks EMR/PM Software (www.eClinicalWorks.com)

<https://scmlhtapp.eclinicalweb.com/mobiledoc/jsp/catalog/xml/printChartOptions.jsp?enco...> 12/7/2020

FLOYD, Sherry DOB: 01/01/1963 (57 yo F) Acc No. e1169823 DOS: 11/23/2020

Examination

General Examination:

On examination of the right shoulder today the patient has forward flexion to 140 degrees.

Assessments

1. Primary osteoarthritis, right shoulder - M19.011 (Primary)

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

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

Notes :Turner,Misty 11/23/2020 12:24:55 PM EST > done Martin,Deborah 11/24/2020 10:49:05 AM EST > AP and Y views of the right shoulder taken today show a stable total shoulder arthroplasty with no signs of loosening.

Notes:

Patient is given a prescription for Skelaxin and will continue with physical therapy. She can return to work with no use of her right upper extremity.

The above findings and recommendations were discussed with the patient's case manager, Lauren Freeman, RN of McLeod.

Referral To:Physical Therapy

Reason:CONTINUE PT 2-3 TIMES A WEEK FOR 6-8 WEEKS S/P RIGHT SHOULDER TSA

2. Others

Start Skelaxin Tablet, 800 MG, 1 tablet, Orally, BID, 90 day(s), 60 Tablet

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:Physical Therapy

Reason:CONTINUE PT 2-3 TIMES A WEEK FOR 6-8 WEEKS S/P RIGHT SHOULDER TSA

Procedure Codes

73030 Xray exam of shoulder

99361 CASE MGMT

Follow Up

6 Weeks

Progress Note: Patrick K. Denton, MD 11/23/2020
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<https://scmlhtapp.eclinicalweb.com/mobiledoc/jsp/catalog/xml/printChartOptions.jsp?enco...> 12/7/2020

FLOYD, Sherry DOB: 01/01/1963 (57 yo F) Acc No. e1169823 DOS: 11/23/2020



Electronically signed by PATRICK DENTON, MD on 11/25/2020 at 07:56 AM EST
Sign off status: Completed

McLeod Orthopaedics Florence
1005 East Cheves St
FLORENCE, SC 29506-2777
Tel: 843-662-5233
Fax: 843-777-7925

Progress Note: Patrick K. Denton, MD 11/23/2020

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FLOYD, Sherry DOB: 01/01/1963 (57 yo F) Acc No. e1169823

McLeod
Physician Associates

McLeod Orthopaedics Florence

1005 East Cheves St
FLORENCE SC 29506-2777
Ph: 843-662-5233 Fax: 843-777-7925

Release To School Work Form

NAME: Sherry Floyd DATE: 11/23/2020

ADDRESS: 1279 CONESTOGA ST MANNING SC 29102-6791

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

Diagnosis:

Release to: WORK on 11/24/2020

Restrictions:

- No restrictions
- No jumping
- No lifting
- No overhead work
- Right-hand work only
- No repetitive bending
- No continual standing
- No prolonged sitting
- No climbing
- Sedentary Only
- No lower body
- No pivoting
- Other
- No running
- No contact sports
- Right Left
- Left-hand work only
- No repetitive stooping
- No continual walking
- No continual stair climbing
- No upper body
- No twisting movements

Instructions:

NO USE OF RIGHT UPPER EXTERMITY

Recheck Visit: 6 WEEKS

Physician's Signature

PA's Signature

11/23/2020

Date

Powered By eClinicalWorks LLC.

https://scmlhfapp.eclinicalweb.com/mobiledoc/jsp/catalog/xml/specialityforms/school_w... 11/23/2020

Personal Information

| | | | |
|-----------------|------------|---------------------------|--------|
| Claimant Id: | [REDACTED] | Other Last Name Used (1): | FLOYD |
| Date of Birth: | [REDACTED] | Other Last Name Used (2): | |
| First Name: | SHERRY | Other Last Name Used (3): | |
| Last Name: | SASSAMAN | Gender: | Female |
| Middle Initial: | | Mothers Maiden Name: | |
| Suffix: | | | |

Address Information

| | | | |
|---|-------------------|---------------------------------|---------|
| Country: | USA | Mailing Address City: | Manning |
| Mailing Address, if different from residential: | 1279 CONESTOGA ST | Mailing Address Zip: | 29102 |
| Mailing Address State: | South Carolina | Residential Address Country:USA | |
| Residential Address: | 1279 CONESTOGA ST | Residential Address City: | Manning |
| Residential Address State: | South Carolina | Residential Address Zip: | 29102 |
| Closest Employment Services Office | Manning | Commuter: | |

Contact Information

| | | | |
|--|------------|---------------------------|--------|
| Primary Phone: | [REDACTED] | Alternate Phone: | Ext: |
| Cell Phone: | [REDACTED] | Fax Number: | |
| E-mail Address: | [REDACTED] | Preferred Contact Method: | E-mail |
| I wish to receive text alerts on important information on my unemployment claim: | Yes | | |

Demographic Information

| | | | |
|-----------------------------|--------------------------|----------------------------|-----|
| Education Level: | 12 - HIGH SCHOOL DIPLOMA | Disabled: | No |
| Do you need an interpreter: | No | Veteran: | No |
| Race: | White | U.S. Citizen: | Yes |
| Ethnicity: | Not Hispanic or Latino | Alien Registration Number: | |
| Preferred Language: | English | | |

Eligibility

| | |
|--|------|
| Indicate from what location you are filing your claim | Home |
| Have you applied for or are you receiving benefits from any state or federal programs? | No |

Employment Questions

| | |
|---|----|
| Has all of your employment been in another state since 10/13/2018 | No |
| Has any of your employment been in another state since 10/13/2018 | No |
| Have you served in the Military since 10/13/2018 | No |
| Are you currently in the State of SC | |
| Have you been employed as a civilian by the Federal Government since 04/13/2018 | No |
| Have you worked for a school or educational institution since 10/13/2018 | No |

Exh. B

Have you worked for a professional athletics organization since 10/13/2018 No
 Are you a Longshoreman who has been assigned work by a Longshoreman union since 10/13/2018 No
 Are you an elected official No

Employability Questions

Are you currently self-employed or do you earn income on a commission basis No
 Do you have plans to become self-employed or earn income on a commission basis No
 Are you currently able to look for, accept, and perform full time work for which you have training or experience Yes
 Are you currently enrolled in school or in training No
 Are you available only for part-time work No
 Have you filed a claim in the past year for worker's compensation due to a work related injury Yes

Employers - Regular

| Employer Name | Address | Dates of Employment | Type of Employment |
|---|------------------------------|-----------------------|--------------------|
| MCLEOD PHYSICIAN ASSOCIATES II, DBAMCLEOD PHYSICIAN ASSOCIATES II | PO BOX 100551 FLORENCE 29502 | 02/14/2017-03/31/2020 | Full Time |

Separation - Regular

Employer Name MCLEOD PHYSICIAN ASSOCIATES II, DBAMCLEOD PHYSICIAN ASSOCIATES II
 Reason employment ended: I was fired, terminated, or discharged from the job.
 If Quit or Discharge select the reason why: General Reasons
 Will you be returning to work for this employer No
 If yes, please enter your return to work date:
 State where work was performed: South Carolina
 City where work was performed: Manning
 Primary Occupation with this employer:
 Are you an owner, corporate officer, or stakeholder of this employer? No
 What were your total earnings with this employer from 24000.0

Other Separation

Are you currently receiving workers' compensation workers compensation for a job related injury or illness? No
 Are you or will you receive pension or retirement pay (other than Social Security)? No
 Are you or will you receive vacation pay, severance pay, military accrued leave pay or other separation pay? No
 If you are eligible to receive benefits, would you like Federal Income Tax withheld from your benefits? Yes
 If you are eligible to receive benefits, would you like State Income Tax withheld from your benefits? Yes
 Do you have a definite return to work date or will start a new job for an employer you have not told us about? No
 If yes, what is the name of the employer?
 If yes, what is your return to work or start date?

Preferred Payment Method

Benefits Payment Method

Name of Financial Institution
 Financial Institution Routing #
 Account Number
 Account Type



Work Search

What is your lowest Rate of Pay you will accept for the type of work you are seeking? \$13.00 per Hour

Are tool, licenses, or permits required for the work you are seeking No

If yes, do you have the required tools, licenses, or permits to perform the work you are seeking

Military/Veteran Information

Are you a veteran? No

Is your spouse a veteran? No

Is your spouse a veteran killed in active duty? No

Is your spouse a deceased veteran who had a total disability? No

Is your spouse a service member who is a MIA or POW? No

Is your spouse a veteran who had a total (100%) disability rating from the VA?

Were you awarded any campaign badges, ribbons or decorations?
If yes, please mention

Have you worked on a farm? No

Did you earn at least half of your last 12 months income on a farm?

Were you employed all year on a farm?

Did you travel to work?

Did you work at least 25 days on a farm?

Have you worked in a food processing plant? No

Did you earn at least half of your last 12 months income in food processing?

Were you employed all year in food processing?

Did you travel to work?

Did you work at least 25 days in food processing?

Do you have a valid SC driver's license? Yes

Please provide your driver's license number as it appears on your driver's license

Please provide your weight as it appears on your driver's license 160

Driver's license class D Regular Operator License

Commercial driver's license classes None

Commercial driver's license restrictions None

Job Eligibility Counties

Select upto 6 counties where you are willing to work:

CLARENDON

SUMTER

Job Eligibility Experience

Are you willing to look for other types of work?

Primary Choice

Kinds of Jobs Seeking / ONET?:

Customer Service Representatives

Years of experience: 02

Years of Training:

Secondary Choice

Kinds of Jobs Seeking / ONET?: Office and Administrative Support Workers, All Other

Years of experience: 02

Years of Training:

Last Job Information

How much did you earn on your last job?: 13.0

Unit of pay: Hour

Travel Miles: 11-20

Location

Are you willing to relocate?: No

Are you willing to travel at least the same distance as you last traveled to your last job?: Yes

Your transportation methods: Automobile

Availability Start Date Immediately? Yes

You must actively search for suitable work each week that you file a weekly certification for unemployment insurance benefits by performing at least two (2) job searches through the South Carolina Works Online System (SCWOS), so that the search can be electronically verified. Suitable work includes any trade, occupation, or business in which you are qualified based upon your training and experience, and which pays at least 90% of your previous salary from the most recent bona fide employer during the first eight paid weeks of unemployment and 75% of your previous salary after eight paid weeks of unemployment. Are you willing to accept this requirement yes or no?: Yes

Does a lack of childcare or dependent care affect your ability to work?: No



Date Completed: Apr 13, 2020 11:57 AM

South Carolina
Department of Employment and Workforce

| | | |
|---|------------------------------|--|
| indicated that your separation from MCLEOD PHYSICIAN ASSOCIATES II was due to other reasons. Is this the correct separation reason? | | |
| What date was your first day of work? | 02/14/2017 | |
| What date was your last day of work? | 03/31/2020 | |
| What date were you discharged? | 03/31/2020 | |
| Who discharged you? Name: | Libby Boiselle | |
| Job Title: | Supervisor | |
| Did your discharge have a financial impact on the employer? | No | |
| Did you receive any warnings? | No | |
| Did you violate company policy? | No | |
| Was there a final incident that caused you to be discharged? | Yes | |
| What date was the final incident? | 03/30/2020 | |
| What was the final incident? | Forgot to check a patient in | |

By submitting this form, you confirm these are your own answers to the best of your knowledge.

Date Completed: April 13, 2020 12:05 PM



South Carolina
Department of Employment and Workforce



6880562

REQUEST TO EMPLOYER FOR SEPARATION INFORMATION - RESPONSE PAGE

04/14/2020

Claimant Name: SHERRY SASSAMAN

Claimant SSN: [REDACTED] 8764

Employer Account Number: [REDACTED]

Please give full details concerning the separation to ensure that a fair determination may be made.

1. Reason for Separation(Explain Fully): Conduct

2. Dates of Employment: From 02/13/2017 to 03/31/2020 (Last day worked)

3. Enter the total amount of earnings which you paid the claimant during:

a. The current quarter \$ 1,284.47
b. The last completed calendar quarter \$ 6,382.12

4. Are you paying, or WILL YOU PAY, this claimant a pension or retirement pay?

If YES, what amount? \$ 5,136.66 PER Final payout

YES NO

a. Did claimant contribute to pension plan?

If YES, what percent? 5 %

YES NO

5. Date: 03/31/20

Signed: Cynthia M. Causey / Jf

Title: VP of HR

Return To:

South Carolina Department of Employment and Workforce

P.O. Box 1477

Columbia, SC 29202

(803) 737-0499

Fax To:

RECEIVED

APR 16 2020

Document Control

McLeod Health

The Choice for Medical Excellence

PERFORMANCE EXPECTATION PROCESS WORKSHEET DISMISSAL

Employee Name: Sherry Floyd ID Number: 34955
Department/Division: McLeod Surgery Clarendon Date of Hire: 02/13/2017
Date in Position: 02/13/2017

ACTUAL PERFORMANCE:

Sherry has continued to be confrontational and insubordinate towards management. Her performance when dealing with patients does not represent the core values of McLeod. She has failed to comply with the expectations and requirements of her job by her conduct, her performance and failure to exhibit service excellence.

Specific category of issue: Service Excellence Attendance Performance Conduct

DATE(S) AND CATEGORIES OF PREVIOUS DISCUSSION(S):

Informal Discussion(s) Date(s):
Coaching Date: 12/03/2018
Performance Talk Date: 03/19/2019
Performance Reminder Date: 05/15/2019, 08/29/2019
Decision Making Leave Date: 10/07/2019

OTHER FACTORS I SHOULD CONSIDER IN EVALUATING THIS PROBLEM:

1. Last Performance Evaluation Results: Successful Date: 02/11/2019
2. Required review for PEP Steps: DISMISSAL - Director, VP and Human Resources

Attach appropriate documentation from review of circumstances surrounding the problem.

POST MEETING NOTES:

Date/Time of discussion: 3/31/2020 9:15 am
Location of meeting: McLeod Surgery Clarendon Office

ALL REPRESENTATIVES PRESENT (NAMES AND TITLES):

*Sherry Floyd
Christina V. Powell
Keith Stefanicki*

SIGNIFICANT ISSUES RAISED BY THE EMPLOYEE:

see back

cc: Employee Date Reviewed 3/31/2020
Director/Manager Director/Manager's Signature Christina V. Powell
Human Resources Observed by Keith Stefanicki
I received a copy of this form refused to sign
(Employee initials)

She says she does not have a key - she lost it. JV

To whom this concerns,

A patient [REDACTED] had an appt. Wednesday, March 25 at 1:30 pm. I didn't see her check-in as I was calling 80 something pts to cancel appts. I looked at schedule about 2:50 pm, seen she hadn't checked in for her as a no show. A little after 3pm a lady walks in to use the bathroom, when she comes out, she looks at me, throws her arms up. So, I asked ma'am are you still waiting? Ms [REDACTED] comes to my window, states she has been there since a little after 1pm, looks over at [REDACTED] and says she checked no in and took my reply, Ms [REDACTED] continues to say that she ~~even~~ came back in went to [REDACTED] window and asked to reschedule, Sherry told her that she needed to be seen and can't reschedule. I then proceeded to let ~~to~~ her know, within her telling me everything that she wasn't checked in, I apologized to her and checked her. I let them in the back know she was ~~to~~ here but never checked in.

When I went back up front Sherry got in my face, and said don't you ever throw me under the bus like that again. Being that I'm beyond tired of her mess, said to her I'm not sugar coating anything for you anymore. That made her much madder, a lot of said after that, I'm not putting up with someone jumping in my face and it is there mess up, and the 2nd time she has gotten in my face. Sherry also said you just wait and said it again, I don't take threats either. Any other questions, please ask.

[REDACTED]

3-30-20

South Carolina
Department of Employment and Workforce



Note: Reimbursable employers are not subject to the above charge provisions, but are charged according to base period wages in a claim.

FOR ADDITIONAL INFORMATION OR QUESTIONS PLEASE CONTACT US AT 1-866-831-1724.





South Carolina
Department of Employment and Workforce



10922782

MCLEOD PHYSICIAN ASSOCIATES II
Po Box 100551
Florence SC 29502-0551





10922782

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL (TELEPHONE CONFERENCE)

Mail Date: 07/02/2020

Claimant Name: SHERRY FLOYD
Address: 1279 CONESTOGA ST
 MANNING SC 29102

Social Security Number: XXX-XX-8764
Claimant ID: [REDACTED]
Appeal Number : 20-LA-017456
Phone: [REDACTED]

Employer name: MCLEOD PHYSICIAN ASSOCIATES II
Address: PO BOX 100551
 FLORENCE SC 29502-0551

Phone: 843-777-4550

An administrative hearing will be held TELEPHONE CONFERENCE on: 07/16/2020 at 03:00 PM, Eastern Standard Time, BEFORE: ANDREW WELSH, Administrative Hearing Officer, for the SC Department of Employment and Workforce. The parties will be called by the hearing officer at the telephone numbers shown on this form. IF THE TELEPHONE NUMBER IS INCORRECT OR NO TELEPHONE NUMBER IS SHOWN, YOU MUST CALL THIS TOLL-FREE NUMBER 866-269-5680 IMMEDIATELY TO INFORM US OF YOUR TELEPHONE NUMBER SO THAT YOU CAN PARTICIPATE IN THE HEARING.

If you have not been called within 10 minutes after the scheduled time of the hearing, you must call 803-737-2520. Either another hearing is still in progress, or we are unable to contact you. Failure to call or participate in the hearing may result in your interests being considered abandoned.

The issue(s) for the hearing are:

- Discharge
- Voluntary Quit

SCHEDULE CONFLICTS: Hearing postponements are not ordinarily granted. However, if you have a justifiable conflict, notify the Department as soon as possible before your hearing. If you do not, a later request to reopen your hearing may be denied. Contact an appeals representative at 803-737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing.

PURPOSE OF THE HEARING: The hearing is a fact-finding process that uses a question-and-answer method. Each side may present testimony, witnesses, and documents relevant to its case. The hearing officer will conduct a fair hearing, determine what is relevant, and make sure the record is complete. After the hearing, the officer will prepare a written decision based on the evidence. That decision will be mailed to you.

SPECIAL NOTE: The Appeal Tribunal may reverse, affirm, or modify the decision on appeal. **Be advised that if a disqualification is at issue, then the appeal may result in an increase or decrease of the disqualification.**



South Carolina
Department of Employment and Workforce

Appeal Tribunal
P.O. Box 995
Columbia SC 29202



10922782

WHAT HAPPENS AT A HEARING: This notice lists what issues the hearing will cover. The hearing is recorded and all proceedings are taken under oath. After explaining the law and procedures, the hearing officer will ask questions of each side and its witnesses in turn. After all testimony is taken from one side the same procedure is repeated for the other side. Wait your turn, as you may not interrupt while another person is testifying. The hearing officer will tell you when it's your turn to ask questions. Ask relevant questions that have not already been asked and answered. If you don't have any questions, let the hearing officer know.

EVIDENCE: Written evidence or documents such as letters timecards, or doctors' statements may help your case. Photos, maps, or charts may also help explain what happened. Be ready to tell who prepared the evidence and how it helps your case. Send legible copies of the documents to the hearing officer and the other side before the hearing. Do this even if you believe the Department or the other side already has them. **EVIDENCE MUST BE SUBMITTED TO THE APPEAL TRIBUNAL AND PROVIDED TO THE OPPOSING PARTY AT LEAST 24 HOURS PRIOR TO THE HEARING.** If you don't, the documents may not be considered as evidence. Include only evidence that relates directly to issues listed on the hearing notice.

Any evidence that you want to be considered in this hearing must be sent immediately to the Appeal Tribunal at the address shown on the top of this notice, or faxed to our number 803-737-0287, or uploaded through the claimant or employer self-service portal.

WITNESSES: You may present witnesses to support your case. Choose witnesses who actually saw or heard what happened. Those witnesses must be present at the time and location of the hearing.

DO I NEED A LAWYER? The unemployment appeal process is designed for claimants and employers who don't have attorneys. However, an attorney may represent you at your own expense. If you do choose to retain a lawyer, fees charged to represent claimants are limited to the greater of \$200 or a claimant's maximum weekly benefit amount for each proceeding.

SUBPOENAS: A subpoena is a legal document issued by the Department that orders an essential witness to testify or produce certain documents for the hearing. You may apply for a subpoena of witnesses and/or documents by downloading a form APP-107 under the Appeal Hearings heading at www.dew.sc.gov/individuals/tools/forms. The form must be completed, signed and sent to the Appeal Tribunal. It may be sent by mail to "Appeal Tribunal, P.O. Box 995, Columbia SC, 29202;" by fax to 803-737-0287, or through the claimant or employer self-service portal. ***SUBPOENA APPLICATIONS MUST BE RECEIVED SIX (6) BUSINESS DAYS PRIOR TO THE HEARING DATE OR THE REQUEST MAY NOT BE CONSIDERED.***

INTERPRETERS: The Appeal Tribunal will provide qualified language interpreter or interpreter for the deaf when requested. If you or any of your witnesses need an interpreter and you have not previously requested one, contact the Tribunal immediately.



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



10922782

WITHDRAWING AN APPEAL: Only the party who filed the appeal may withdraw it. If you wish to withdraw your appeal, please contact a Department representative at 803-737-2520 or mail your notice of withdrawal to "Appeal Tribunal P.O. Box 995, Columbia SC 29202".

TIME ZONES: If you call from a time zone other than Eastern Standard Time, be sure to properly calculate the time difference.

OVERPAYMENT OF BENEFITS: An adverse decision may result in an overpayment of benefits. In the event you are overpaid benefits, you will be required to repay those benefits to the Department.

DECISION: The Appeal Tribunal's written decision will resolve each issue, but it may not review in detail all testimony or documents given at the hearing. If you disagree with the decision, you may file a further appeal. The decision will explain how to file an appeal.

FILING FOR BENEFITS DURING APPEAL: A CLAIMANT MUST CONTINUE TO FILE WEEKLY CLAIMS FOR BENEFITS DURING THE APPEAL PROCESS, IF STILL UNEMPLOYED. Claim Weeks that are not timely filed cannot be paid, even if the claimant wins the appeal and is later held eligible. CONTACT THE DEPARTMENT AT ONCE AT 1-866-831-1724 if there are any problems or questions when filing weekly claims.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE ON THIS ISSUE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

Selected Sections of the South Carolina Unemployment Law

VOLUNTARY QUIT: Section 41-35-120(1) provides that a claimant found to have left work voluntarily without good cause is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount. Good cause is a reason that is connected to employment and would justify a reasonable person leaving employment.

DISCHARGE FOR MISCONDUCT: Section 41-35-120(2)(a) provides that a claimant found to have been discharged for misconduct is disqualified for twenty (20) weeks. "Misconduct" includes conduct showing willful disregard of an employer's interests, such as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee. No finding of misconduct may be made for discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

DISCHARGE FOR CAUSE: Section 41-35-120(2)(b) provides that a claimant found to have been discharged for cause (i.e., fault), other than misconduct, is partially disqualified from benefits from five (5) to nineteen (19) weeks, according to the seriousness of the cause for discharge.



South Carolina
Department of Employment and Workforce
Appeal Tribunal
P.O. Box 995
Columbia SC 29202



10922782

GROSS MISCONDUCT: Section 41-35-120(4) provides if a claimant is discharged for gross misconduct claimant is indefinitely disqualified from receiving benefits until s/he returns to work and earn at least eight (8) times the weekly benefit amount.

UNEMPLOYMENT DUE TO DOMESTIC ABUSE OR COMPELLING FAMILY CIRCUMSTANCES: Section 41-35-125 provides that a claimant may be found to be eligible for unemployment benefits if the separation from employment is attributable to domestic abuse or other compelling family circumstances. Compelling family circumstances may involve illness or disability of the claimant or an immediate family member and a required relocation for the claimant's spouse. The burden is on the claimant to show these circumstances exist. Where required by statute, the claimant must produce documentary evidence supporting the claim.

AVAILABILITY: Section 41-35-110 provides that a claimant is eligible for benefits for any week only if the week is claimed according to the regulations and the claimant has registered and maintained contact with the Department as required. Additionally, a claimant must be physically "able to work" at his/her usual occupation which prior training and experience shows him to be qualified. Also, a claimant must be "available for work," which means being ready, able and willing to accept suitable work, and that personal circumstances would not prevent him/her from accepting such work.

Unemployment benefits will not be paid for weeks in which the claimant is held to be unavailable. If the conditions which cause the unavailability change, the claimant may contact the Department to reopen his claim. The burden is on the claimant to show availability for work and reasonable effort to obtain work.

ONLINEWORK SEARCH REQUIREMENT: To be eligible for your weekly claim, you must perform at least two (2) job searches each week through the South Carolina Works Online Services (SCWOS) system. If you do not complete this requirement, you may not receive payment. The Department may waive this requirement to perform at least two (2) weekly job searches through SCWOS only for good cause. Good cause includes, but is not limited to, verifiable electronic access and/or language barriers, and is determined by the Department on a case-by-case basis and only after a claim has not been paid. See S.C. Code Ann. Regs. 47-104.

JOB OFFER AND REFERRAL: Section 41-35-120(5) provides that any claimant who has failed (1) without good cause to either apply for available suitable work, when so directed by the Department, or (2) to accept available suitable work when offered by the Department or an employer, shall be ineligible until the claimant furnishes satisfactory evidence of having been re employed and having earned at least eight (8) times the weekly benefit amount. The burden is on the claimant to show availability for work and reasonable effort to obtain work. See S.C. Code Ann. Regs. 47-23.



8364934

Original

SHERRY FLOYD
1279 CONESTOGA ST
MANNING SC 29102-6791

Decision Date: 04/28/2020
Mailing Date: 04/28/2020
Effective Date: 04/12/2020
Type: DC33
Category: Improper Actions
Benefit Year Ends: 04/10/2021
RE: MCLEOD
PHYSICIAN
ASSOCIATES II
Claimant ID: [REDACTED]
SSN: XXX-XX-8764
WBA: \$326.00
RBA: \$0.00

DECISION

You are held ineligible for benefits from 04/12/2020 to 08/29/2020.

DETERMINATION REASON

You were discharged from your job with your most recent bona fide employer for improper behavior toward another employee while on the job. Your actions were contrary to what an employer has a right to expect. You were discharged for misconduct in connection with the employment under the South Carolina Code Section 41-35-120(2)(a).

CONCLUSION

You have not met the eligibility requirements of the law, benefits are denied. You are disqualified for 20 weeks. Your maximum benefits are also reduced by 20 times your weekly benefit amount.

MONETARY INFORMATION

| Weekly Benefit Amount | Maximum Potential | Less Reduction Of | Net Total Benefits | Benefit Year Ends |
|-----------------------|-------------------|-------------------|--------------------|-------------------|
| \$326.00 | \$6,520.00 | \$6,520.00 | \$0.00 | 04/10/2021 |

UI Claims Adjudicator

IMPORTANT: This determination will be the final decision of the Department unless you file an appeal setting forth in detail the grounds for appeal by 05/08/2020. Your appeal may be filed via the MyBenefits Portal, by mail addressed to the "Appeal Tribunal, Post Office Box 995, Columbia, SC 29202," or by fax to 803-737-0287. For additional information on filing an appeal, contact the Appeals Department at 803-737-2520 or visit our website at www.dew.sc.gov/individuals/manage-your-benefits/appeals.

SEE FURTHER EXPLANATIONS OF THE LAW ON PAGE TWO (2) OF THIS FORM

Personal Information

| | | | |
|-----------------|------------|---------------------------|--------|
| Claimant Id: | [REDACTED] | Other Last Name Used (1): | FLOYD |
| Date of Birth: | [REDACTED] | Other Last Name Used (2): | |
| First Name: | SHERRY | Other Last Name Used (3): | |
| Last Name: | SASSAMAN | Gender: | Female |
| Middle Initial: | | Mothers Maiden Name: | |
| Suffix: | | | |

Address Information

| | | | |
|---|-------------------|------------------------------|---------|
| Country: | USA | Mailing Address City: | Manning |
| Mailing Address, if different from residential: | 1279 CONESTOGA ST | Mailing Address Zip: | 29102 |
| Mailing Address State: | South Carolina | Residential Address Country: | USA |
| Residential Address: | 1279 CONESTOGA ST | Residential Address City: | Manning |
| Residential Address State: | South Carolina | Residential Address Zip: | 29102 |
| Closest Employment Services Office | Manning | Commuter: | |

Contact Information

| | | | |
|--|------------|---------------------------|--------|
| Primary Phone: | [REDACTED] | Alternate Phone: | Ext: |
| Cell Phone: | [REDACTED] | Fax Number: | |
| E-mail Address: | [REDACTED] | Preferred Contact Method: | E-mail |
| I wish to receive text alerts on important information on my unemployment claim: <input checked="" type="checkbox"/> Yes | | | |

Demographic Information



Eligibility

| | |
|--|------|
| Indicate from what location you are filing your claim | Home |
| Have you applied for or are you receiving benefits from any state or federal programs? | No |

Employment Questions

| | |
|---|----|
| Has all of your employment been in another state since 10/13/2018 | No |
| Has any of your employment been in another state since 10/13/2018 | No |
| Have you served in the Military since 10/13/2018 | No |
| Are you currently in the State of SC | |
| Have you been employed as a civilian by the Federal Government since 04/13/2018 | No |
| Have you worked for a school or educational institution since 10/13/2018 | No |

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 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:

I. 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).

II. 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

Attorney for Employer/Carrier
Title

walt.barefoot@mgclaw.com
Email

May 11, 2021
Date

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

W.C.C. FILE NO: 1821956

SHERRY L. FLOYD,

Employee,

Claimant,

vs.

MCLEOD HEALTH,

Employer,

AND

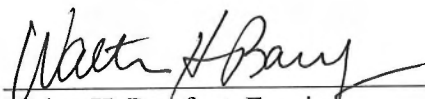
MCLEOD HEALTH SELF INSURED C/O
ANTUM RISK,

Carrier,

Defendants.

VERIFICATION

Pursuant to S.C. Code Ann. Section 42-1-705(C) and other applicable law, I verify the contents of the Form 21 are accurate and true to the best of my knowledge on this date.



Walter H. Barefoot, Esquire
Post Office Box 7489
501 South Irby Street, 2nd Floor (29501)
Florence, South Carolina 29502
(843) 519-1800

ATTORNEYS FOR DEFENDANTS

Date: May 11, 2021



Claimant's Name: Sherry Floyd
Address: 1279 Conestoga St
City: Manning State: SC Zip: 29102
Home Phone: (803) 460-9002 Work Phone: (803) 435-2822
Preparer's Name: AIM Law Firm: Mattie Mitchum, AIC, AIS

Employer's Name: McLeod Health TPA
Address: 701 Cashua Ferry Road
City: Darlington State: SC Zip: 29532
Insurance Carrier: Palmetto Hospital Trust
Preparer's Phone #: (803) 461-8402

Date of injury: 12/31/2018

Date of Notice to Employer of Injury: 1/10/2019

I. Payment of Temporary Compensation Check one: Initial period Additional period Corrected compensation rate
(choose A, B, or C)

- A. Temporary Total at the compensation rate of \$350.17 per week. For this period of disability, disability began on 09/22/2020 and the date of first payment was 10/01/2020..
- B. Temporary Partial at the compensation rate of \$ per week. Note: When the Temporary Partial compensation rate will vary, report the first payment here. Supplement this report throughout the period of Temporary Partial compensation by filing a Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on (m/d/yyyy), and the date of first payment was (m/d/yyyy).

Calculation of Temporary Partial Rate:

| | |
|---|---------------|
| Average weekly wage before injury | \$0.00 |
| - Current weekly wage | \$0.00 |
| = Difference in wages before injury and now | \$0.00 |
| x | \$.6667 |
| Temporary Partial Compensation Rate | \$0.00 |

- C. Salary in lieu of Temporary Total Partial (choose one) compensation in the amount of \$ per week. For this period of disability, disability began on (M/d/yyyy) and the date of first payment of salary in lieu of temporary compensation was (M/d/yyyy).

THIS SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF INJURY. ATTACH DOCUMENTATION AS TO THE REASON OF THE TERMINATION.

II. Termination of Temporary Compensation Temporary compensation payments were stopped on for the following reason:

- Claimant has returned to work at least 15 days and no temporary partial compensation is due.
- Claimant agrees he/she is able to return to work and has signed a Form 17.
- Based on a good faith investigation, the claim is denied. Reason for denial:
- Claimant has been released to return to work without restrictions and employment has been offered.
- Claimant has been released to work at limited duty and employer has provided limited duty work consistent with the terms upon which the Employee has been released.
- Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation. Additional report must be filed if compensation is resumed.

I certify that this form has been served on the claimant per R.67-211.

Signature of Claims Administrator

Date

III. Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:

The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that the temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to SCWCC Judicial Department at the address at the top of this form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

MY SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED TO FURTHER TEMPORARY COMPENSATION PAYMENTS.

Check one: Form 15(II) Has Has not been received.

Signature of Claimant or Legal Representative

Date

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employer's representative must serve the Form 15 on the claimant when compensation begins per R.67-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.67-1603. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as to the reason for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with Judicial Department.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: **1821956**
Carrier File #: **MCLH-09431**
Carrier Code #: **S-867**
Employer FEIN #: **51-0473500**

Claimant's Name: **Sherry Floyd** Employer's Name: **McLeod Health TPA**
Address: **1279 Conestoga St** Address: **701 Cashua Ferry Road**
City: **Manning** State: **SC** Zip: **29102** City: **Darlington** State: **SC** Zip: **29532**
Home Phone: **(803) 460-9002** Work Phone: **(803) 435-2822** Insurance Carrier: **Palmetto Hospital Trust**
Preparer's Name: **Mattie Mitchum** Law Firm: _____ Preparer's Phone: **(803) 461-8402**

1. Date of injury: **12/31/2018** 2. Total Week Compensation Paid **33.00**

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: **TT** From: **09/22/2020** To: **05/10/2021**

4. Date of First Payment **10/01/2020**

5. Total Amount Paid: (a) Compensation: **\$11,555.61**
(b) Medical (Including Nursing, Hospital, Drugs, Etc.): **\$31,846.63**

Mattie Mitchum (803) 461-8402 05/10/2021
Employer's Representative Phone Date

Type or print all information. File this form six months after the alleged injury date and each six months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Refer to R.67-413, and R.67-804 for further information.

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1821956
Carrier File #: MCLH-09431
May 28, 2021

NOTICE OF HEARING

Sherry L Floyd v. MCLEOD PHYSICIANS ASSOCIATION

Subject: To determine if employer/carrier may stop payment, and if so, to determine if claimant is entitled to any further benefits. Carrier also request credit for temporary total benefits paid in excess of award.

Date: July 13, 2021 at 12:00 PM

Location: South Carolina Vocational Rehabilitation Department- Small Conference Room
1947 West Darlington Street
Florence, SC 29504

South Carolina Regulations 67-601 through 67-615 govern hearings before the South Carolina Workers' Compensation Commission. The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Attorneys must file a Form 58 with proof of service pursuant to Regulation 67-611. Postponements are only granted pursuant to Regulation 67-613. Please visit www.wcc.sc.gov/Commissioners to view Commissioners' Preferences. If you have questions regarding this matter, please contact the office of the undersigned Jurisdictional Commissioner.

Commissioner Susan S. Barden
803-737-5660, bskarbek@wcc.sc.gov

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail.

By: Barbara C Skarbek, SC Workers' Compensation, May 28, 2021

Party

Employee: Sherry L Floyd
1279 Conestoga St
Manning, SC 29102

Employer: MCLEOD PHYSICIANS ASSOCIATION
Carrier: McLeod Health

Attorney

Walter H. Barefoot
walt.barefoot@mgclaw.com
843-519-1801

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.

**NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS
DIRECT EVIDENCE ON BEHALF
OF DEFENDANT**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND SHERRY L. FLOYD, *PRO SE* CLAIMANT:

YOU ARE NOTIFIED that the Defendants, pursuant to the provisions of the South Carolina Workers' Compensation Act and Section 1-23-330 of the South Carolina Code of Laws (Cum. Supp. 1988) submit the following medical records and other documents as evidence:

| APA# | RECORDS OF | DATES | PAGES |
|------|---|---------------------|--------|
| 1. | McLeod Orthopaedics Florence | 11/23/20 – 05/26/21 | 1-21 |
| 2. | South Carolina Department of Employment and Workforce | 04/13/20 – 03/03/21 | 22-157 |

YOU ARE FURTHER NOTIFIED that you have the right to cross-examine or otherwise oppose this evidence and, should you desire to exercise this right, you are to promptly schedule the deposition of any provider whose records are submitted, for the purposes of cross-examination, or otherwise promptly submit opposing medical records into evidence.

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

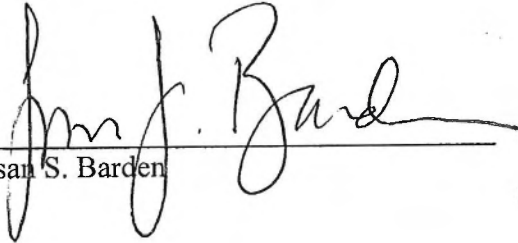
THIS MATTER was scheduled to be heard before the undersigned Commissioner on July 13, 2021, upon the filing of Defendants' Form 21 Request for Hearing. Claimant is pro-se, and Defendants are represented by Walter H Barefoot. Claimant was provided proper notice of the hearing and failed to show at the 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

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

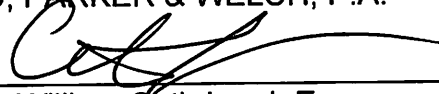
the Claimant is still receiving treatment from the authorized treating physician, Dr. Denton and has not been deemed to be at MMI.

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

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".

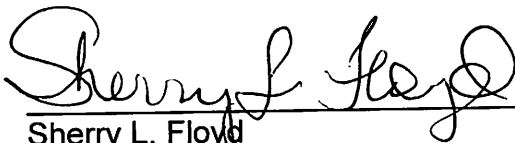
I did not understand why they were talking about "court" when everything was going fine with my case. I called Ceth Land on Monday, August 9, so he could help me understand what they were talking about. He told me to get all my paperwork together and come to his office on Wednesday, August 10. My paperwork 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: 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).

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.

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).

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

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.

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.

Walter H. Barefoot Preparer's Signature
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.

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 Chaves St
FLORENCE SC 29508-2777
Ph: 843-777-7900 Fax: 843-777-7925

Release To School Work Form

NAME: Sherry Floyd DATE: 05/26/2021

ADDRESS: 1279 CONESTOGA ST MANNING SC 29102-6781

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

Diagnosis:

Release to: WORK on 05/26/2021

Restrictions:

- No restrictions
- No jumping
- No lifting
- No overhead work
- Right-hand work only
- No repetitive bending
- No constant standing
- No prolonged sitting
- No climbing
- Sedentary Only
- No lower body
- No pivoting
- Other
- No running
- No contact sports
- Right Left
- Left-hand work only
- No repetitive stooping
- No constant walking
- No constant stair climbing
- No upper body
- No twisting movements

Instructions:

NO USE OF RIGHT UPPER EXTREMITY

Recheck Visit: **AFTER PCE**

Electronically signed by: Patrick K. Denton, MD

Physician's Signature

PA's Signature

05/26/2021
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

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

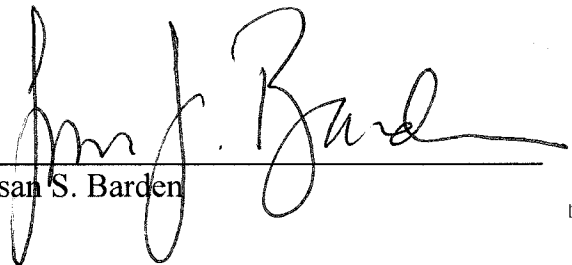
Carrier,

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, 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

Exh. H

Order served via email:

William Ceth Land
ceth@lpwlawfirm.com

Walter H. Barefoot
Walt.barefoot@mgclaw.com

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 address Land Parker Welch LLC, Post Office Box 138, Manning, South Carolina 29102 on the William Ceth Land, Esquire 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

RECEIVED

Sep 20 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2021-000932

Sherry L. Floyd, Employee..... Respondent,

v.

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

PROOF OF SERVICE

I certify that I have served **Appellants' Memorandum on Appealability** on the attorney of record for Respondent Sherry L. Floyd by emailing a copy of it on the 20th day of September, 2021, addressed as follows:

William Ceth Land, Esq.
Land, Parker & Welch, P.A.
29 South Mill Street
P.O. Box 138
Manning, South Carolina 29102
(803) 435-8894
Ceth@lpwlawfirm.com

s/Helen F. Hiser
Helen F. Hiser
MCANGUS GOUDELOCK & COURIE LLC
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Appellants



RECEIVED

Sep 20 2021

SC Court of Appeals

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

September 20, 2021

Via S.C. Courts E-Filing

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. 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
Our File No.: 2021.21002
Claim No.: MCLH-09431
Appeal No.: 2021-000932

Dear Ms. Kitchings:

Enclosed please find the original of Appellants' Memorandum on Appealability, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email.

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

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

cc: William Ceth Land, Esq. (via Email)