SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1520443

MELISSA MCKNIGHT,

Employee,

Claimant,

vs.

MCCALL FARMS,

Employer,

AND

GREAT AMERICAN INSURANCE COMPANY OF NEW YORK C/O STRATEGIC COMP SERVICES

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Florence, S.C. on January 12, 2021.

APPEARANCES: Claimant appeared and was represented by Ian Maguire, Esquire and Tiffany Buffkin, Esquire both of Maguire Law Firm of Myrtle Beach, South Carolina.

Defendants represented by Walter H. Barefoot, Esquire of McAngus Goudelock & Courie, L.L.C. of Florence, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Defendants' Form 21 and Claimant's motion.

COMMISSIONER: Commissioner Susan S. Barden

FILED: April 20, 2021

APA SUBMISSIONS

Prior to the hearing, the parties submitted the following documentary evidence in accordance with the Administrative Procedures Act:

On behalf of the Claimant:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1.		McLeod Regional Medical Center	10/23/15 – 10/19/16	1-59
2.	Dr. Runyon	Pee Dee Orthopaedics	10/28/15 – 12/30/15	60-69
3.	Carolinas Hospital System		11/06/15 – 12/18/15	70-79
4.	McLeod Occupational Health		11/09/15 – 03/29/16	80-101
5.	Three Rivers Physical Therapy		01/12/16 – 01/18/16	102-109
6.	Dr. Moore	Hand Surgery Associates	01/29/16	110-111
7.	InMed Diagnostic Services		02/03/16	112-113
8.	Dr. Culbertson		02/15/16 – 03/28/16	114-115
9.	Clarendon Health System		03/01/16	116
10.	Dr. Baker	Colonial Neurology (EMG)	03/17/16	117-121
11.	Dr. Westerkam	Rehabilitation and Geriatric Specialists	03/24/16	122-125
12.	Dr. Green	Midlands Orthopaedics	04/11/16	126-128
13.	Dr. Leak	OrthoSC (f/k/a Strand Ortho)	05/10/16 – 02/18/20	129-170
14.	Dr. Merritt	OrthoSC (f/k/a Strand Ortho)	05/10/16 – 02/18/20	171-182
15.	Hope Health		06/03/16 – 07/08/16	183-192
16.	Dr. Gayton	OrthoSC (f/k/a Coastal Ortho)	06/21/16 – 08/18/16	193-196
17.	Dr. Woodbury	McLeod Orthopaedics	08/19/16 – 11/01/16	197-204
18.	McLeod Regional Medical		11/15/16 – 12/14/16	205-224
19.	Dr. Chambers	OrthoSC (f/k/a Strand Ortho)	05/24/17 – 10/25/19	225-232
20.	Palmetto Health		08/30/17	233-235
21.	Carolina Bone & Joint Center		12/20/17	236-237
22.	ATI Physical Therapy		03/15/18 – 07/27/18	238-290
23.	Dr. Everman	OrthoSC	03/26/2018	291-293
24.	Dr. Woolf	MUSC Health Orthopaedics	04/19/18	294-300
25.	Dr. Young	Roper St. Francis Orthopaedics	10/17/18 – 05/31/19	301-320
26.	Form 20			321
27.	Appellate Decision and Order		12/18/18	322-329
28.	Subpoenas			330-332

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A	Claimant's Response to Motion	333-343
B	Claimant's Exhibits to Motion	344-510
C	Deposition of Dr. Chambers	511-540
D	Subpoenas	541-546
E	Ledger	547-556
F	Letter	557-558

On behalf of the Defendants:

APA#	DOCTOR	PRACTICE	DATES	PAGES
1.		McLeod Regional Medical Center	07/16/09 – 12/21/18	1-45
2.	Robert W. Moore, M.D.		08/13/09 – 03/07/16	46-52
3.	Records from R. Walter Hundley (prior Workers' Compensation Claim)		11/08/12 – 02/27/13	53-100
4.	Employer		08/07/14 – 11/08/16	101-130
5.		Wallace Chiro and Spinal Rehab, LLC	05/05/15	131-134
6.	South Carolina Department of Employment and Workforce		11/09/15	135
7.		McLeod Occupational Health	11/09/15 – 02/05/16	136-140
8.		Three Rivers Therapy Association	01/12/16	141
9.		Clarendon Health System	03/01/16	142
10.	Email from Claimant's Attorney		09/09/16	143
11.	NCM Suzanne Price, RN, CCM		10/19/16	144
12.		McLeod Orthopaedics	11/29/16 – 12/22/16	145-148
13.		Waccamaw Orthopaedics and Spine	01/25/17	149-153
14.		Lake City Scranton Healthcare Center	(undated)	154-181
15.	Kimberly Young, M.D.	Roper St. Francis	10/17/18 – 05/31/19	182-191
16.	Richard Joel Friedman, M.D.	Medical University of South Carolina	12/13/17	192-195
17.	Shane Woolf, M.D.	Medical University of South Carolina Health Orthopaedics Sports Medicine	04/19/18	196-202
18.	Suzanne Price, RN, CCM	Wright Rehabilitation Services	10/16/18 – 05/31/19	203-207
19.	Robert S. Leak, M.D.	Strand Orthopaedic Consultants/OrthoSC	09/14/17 – 09/19/19	208-263
20.	Optum - prescription history		06/05/18 – 05/02/19	264-272
21.	Deana McHugh, AGNP	Hope Health	11/28/16 – 10/23/18	273-301
22.		Carolina Hospital Systems	05/24/18	302-303
23.		ATI Physical Therapy	03/15/18 – 07/24/18	304-326
24.		McLeod Occupational Therapy	05/08/19 – 05/16/19	327-336
25.	Certificate of Non-Appearance for Scheduled Deposition of Claimant		08/01/19	337-340
26.	Certificate of Non-Appearance for Scheduled Deposition of Claimant		10/11/19	341-344

27.	Single Commission Decision and Order		04/24/18	345-368
28.	Appellate Panel Decision and Order		12/28/18	369-376
29.	Consent Order		03/05/19	377-378
30.	Claimant's Motion to SC Workers' Compensation Commission		06/21/19	379-380
31.	Defendant's Response to Claimant's Motion		07/17/19	381-384
32.	Administrative Order		09/06/19	385
33.	Emails from Claimant's Prior Attorney		11/26/18 – 12/3/18	386-393
34.	Records of Employer		08/07/14 – 11/08/16	394-411
35.	Texts between Claimant and Jane Curkendall, RN, BSN, CCM		10/24/19 – 10/29/19	412-414
36.	Return Receipt Card addressed to Claimant		10/26/19	415
37.	Correspondence and Text from Carrier to Claimant		10/26/19 – 10/31/19	416
38.	J. Christopher Gayton, M.D.		06/21/16	417-419
39.	Correspondence between Claimant and Dr. Kimberly C. Young		06/06/19	420-421
40.	Earl B. McFadden, Jr., M.D.	Palmetto Health USC Orthopedic Center	08/10/20	422-425
41.	Kimberly Barrie, M.D.	Fayetteville Orthopaedics	08/05/20 – 10/12/20	426-430
42.	Order		08/06/20	431-440
43.	Order Denying Claimant's Motion to Compel Treatment with Dr. Robert S. Leak		09/21/20	441-460

STIPULATIONS

At the outset of the hearing, the parties stipulated as to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and subject matter.
2. The parties consent to the venue of the hearing in Florence County, South Carolina.
3. Claimant has an average weekly wage of $761.40, with a corresponding compensation rate of $507.62. *See* Claimant's APA p. 321.
4. All parties received timely and proper notice of the hearing.
5. The purpose of the hearing was to address the issues set forth in Defendants' Form 21, as well as a pending motion from the Claimant and a motion and a rule to show cause on the basis of Claimant's alleged refusal of authorized medical treatment.

STATEMENT OF THE CASE

This matter appears before the undersigned Commissioner upon Defendants' Form 21 Hearing Request, and Defendants' Motion for a Rule to Show Cause. In addition, the Claimant has a pending motion. This is an admitted claim to the right wrist and left shoulder, but has a very lengthy procedural history requiring some explanation.

The claim went to a hearing in October 2017, at which time Claimant's alleged repetitive trauma injury to the wrist, as well as alleged entitlement to back-owed temporary total disability benefits at the time, was deemed non-compensable by Order of the Commission. (Def. APA pp. 345-368). The Order did provide for a compensable injury to the right wrist from a subsequent acute fall, as well as an injury to the left shoulder, and further provided that Claimant would not be entitled to temporary compensation for any time when she was on light duty. This Order was affirmed on appeal to the full Commission. (Claimant's APA pp. 322-29; Def. APA pp. 369-376). Defendants have since provided authorized treatment for the right wrist and left shoulder.

After some difficulties with treatment, explained further in the evidence below, the parties entered a consent order that (1) designated Dr. Kimberly Young an authorized treating physician for the wrist, (2) provided that Claimant would resume treatment with Dr. Young, and (3) stated that Defendants would resume temporary compensation benefits as of the date the Order was signed by the Commissioner. (Def. APA pp. 377-78, 453-54). All other issues were held in abeyance. Throughout this time period, the claim was also delayed in light of a substitution of two prior attorneys for Claimant before she was represented by her current counsel, and was also delayed by a mediation that was cancelled on the evening prior.

The claim came before the undersigned Commissioner on June 24, 2020, to address competing hearing requests from each party, as Clamant had been discharged from Dr. Young's practice and instead sought treatment recommended by a prior treating physician. (Def. APA pp.

431-440). Following that hearing, Claimant was ordered to go to evaluations with Dr. Barrie—a new treating physician for the right wrist and with Dr. McFadden for the left shoulder. The Order provided that any failure to attend those appointments, as well as any non-compliance or lack of cooperation with treatment may constitute a refusal of medical treatment. In that order, the undersigned Commissioner maintained jurisdiction of the claim. In addition, Claimant's motion (Def. APA p. 443-47) to compel additional treatment with Dr. Leak was denied. (Def. APA p. 441).

Defendants have now filed a motion for a rule to show cause, in light of their position that Claimant has again failed to cooperate with the treatment recommendations of Dr. Barrie, as required by the Commissioner's prior Order. In addition, through their Form 21, Defendants submit they are authorized to stop Claimant's temporary total disability benefits, if payable at all, until such time as she again complies with treatment. Defendants also seek an Order compelling Claimant's attendance and cooperation with treatment with the recently-provided physician, Dr. Barrie, who recommended surgery on the wrist, or alternatively a determination that Claimant has reached maximum medical improvement should Claimant refuse the recommended treatment of Dr. Barrie. Finally, Defendants seek an Order determining Claimant's entitlement to permanent disability benefits as it pertains to the admitted left shoulder, based on the varying opinions placing her at maximum medical improvement.

In reply, Claimant contends that she has been compliant with medical treatment, but Defendants have frequently changed her treatment providers so as to prolong and interfere with her treatment. *See* Claimant's APA pp. 330-341. Accordingly, she asserts entitlement to temporary total disability benefits from December 2018 through March 2019, and June 2019 and continuing. Claimant also requests appropriate penalties dating back to March 2020, at which

time she contends that her temporary compensation was improperly suspended or terminated. She requests that Dr. Leak, the original wrist physician who has recommended a less invasive surgery than that of her more recent physicians, be the treating physician and she requests that care for the shoulder be resumed with Dr. Chambers—her IME provider, or alternatively an independent physician.

EVIDENCE OF THE CASE

In addition to the evidentiary submissions and testimony taken, the Commission's file, with the exception of any unstipulated medical records or self-serving declarations, was also made a part of the record. Claimant was the only witness to testify at the hearing.

Claimant's Testimony

Melissa Rhondell McKnight, 50 years old, testified that she is married with four adult children. Claimant testified that she stopped attending school in the 9th grade, and she is left-hand dominant. Her prior employment includes housekeeping, machine operation, manual labor, and inventory control. In her employment with Employer, she applied labels onto cans of finished product and then placed the cans in rows in preparation of shipment.

Following her work injury, Claimant underwent surgery with Dr. Leak, and then met with him for several post-operative appointments. In those appointments, she reported ongoing pain that she wished for Dr. Leak to address. However, she had a second opinion with Dr. Kimberly Young, who recommended that she begin using a splint. Thereafter, she saw Dr. Young instead of Dr. Leak. Claimant acknowledged missing an appointment due to a conflict with another doctor's appointment, and she stated that her temporary compensation checks were then stopped from December 2018 through March 2019. She denied any receipt of a Form 15 or Form 17 from Defendants, but only a Form 21 several months later. In March 2019, a consent order was

entered and Claimant's temporary compensation was reinitiated, although Claimant stated that she returned to see Dr. Young prior to the temporary compensation's reinstatement and has never received the purportedly back-owed benefits. Since then, she returned to Dr. Young, who was designated as a treating physician, and began wearing a brace on her thumb. She was also referred to see Dr. Brett Young for a shoulder and pain management evaluation.

Soon after the missed appointment with Dr. Young, Claimant's prior attorney withdrew as counsel. Claimant continued in her treatment without legal representation for a brief time. In May 2019, she attended an appointment with Dr. Young. During the appointment, Claimant expressed to Dr. Young her comfort with her prior physician, Dr. Leak. The appointment was also attended by a nurse case manager, who the Claimant claims discussed the claim with the doctor outside of Claimant's presence, and Claimant learned of this conversation when later reading the transcribed medical report and upon receiving a bill for the conversation at her home. After this incident, Claimant was encouraged to return to Dr. Leak for treatment. At this same appointment, Claimant stated she was discharged from Dr. Young's care and assigned light duty restrictions, despite previously being completely withheld from working by Dr. Young. **Dr. Leak continues providing pain medication for the wrist as of the date of the hearing.**

In July 2019, Claimant was provided an evaluation with Dr. Barrie for her wrist. Ultimately, the nurse case manager arranged for the appointment with Dr. Barrie, and Claimant explained that she was not going to go see Dr. Barrie because she had a pending hearing request to get treatment with Dr. Leak. However, after the Commissioner ordered it, she did agree to go see Dr. Barrie, who recommended surgery similar to the recommendations of Dr. Leak and Dr. Young. Upon later reviewing the medical report, Claimant realized that Dr. Barrie had made a different recommendation, and had instead sought to perform a fusion surgery. Claimant does

not want to proceed with the surgery because it is an invasive procedure and had no guarantee of improvement. Additionally, Claimant understood that she would lose mobility in her wrist following a wrist fusion. Instead, she wants to have a less invasive procedure recommended by Dr. Leak.

At the same time, Claimant was seeking treatment for her admitted injury to the left shoulder. Her prior attorney arranged for her to be seen by Dr. Woolf, who provided her pain medication and a release. She stated that she had previously seen Dr. Gayton, who obtained an MRI and administered injections prior to releasing her. She expressed her dissatisfaction with her treatment with Dr. Gayton. The Defendants had provided her an IME with Dr. Friedman for the shoulder as well, and Claimant also expressed dissatisfaction with him because she felt her complaints were not being heard. She also saw Dr. Chambers, who recommended a continuation of the treatment Dr. Gayton had previously provided. In addition, Claimant saw Dr. McFadden, and she also complained of her appointment there because her wait time was longer than the appointment, and she only got "incomplete prognosis and contradicting science." She expressed frustration following the appointment, and says that she was made to believe that she was delusional about her injury.

Claimant described the pain in the shoulder as a hindrance that prevents her from doing normal tasks and interferes with her sleep, and sometimes leads to numbness throughout the upper extremity. Claimant explained that she has difficulty doing overhead lifting, and she attempts to do more with the opposite arm to account for the shoulder pain, but she has additional spasms and increased pain as a result. She presently takes Lyrica for the pain, prescribed by her family physician. Claimant expressed her desire to continue treatment with Dr. Chambers for the shoulder and with Dr. Leak for the wrist.

Cross-Examination

Upon questioning from counsel for Defendants, Claimant stated she stands 5'7" tall and weighs less than 300 pounds. She was presented her job application with Employer (Defendants' APA p. 157) on which she indicated that she had a high school diploma—a contradiction of her testimony at the hearing that she had only attended ninth grade. She admitted she lied on a job application about having a high school diploma. In addition, she admitted to lying about computer skills that she possessed. Claimant was presented documentation (Defendants' APA p. 135) of wage garnishment by the South Carolina Department of Employment and Workforce Fraud Investigation Recovery Unit, **but she denied ever having her wages garnished and stated that the issue had been cleared.** Claimant was also presented a document (Defendants' APA pp. 101-105) which she signed and attested to a truthful certification of her job application including an attestation that she had never been convicted of, admitting to, or awaiting trial for a crime. **After evading the question, Claimant ultimately responded that she was not truthful in the job application in that regard because she had previously pled guilty to receiving stolen goods.** She explained her lie by saying she was not under oath when she applied for the job. In addition, she acknowledged lying about prior employment on her job application with McCall Farms. On the application, she stated she had left a prior job to seek advancement. In fact, she had been fired for falsifying information. **She also acknowledged that she untruthfully asserted in her job application that she had never been discharged from any previous job.** Claimant denied earning any income whatsoever since October 2, 2017.

Counsel for Defendants questioned Claimant about the prior orders of the Commission, which indicated that she was barred from temporary total disability benefits while on light duty in light of her termination for cause.

As for Claimant's treatment, she confirmed that she had surgery on her wrist with Dr. Leak, and subsequently had pain that she should not have been experiencing. **When asked whether a year had passed without seeing Dr. Leak and in which she continued taking prescription medications prescribed by him, Claimant stated she would have to review the records. Claimant again was evasive, and the undersigned directed—for the third time—Claimant to answer the questioning but afforded Claimant the opportunity to explain her responses afterward.** This schedule of events in her treatment was confirmed by consulting Dr. Leaks's *de bene esse* testimony. (Dr. Leak's Deposition, Page 13, 24-25). Over that same time period, Claimant was taking narcotic medication prescribed by Dr. Leak without any monitoring of her compliance.

Claimant confirmed that she had seen Dr. Friedman as well as Dr. Gayton for her shoulder. She was provided a note from her last appointment with Dr. Gayton, in August 2016, at which time he stated he was "not convinced there's any true pathology, and whether some of this is not for secondary gain." (Claimant's APA p. 196). Claimant disputed that this was indicated to her in the appointment, and she also disputed the doctor's contention that she was discharged for being "belligerent and difficult." Claimant acknowledged that her more recent treatment for the left shoulder had been with Dr. Woolf, and this appointment was set up by her own attorney. Claimant confirmed that Dr. Woolf had mentioned possibly administering injections, and she acknowledged that she had not requested that the Commissioner order a return to Dr. Woolf seeking same. In addition, a prior order of the Commission directed

Claimant to go to Dr. McFadden, and she did attend an appointment with him. In total, Claimant acknowledged that she had seen five physicians for the left shoulder but only wished to return to Dr. Chambers.

For the wrist, Claimant acknowledged that she first saw Dr. Leak, and then saw Dr. Young for a second opinion. After seeing Dr. Young, Claimant stated it was recommended for her to use a spica splint, but she failed to attend the first appointment to obtain that splint due to a scheduling conflict. Instead, she attended an appointment with an OB/GYN, and she could not remember whether she made any effort to have the conflicting appointment rescheduled. It was not until the following month before Claimant returned to Dr. Young, and Claimant stated it was her understanding that she was being referred back to Dr. Leak for additional treatment at that time.

Regarding her current condition, Claimant testified she experiences weakness in the forearm but is able to lift her arm. Most recently, Claimant was scheduled for an appointment with Dr. Barrie in November 2019. Prior to that appointment, she texted the nurse case manager to state she would not be attending the appointment. Claimant was aware of the difficulties finding a physician who would agree to an evaluation, and confirmed she was offered transportation, a hotel room, and food reimbursement, but she still refused to go. Only after proceeding to a hearing before the Commission, leading to an Order compelling Claimant's attendance, did Claimant go see Dr. Barrie. Claimant reasoned that she refused to initially attend because she wanted to advise the Commission that she wished to continue treating with Dr. Leak and seek an order letting her return to him. Claimant acknowledged that when she saw Dr. Barrie she was given light duty restrictions. In addition, a pre-operative appointment was scheduled for October 2020. Claimant did not attend. It was then rescheduled for February 5,

2021. Claimant testified that she was not planning to attend the appointment because she first wished to have the Commission's order from this hearing. Upon questioning from the undersigned regarding whether she would attend the appointment and undergo the surgery if ordered, Claimant ultimately responded that she would not undergo the fusion surgery at this time. She later stated she did not wish to have a fusion surgery because she was fearful of ongoing pain in the wrist in addition to an expected limitation in her range of motion, and she instead wished to undergo a CMC arthroplasty surgery to see if the less invasive procedure would be successful.

In response to Claimant's testimony that she was entitled to temporary compensation during the time of her missed appointment, she did acknowledge that she entered into a consent order agreeing that temporary compensation would be resumed as of the date the order was signed by the Commissioner.

As it pertains to the alleged *ex parte* communication between Dr. Young and a nurse case manager, Claimant testified she was unaware of what correspondence her prior attorney received before he was relieved as counsel. However, she stated she had disassociated with him in April 2019, prior to the date he was formally relieved by the Commission in June 2019 and he informed her that he had done nothing whatsoever on her case after that.

In addition, Claimant admitted that she underwent surgery in 2016 for carpal tunnel syndrome in the right wrist, and that treatment with Dr. Woodbury was obtained through her own health insurance rather than sought and obtained through Workers' Compensation. After again evading questioning, Claimant was presented with medical records indicating Dr. Woodbury had the opinion that Claimant had secondary gain issues as well. (Defendants' APA p. 147).

Documentary Evidence

Prior Medical Records

Medical records from 2009 through 2016 indicated a history of carpal tunnel syndrome indicated on an EMG, as well as prior carpal tunnel surgeries on the right wrist. (Def. APA pp. 1-5; 6-14, 39, 46-47, 137). Her prior records also noted symptom magnification and indications of Claimant's subjective symptoms being inconsistent and out of proportion to clinical findings. (Def. APA p. 50).

Prior records from the Workers' Compensation Commission corroborated prior workers' compensation claims that settled for $25,000.00 and $12,000.00. (Def. APA pp. 55-80, 97-100).

Records from Wallace Chiro and Spinal Rehab LLC indicated that Claimant was involved in a 2015 motor vehicle accident and sustained injuries to her head, neck, shoulders, and lower back. She was sent to Williamsburg Regional Hospital for treatment, and treatment was recommended by Wallace Chiro and Spinal Rehab as well. (Def. APA pp. 131-134).

Employment Records

Prior employment records of Lake City Scranton Healthcare Center indicated Claimant's admission of a prior criminal record, as well as an assertion that she obtained a high school diploma. (Def. APA pp. 155-181). Those records further revealed that Claimant alleged a job injury there, and manipulated her records regarding her ability to return to work. She was terminated for falsifying company records, an offense that had occurred at least three times. (Def. APA p. 178-81).

Claimant's August 7, 2014 employment application to McCall Farms, the present employer, included an assertion of no prior criminal record, as well as an assertion of education at CCP College in pursuit of a general studies degree. (Def. APA p. 102). In addition, she

indicated that she left a prior job with Lake City/Scranton Washing because she was "seeking advancement," and asserted that she had never been discharged from any position of employment. (Def. APA p. 102-03). Claimant signed an attestation that her application was "true and complete." (Def. APA p. 105). Her personnel file indicated a history of altercations with employees, complaints of working conditions and apparent refusal of work, and long term absence without pursuit of FMLA which ultimately led to her termination in November 2016. (Def. APA pp. 109-130). It also included a wage withholding notice from the Fraud Investigation Recovery Enforcement (FIRE) Unit of the South Carolina Department of Employment and Workforce (SCDEW), requesting that the employer withhold Claimant's wages to reimburse a debt to SCDEW. (Def. APA p. 135).

Medical Records

On October 23, 2015, Claimant presented to the emergency department of McLeod Regional Medical Center. She reported wrist pain developing over the previous week. It was noted she had a history of bilateral carpal tunnel syndrome, and she was assessed with possible tendonitis or return of carpal tunnel symptoms and directed to follow up with an orthopedist. (Claimant's APA pp. 1-5). Claimant returned a week later with ongoing complaints of pain in the right wrist after receiving an injection and a splint, and she was provided a prescription for pain medication. (Claimant's APA pp. 6-11, 60-61).

On November 7, 2015, Claimant returned to the emergency room reporting a fall at work after slipping on water and injuring her bilateral wrists and left arm, and eventually her left shoulder. (Claimant's APA p. 12). She was also seen at McLeod's occupational health facility, and assessed there with sprains of the right wrist, left arm, and left shoulder, leading to an orthopedic referral after an MRI indicated a tear in the bicep. (Claimant's APA pp. 80-81, 85-

87, 88-100, 112-13). Claimant returned to the emergency department several times over the next several months with similar complaints, normal imaging, and she was consistently provided medication and recommendations to follow up. (Claimant's APA pp. 15-18, 25-26, 28, 31-32, 42-44, 46-56; Def. APA pp. 138-140).

Claimant was referred by Dr. Chadley Runyan for an MRI of the right wrist, occupational therapy (Claimant's APA pp. 102-09; Def. APA pp. 141-42), and the use of an orthotic on November 23, 2015. (Claimant's APA pp. 62-65). On December 30, 2015, Dr. Runyan reviewed Claimant's MRI and referred her to a different doctor, Dr. Robert Moore, for ongoing management of her symptoms. (Claimant's APA pp. 66-67).

On January 29, 2016, Claimant presented to Dr. Moore for a right wrist evaluation. Dr. Moore diagnosed Claimant with a right wrist contusion, symptom magnification, clinically insignificant pathology, and also noted that her symptoms were inconsistent and out of proportion to her clinical findings. She was released to full duty work. (Claimant's APA pp. 110-111).

On February 15, 2016, Claimant saw Dr. Gary Culbertson for wrist pain, and he recommended repeat imaging to rule-out carpal tunnel syndrome. In addition, he recommended that she utilize a splint, medication, and a follow-up appointment in 6-8 weeks. (Claimant's APA p. 114-15). The follow-up EMG on March 17, 2016, revealed evidence of recurrent bilateral carpal tunnel syndrome. (Claimant's APA p. 116-121).

Claimant's first attorney referred her for an independent medical examination with Dr. Westerkam on March 24, 2016. Dr. Westerkam opined that Claimant's right wrist and left shoulder complaints were related to an aggravation due to repetitive work activities. (Claimant's APA pp. 122-25). Subsequently, Claimant saw Dr. Michael Green on April 11, 2016. Dr. Green

noted that Claimant's condition was not sufficiently severe to recommend surgical intervention for carpal tunnel syndrome because the ganglion cyst was small in size. (Claimant's APA pp. 127-28).

Dr. Leak first saw Claimant on May 10, 2016. He assessed her with causally-related right wrist scapholunate dynamic instability and recurrent right carpal tunnel syndrome secondary to flexor tenosynovitis, for which he recommended pain medication and steroid injections into the right wrist and light duty restrictions. (Claimant's APA pp. 130-31, 133).

In June 2016, Claimant presented to Dr. Gayton with complaints of left wrist, elbow, and shoulder pain, and he provided an injection into the left shoulder. (Claimant's APA pp. 193-94). At a subsequent appointment, Dr. Gayton noted that Claimant became angry and would not listen to his recommendations for a referral to another specialist. Dr. Gayton was of the opinion that there was no "true pathology" and questioned "whether some of this is not for secondary gain." Dr. Gayton discharged her from his practice with her current work restrictions due to her "belligerence and difficulty." (Claimant's APA pp. 194-96; Def. APA pp. 417-19)

In October 2016, Claimant was provided an appointment by Defendants with Dr. Greer for her wrists after requesting same; however, she failed to attend the appointment and Dr. Greer advised he would no longer see Claimant, although he did later provide an IME opinion. (Def. APA pp. 143-44, 150-53).

Upon the recommendations of Dr. Woodbury, her own physician, Claimant underwent carpal tunnel surgery on the right wrist in October 2016. (Claimant's APA pp. 58-59, 197-202; Def. APA pp. 145-46). She then proceeded with a course of post-operative occupational therapy beginning in November 2016. (Claimant's APA pp. 205-224). By December 2016, Dr. Woodbury released Claimant from his care because he felt that she had fully recovered, and he

also cited inconsistent examination, "alterior motives" and "secondary gain issues." (Def. APA pp. 147-48).

On May 24, 2017, Claimant presented to Dr. Chambers for an independent medical examination, after which he opined that Claimant had reached maximum medical improvement for the right wrist, and the primary concern was the left shoulder. He stated she may benefit from arthroscopic surgery, and would continue her on light duty pending further treatment. (Claimant's APA pp. 226-28).

In May 2017, Claimant returned to Dr. Leak with ongoing complaints of wrist pain, and he again recommended and administered steroid injections. (Claimant's APA pp. 135-36). In August 2017, he ordered an MRI arthrogram to diagnose the left shoulder complaints. (Claimant's APA p. 139). Upon reviewing the MRI results, he referred Claimant for an orthopedic evaluation to address a suspected labral tear. (Claimant's APA p. 142; Def. APA pp. 208-210). As for the wrist, Dr. Leak recommended a right wrist proximal row carpectomy surgery in light of the fact that she reported that he had no improvement following the injections, and the surgery was performed in December 2017. (Claimant's APA p. 145, 236-37; Def. APA pp. 211-13, 214-15).

In December 2017, Claimant presented to Dr. Friedman for an IME of the left shoulder. (Def. APA pp. 191-95). Dr. Friedman opined that Claimant's response was out of proportion to examination findings, and released her at maximum medical improvement with 0% impairment to the left shoulder. (Def. APA p. 195).

After Claimant's wrist surgery, Dr. Leak recommended that Claimant use a removable splint at a February 2018 appointment, and also recommended she proceed with therapy and

continue pain medications through June 2018. (Claimant's APA p. 151, 154, 157, 159; 238-290; 291-93; Def. APA pp. 216-232; 304-336).

Claimant presented for yet another IME of the left shoulder on April 19, 2018, with Dr. Shane Woolf in Charleston. (Def. APA pp. 196-202). Dr. Woolf noted that although Claimant did "not have rotator cuff pathology or capsulolabral issues to create instability," she did have "consistent acromioclavicular pain and deeper pain with overhead shoulder motion that could be related to residual biceps tissue if in fact the tendon is ruptured, which the second MRI suggested." He believed this could be a potential pain generator in the shoulder. (Claimant's APA pp. 294-300). Dr. Woolf opined that Claimant has "achieved a steady state in her condition," and he had "nothing further to recommend" than injections for "prognostic value as to whether there is a procedure that could help her with her subjective complaints." Dr. Woolf "would not specifically restrict her from any specific work duties," but "would impose a restriction from overhead use" due to her 2.5 year history of left shoulder pain. (Claimant's APA p. 299).

In July 2018, Dr. Leak ultimately recommended that a second wrist surgery be performed: a CMC interposition arthroplasty, for which he estimated a 3-month recovery period. (Claimant's APA p. 162; Def. APA pp. 233-36).

Claimant presented to Dr. Kimberly Young for a second opinion for her wrist on October 17, 2018. (Def. APA pp. 182-83). Dr. Young recommended the use of a splint for six weeks to ease tension on the CMC joint but otherwise suggested a wrist fusion, referrals to various other physicians, including Dr. Brett Young. (APA pp. 184-87). Dr. Young directed her to continue medication "as directed by the ordering provider." Dr. Young opposed the recommended CMC arthroplasty due to Claimant's young age. Claimant also opposed receiving the brace

recommended by Dr. Young, did not attend an appointment to be fitted for the brace/splint on December 3, 2018, and expressed her desire to instead return to Dr. Leak. (Claimant's APA pp. 301-304; Def. APA pp. 390-93; 410-416). In January 2019, Claimant returned to Dr. Young but expressed that she was happy with her care with Dr. Leak and his surgical plan. Dr. Young noted that she would "recommend continuing care with her surgeon that she is very happy with." (Claimant's APA pp. 305-07).

By April 2019, the parties agreed in a consent order that Claimant would resume treatment with Dr. Kimberly Young as an authorized treating physician, and Claimant again presented for an evaluation. Dr. Young referred Claimant for shoulder treatment and indicated Claimant's only option for wrist treatment was an arthrodesis. (Claimant's APA pp. 308-315). A month later, Dr. Young advised Claimant that she was dismissed as a patient due to non-compliance and recommended that she find another orthopedic provider. (Claimant's APA p. 316; *see also* Def. APA pp. 205-07, 421). Nevertheless, Claimant returned for an appointment on May 31, 2019, at which time Dr. Young noted that Claimant continued to receive hydrocodone from Dr. Leak despite not actually seeing the doctor. *See* Def. APA pp. 234-258, 261-63, 264-272. Dr. Young noted Claimant's discharge from therapy, as well as the fact their relationship was "relatively strained since the initial presentation." Dr. Young noted that she would no longer treat Claimant based on her concern of narcotics from Dr. Leak, as well as Claimant's pain being out of proportion to her examination. Claimant was assigned work restrictions of no use of the right side. (Claimant's APA pp. 317-320, 445-47; Def. APA pp. 189-191, 454-55).

Dr. Leak saw Claimant again in July 2019, at which time he maintained his same recommendations. (Claimant's APA p. 164; Def. APA pp. 259-261). After being advised of the

recommendations of Dr. Young, he noted he opposed a wrist fusion due to the likelihood of Claimant's loss of range of motion in the wrist, and reasserted the arthroplasty surgical recommendation again in February 2020. (Claimant's APA p. 167, 170).

Claimant returned to Dr. Chambers for another evaluation on her left shoulder in October 2019. He then reviewed an MRI arthrogram (Claimant's APA pp. 232-35) and assessed her with AC joint arthritis and impingement, for which he recommended arthroscopic surgery with decompression and a SLAP repair if indicated. Claimant opted to proceed with surgery. (Claimant's APA pp. 230-32).

Upon being notified of another appointment with Dr. Barrie, an orthopedist in Fayetteville, North Carolina, Claimant advised the nurse case manager that she would not attend the appointment due to a disagreement over medical treatment, a pending hearing before the Commission, and the fact she was not receiving temporary compensation. (Def. APA pp. 456-59).

On August 5, 2020, Claimant ultimately presented to Dr. Barrie in Fayetteville, North Carolina. Dr. Barrie restated Claimant's treatment history and provided her impression that Claimant was suffering from chronic wrist pain, for which she recommended a wrist arthrodesis surgery. For the time being, Dr. Barrie recommended a 20-pound lifting restriction. (Def. APA p. 426-28). A pre-operative appointment was scheduled for Claimant with Dr. Barrie on October 12, 2020, and Claimant advised Defendants that she did not want to undergo a wrist fusion and would not be attending the pre-operative appointment. (Def. APA pp. 428-430; Claimant's APA pp. 365-68).

As ordered by the undersigned following a prior hearing, Claimant presented to Dr. McFadden on August 10, 2020. (Def. APA p. 422-24). Dr. McFadden examined her left

shoulder and opined that he could not find any cause for her shoulder pain. He placed her at maximum medical improvement with no impairment and no work restrictions. (Def. APA p. 424).

De Bene Esse Deposition of Dr. Leak (Claimant's APA pp. 398-408)

Dr. Leak, a board-certified orthopedic surgeon in private practice in Myrtle Beach, South Carolina, initially treated Claimant as a workers' compensation patient. He assessed her following a fall at work, and diagnosed her with right wrist scapholunate dynamic instability. He recommended that he perform a right wrist proximal row carpectomy, and he did perform that surgery in December 2017. By July 2018, Claimant returned and was now complaining of a different pain, in the right thumb CMC joint. Dr. Leak opined that this was a result of a collapse of the bones in the wrist. For treatment, he recommended a second surgery—a trapeziectomy and radial styloidectomy—an uncommon procedure.

Dr. Leak recalled that his office submitted paperwork to perform the surgery, and he was advised that Claimant was being sent for a second opinion, which was common for the type of procedure he was recommending. He did not see the Claimant again until June 27, 2019, at which time Claimant reported ongoing pain in the right thumb and wrist. To that point in time, Dr. Leak held Claimant out of work completely.

Dr. Leak was presented a letter he wrote indicating his preference for the CMC arthroplasty as opposed to a wrist fusion because the fusion would have a detrimental effect upon Claimant's range of motion. He acknowledged a note from Dr. Barrie indicating the potential that both surgeries may ultimately be necessary. He maintained his recommendation, and suggested a potential 20-pound lifting restriction after the surgery, but also indicated that it would not be unreasonable for her to have no lifting restriction at all.

Upon questioning from counsel for Defendants, Dr. Leak stated he was familiar with Dr. Barrie, and that he would not question her credentials or judgment regarding recommendations for Claimant. Dr. Leak admitted providing Claimant hydrocodone—an opioid—from July 2018 to June 2019 on a monthly basis, due to her surgery being imminent and because "we are stuck in this legal runaround and can't get the patient treated." Dr. Leak reviewed records from Dr. Young, indicating Claimant's discharge from the practice due to her ongoing opioid treatment with Dr. Leak, and Dr. Leak stated he was not particularly surprised about the "break up" because the two of them did not agree on the treatment recommendations for Claimant. As for Dr. Barrie, Dr. Leak had no reason to object to Claimant continuing treatment with Dr. Barrie—though he noted he did not know where Claimant lived and whether it would be convenient for her to travel to Dr. Barrie's office. In addition, he would defer any pain medication treatment to Dr. Barrie as well, if she were the treating provider.

De Bene Esse Deposition of Dr. Chambers (December 28, 2020) (Claimant's APA pp. 510-540)

Dr. Chambers, a board-certified orthopedic physician with a specialization in sports medicine, testified he treated Claimant for her shoulder injury for the first time in May 2017. After a series of tests in his examination, he recommended an MRI arthrogram for a clearer image of the status of her shoulder as he had suspected a SLAP tear. The MRI arthrogram was normal insofar as the SLAP tear, but Dr. Chambers maintained his recommendation to perform arthroscopic surgery, and expected Claimant's pain to completely resolve after the procedure.

Upon questioning from counsel for Defendants, Dr. Chambers recalled he last saw Claimant on August 14, 2020. He acknowledged there were no objective signs of an injury to the shoulder, that recent MRIs would be more indicative of her condition, and that a board-certified orthopedist would be well-qualified to resume Claimant's care if he or she had seen

Claimant more recently. Upon being advised that Dr. McFadden had more recently seen Claimant and had completed an upper extremity fellowship, Dr. Chambers stated he was of the opinion that an upper extremity fellowship was geared more toward hands than shoulders, but admitted that a qualified orthopedist could be better suited to evaluate Claimant. Dr. Chambers maintained his recommendations for shoulder surgery at this point in time based on his understanding that Claimant continued to be symptomatic.

FINDINGS OF FACT

Based on the evidence submitted and arguments of counsel, I hereby make the following findings of fact:

1. Initially, as to the parties' objections to evidentiary submissions, the Undersigned makes the following rulings:

    (a) Defendants' objection to the online reviews of Dr. Barrie (submitted by Claimant in Claimant's APA, pages 372-379 and 458-465) is sustained, and therefore these online reviews from anonymous, unnamed individuals are stricken from the record. The Undersigned has removed these documents from the Commission's paper file, and these documents shall not be uploaded electronically. I find that statements from unnamed individuals preclude Defendants' due process right of cross-examination and that the statements' inclusion into the record would be analogous to improperly allowing into evidence an unsigned statement from an anonymous co-worker favorable to an employer's case. I considered allowing Defendants to submit their own online reviews, but I decline to consider any anonymous statements—good, bad, or indifferent. Finally, the Undersigned takes notice of the fact that positive online reviews can be "plants," while

negative reviews may only represent a fraction of those individuals who submitted reviews.

(b) Claimant objected to medical records from Dr. Young and Dr. McFadden, contending the records were produced as a result of *ex parte* conversations with a nurse case manager, in violation of § 42-15-95. Procedurally, Claimant waived this objection by (a) submitting these records herself into evidence; and (b) not withdrawing or moving to withdraw these records prior to, at the time of, or after the Hearing. Substantially, Claimant relied on these documents at the Hearing, including but not limited to referrals made by Dr. Young, and Dr. Young's initial acquiescence to Claimant's desire that Dr. Leak be Claimant's treating physician. Finally, Claimant submitted into the record the deposition testimony of Dr. Leak, which also refers to Dr. Young's visits, and to which there was no objection made as to Dr. Young's records. Claimant cannot have it both ways. Procedurally, Claimant is objecting to her own records without requesting that they be withdrawn from evidence. Substantively, she relies on portions of the records to which she objects. I therefore find that Claimant's objection is overruled. However, the information contained in Dr. Young's records pertaining to (a) Claimant's opioid use and Dr. Leak's continual writing of prescriptions; and (b) Claimant's general behavior during physical exams is also contained in records from myriad sources other than Dr. Young, and therefore not the linchpin of Defendants' case. Absent these records, my conclusions would be no different.

(c) Finally, I note that Claimant did not prove by the greater weight of the evidence that there was a violation of section 42-15-95, as Claimant did not call her former attorney Barr as a witness. Attorney Barr was Claimant's attorney through June 25, 2019. If Claimant had the conversation she alleges through her self-serving testimony—that he had not done anything on her claim and had not received any notice of a nurse case manager's attendance at an appointment with Dr. Young—she only had to call Barr as a witness and waive any privilege. However, Claimant also stated that she had the conversation with Barr after he was relieved (Claimant's APA pp. 430-448; Commission's file; Hearing Transcript, *e.g.*, pages 20-24, 26, 31-32, 45-48, 104-106, and 118-119).

2. I find that Claimant injured her left shoulder and right wrist through acute injuries by accident occurring on November 7, 2015. I base this finding on the Order of the Full Commission, dated December 28, 2018, Findings of Fact #3 and #6. As this particular date of accident was noted in several prior unappealed orders of the Commission, the date of the accident as set forth by the Full Commission is the law of the case.

3. Claimant has a prior workers' compensation claim for bilateral carpal tunnel injuries at Gold Kist for which Claimant received a $25,000 settlement. After Claimant underwent bilateral carpal tunnel releases (right in 2004 and left in 2003), Claimant continued to have bilateral carpal tunnel syndrome (including in 2009), and she underwent another right carpal tunnel release surgery in 2016 with her physician Dr. Woodbury (*e.g.*, Claimant's APA pp 58-59; Def. APA pp. 1-3, 46-47; Claimant's APA p. 122, 126; Order of Commissioner Campbell, page 10, dated April 24, 2018).

4. Claimant had another prior workers' compensation claim for a back injury she sustained in 2012 and for which claim she received a $12,000 settlement in 2013. Claimant reported right shoulder pain as well from this accident (*e.g.*, Order of Commissioner Campbell, page 10, dated April 24, 2018; Def. APA p. 138, 57-100, 161, 173).

5. Claimant sustained some prior motor vehicle accidents, the most recent of which in February 2015 (9 months prior to the accident in issue) and in which Claimant injured her head, neck, lower back, and both shoulders, including "Shoulder segmental dysfunction" and "Shoulder spain" [sic], and for which injuries Claimant underwent chiropractic treatment. Claimant was (or is) represented by counsel in this 2015 motor vehicle accident. (Def. APA, pp. 131-134; Order of Commissioner Campbell, pages 12-13, dated April 24, 2018).

6. Notwithstanding the evidence set forth in the preceding Finding of Facts, Claimant denied on a medical intake form of November 9, 2015 (McLeod Occupational Health visit for the accident in issue) any prior head or spinal injuries, any prior automobile accidents, and any prior back problems. (Def. APA, p. 137). These answers were not truthful.

7. Claimant's right hand/arm repetitive trauma claim of October 2015 was found not compensable by Order of Commissioner Campbell, dated April 24, 2018. Commissioner Campbell's decision was affirmed by Order of the Full Commission, dated December 28, 2018. *See* Commission's file and prior Orders, as also contained in APA submissions.

8. Based upon the prior Order of the Full Commission (Findings of Fact #11, #12, #13, #14, #15, #16, #17, #21, and #22, and Conclusion of Law #8, dated December 28, 2018), Claimant is not entitled to further temporary benefits for periods when she was and is placed on light duty. The Full Commission Order provides that (a) Claimant was terminated for cause, (b) Employer

had provided suitable light duty employment, and therefore (c) "Claimant is not entitled to any temporary disability for the time periods she was and is on light duty." Therefore, the issue of entitlement to temporary benefits while Claimant was or is on light duty is barred by the doctrine of *res judicata*. (*See also* Defendants' APA p. 130).

9. As of the date of the Hearing, Claimant is 50 years of age. (Hearing Transcript, pages 38-39).

10. Claimant is left hand dominant. (Hearing Transcript, pages 59-60 and 73; Claimant's APA p. 2).

11. It is difficult to state with any modicum of precision Claimant's educational achievements. At the Hearing, she professed to have only completed the 8th grade. (Hearing Transcript, pages 40-41 and 74). However, Claimant told at least one physician that she has a high school diploma. (Def. APA p. 162). On one employment application submitted into the record, Claimant also claimed to have graduated with a high school diploma; Claimant testified that this was a lie. (Def. APA p. 157; Hearing Transcript, pages 75-76). On Employer's employment application form, Claimant claimed that she attended 3 years of high school. (Def. APA p. 395, 102).

12. Although Claimant certified that her employment application with Employer was true and complete, Claimant admitted at the Hearing that she lied as follows:

(a) Claimant denied any conviction or admission of crime, when in fact Claimant pled guilty to receipt of stolen goods. When asked on cross examination about the discrepancy, Claimant replied that she was not under oath when she completed the

employment application. (Hearing Transcript, page 81; Defendants' APA pp. 102, 105, 395, 398; Hearing Transcript, pages 77-81); and

(b) Claimant stated that (1) the reason she left her previous employer was "seeking advancement," and (2) she had never been discharged from any job. In truth, Claimant was terminated in 2012 by her previous employer for falsification of company records "at least three times." Claimant admitted at the Hearing that she lied on the employment application. (Def. APA pp. 102-103, 105, 395-396, 398, 57, 178-181; Hearing Transcript, pages 82-83);

(c) Claimant admits she lied when she claimed to have a high level of skills she does not possess. (Defendants' APA pp. 397-398; Hearing Transcript, page 76).

13. Claimant's testimony at the Hearing that she never had her wages garnished is refuted by Defendants' evidence from the Fraud Investigation Recovery Enforcement Unit of SC DEW. (Hearing Transcript, pages 76-77; Defendants' APA p. 135).

14. Claimant denied remembering at the Hearing whether or not she has ridden with her husband during his over-the-road trucking job since the date of the accident in issue. (Hearing Transcript, page 85).

15. Although it is only Claimant's left shoulder and right wrist/thumb which are admitted/pled (as opposed to the right shoulder/elbow/upper arm), Claimant presented at the Hearing, for reasons only known to her, as being unable to lift her right arm to any real degree to be sworn in. However, Claimant inconsistently presented to (a) Dr. Greer as having right shoulder 170 degrees of forward flexion, 120 degrees of abduction; and full range of motion of the elbow; and (b) Dr. Woolf (Claimant's own expert) as having "Active range of motion of right

shoulder is 155 degrees of forward flexion" and 145 degrees of abduction. (Def. APA p. 151; Claimant's APA p. 297). I give greater weight to these medical records than I give to Claimant's presentation at the Hearing.

16. Claimant's employment history includes housekeeping work at a healthcare facility. She also worked as a cashier at a convenience store, machine operator, and processor at a chicken plant. (Hearing Transcript, page 39; Def. APA pp. 82 102-103; Order of Commissioner Campbell, page 10, dated April 24, 2018).

17. On the date of the accident in issue, Claimant's job with Employer was Inventory Clerk. (Hearing Transcript, pages 39-40; Defendants' APA pp. 101, 137).

18. Prior to Commissioner Campbell's Order denying Claimant's carpal tunnel repetitive trauma claim and finding it not compensable, Dr. Woodbury (Claimant's personal physician) wrote that believed Claimant has (a) "secondary gain issues" and (b) "alterior" [sic] motives. Based upon a "puzzling" and "inconsistent" exam, Dr. Woodbury released Claimant and canceled her next appointment—under "Follow Up." (Def. APA pp. 147-148).

19. In addition to the "secondary gain issues" mentioned by Dr. Woodbury, other records submitted into evidence also state that Claimant has financial issues. For instance, Claimant was unable to follow up with her urologist for kidney stones "due to cost of office visit." (Def. APA p. 292).

20. As to the left shoulder, Dr. Willoughby found that Claimant's *"overall presentation appears over-dramatized and I hardly know what to do with this patient."* Claimant *"refuses to perform ROM testing"* and *"attempts to demonstrate 'popping' noise'"* in her left shoulder which Dr. Willoughby *"could not hear or feel"* [emphasis added]. Dr. Willoughby diagnosed a

sprain and released Claimant to regular duty. However, because of Claimant's pain complaints, Dr. Willoughby did in good faith order an MRI and made a referral to an orthopedist. (Def. APA pp. 139-140; Claimant's APA pp. 92-98).

21. As to the left shoulder, Claimant either canceled or "no showed" at physical therapy ordered by Dr. Willoughby as follows: Claimant canceled December 15, 2015, canceled December 23, 2015, canceled December 28, 2015, no showed for January 4, 2016, canceled January 6, 2016, and canceled January 11, 2016. When Claimant did attend, Claimant "continuously pulls away with any attempted passive range of motion." (Claimant's APA pp. 102, 108; Def. APA p. 141).

22. Dr. Friedman, an MUSC orthopedic surgeon, states that "throughout the examination," Claimant "ha[d] a response out of proportion to what was being done," including shaking and resistance, even though Dr. Friedman found (a) no evidence of impingement, (b) a "benign" biceps, (c) normal strength, (d) a negative O'Brien, and (e) no instability. He further found that Claimant's *AC* and SC joints are non-tender. Claimant's presented with shoulder pain "without radiation." Contrary to the fact that Claimant injured both shoulders in the MVA of 2015 (referenced *supra*), Claimant told Dr. Friedman that she had "no prior history" with regard to her shoulder. Dr. Friedman states that Claimant likely sustained a sprain/strain with regard to her left shoulder, and assigned a 0% impairment rating, all to a reasonable degree of medical certainty. Dr. Friedman released Claimant to full, unrestricted activity, as "there is "no medical indication to limit her in any way.". He also saw "no indication for any further diagnostic studies or treatment." (Def. APA pp. 192-195). I give this evidence great weight.

23. Authorized treating physician Dr. Gayton administered a subacromial injection into the left shoulder. Dr. Gayton wrote that Claimant was *"very difficult during her exam and has been*

somewhat belligerent about her symptoms and where they are coming from." Claimant "became angry and states that her shoulder is causing all of her numbness in her hand." (as noted above Claimant has preexisting CTS). Claimant complained of popping about which Dr. Gayton wrote "I am not able to feel any popping in the joint." Nonetheless Dr. Gayton ordered an arthrogram, although he wrote "*I am still not convinced that there is any true pathology and whether some of this is not for secondary gain*" [emphasis added]. Given Claimant's "belligerence and difficulty," Dr. Gayton discharged her from his practice. (Def. APA pp. 417-419; Claimant's APA pp. 193-196).

24. Dr. Woolf, Claimant's own expert to whom she was sent by her first attorney, is Chief of Sports Medicine at MUSC Department of Orthopedics and an MUSC professor (Board Certified with a subspecialty certification in orthopedic sports medicine). Contrary to Claimant's statement to Dr. Friedman that her shoulder pain was with "without radiation," Claimant inconsistently told Dr. Woolf that her pain "shoot[s] down her arm." Dr. Woolf documented Claimant's "dramatic episodes of discomfort" during the exam, making it "fairly difficult to tell exactly where [Claimant's pain] is coming from." Dr. Woolf documented: no atrophy or deformity of the left shoulder, normal grip and abduction strength, "mild" tendinopathy of the rotator cuff and biceps, no evidence for labral pathology, and no instability or rotator cuff tear. His "Assessment" was "pain" in the left acromioclavicular joint and "strain" of the left shoulder. Dr. Woolf states that Claimant "does not have pathology" that should prevent Claimant from working except for Claimant's [subjective] pain complaints. He states that he "would not specifically restrict Claimant from any specific work duties," except because of left shoulder [subjective] pain from an "unclear source," he would restrict overhead use. He goes on to say, but not to a reasonable degree of medical certainty, that further injections could be considered

("*may*" offer prognostic and therapeutic value). Short of that, Dr. Woolf stated he had nothing further to recommend as she has "exhausted everything else including anti-inflammatories, physical therapy and a subacromial injection." (Claimant's APA pp. 294-300; Def. APA pp. 196-202). Claimant never requested to return to Dr. Woolf. (Hearing Transcript, pages 53-54).

25. As to the left shoulder, Dr. Greer found "nonorganic and inconsistent" exam findings and "effort dependent weakness." Dr. Greer also documented "[m]oving two-point discrimination was inconsistent to her hand." Dr. Greer interprets Claimant's left shoulder MRI as showing "some mild degenerative changes noted of the acromioclavicular joint," and his diagnosis is "sprain/strain." Although the MRI shows that Claimant "may have sustained a long head of the biceps tendon tear or rupture; however, clinically there is no Popeye deformity. Her "symptoms do not correlate nor does her physical exam with her MRI." He goes on to say that "I would expect someone with an intact rotator cuff to be able to forward flex her arm, have reasonably good strength." He further found no shoulder instability he could elicit on exam (a sign he says of a labral tear the existence of which was later eliminated). Dr. Greer recommended (a) no other treatment and (b) no restrictions. (Def. APA pp. 149-153). I give this evidence great weight.

26. Dr. Westerkam (to whom Claimant was sent by her first attorney for the left shoulder) found Claimant's AC joint non-tender. He found that the tear of the long head of the biceps is typically not repaired surgically and that he would not recommend surgery. He stated that Claimant's AC joint degenerative joint disease was "not causally related to Claimant's fall but could be treated with physical therapy and a steroid injection." He goes on to say that the supraspinatus tendinosis is likely related to Claimant's AC joint arthritis and not the accident.

He recommended no treatment modalities to a reasonable degree of medical certainty. (Claimant's APA pp. 122-125).

27. Because of Claimant's "dramatic" and/or "belligerent" presentation to physicians as documented in myriad medical records, the Undersigned specifically sought to identify a single medical record in evidence mentioning CRPS/RSD as a possible diagnosis. However, none of the physicians involved in this case has opined that Claimant has any signs of CRPS/RSD, and instead Claimant is medically documented (including by her own experts) as having "no signs of CRPS," "normal" skin, "no skin changes" and/or "No abnormal skin manifestations." (*e.g.*, Defendants' APA pp. 50, 423; Claimant's APA pp. 123, 227, 298).

28. As to the right hand/wrist, Dr. Leak was initially the authorized treating surgeon who performed Claimant's hand/wrist surgery (a proximal row carpectomy in 2017). This surgery failed, an outcome Dr. Leak admits is "unusual." (Claimant's APA pp. 236-237; Def. APA pp. 214-215, 236; Deposition of Dr. Leak).

29. In March 2019, the parties entered into a consent order agreeing that Claimant would accept Dr. Young as an authorized treating physician for the right wrist/hand, and that Claimant would "*resume treatment with [Dr. Young]*" [emphasis added]. Claimant was represented by counsel Barr when she entered into the Consent Order. Although Claimant is technically correct that the Consent Order does say "an" authorized treating physician instead of "the" authorized treating physician, the language regarding the resumption of treatment with Dr. Young language is more compelling, particularly given the vastly differing recommendations of these two physicians. I therefore find Claimant's position at the Hearing—that Claimant was also to continue to treat with Dr. Leak—to be unpersuasive. (Commission's file containing Consent Order; Hearing Transcript, p. 21; Def. APA pp. 453-54).

30. Notwithstanding the facts that (a) the parties chose Dr. Young as the treating physician for the wrist by Consent Order of March 2019, and (b) Commissioner Campbell and the Full Commission confirmed Defendants' right to direct treatment, Claimant asks the Undersigned to name Dr. Leak as the treating physician for the wrist/hand, and to order Defendants to provide Claimant with the surgery Dr. Leak currently recommends. I decline Claimant's request for the following reasons:

(a) Dr. Leak is no longer the treating physician. I find that Dr. Barrie is the treating physician;

(b) The carpectomy surgery performed by Dr. Leak failed (resulting in the "significant collapse" of Claimant's thumb and trapezium), which Dr. Leak admits was an *"unusual" outcome* and that his *suggested future surgery to address the collapse would be "definitely out of the ordinary."* [emphasis added]; therefore, the Undersigned would be more than reluctant to have Dr. Leak continue as treating physician for these reasons alone (*e.g.*, Def. APA p. 236; Deposition of Dr. Leak, *e.g.*, pp. 10, 12);

(c) Although Dr. Leak is no longer the treating physician, he has written Claimant opioid prescriptions for 2 years, including during a one-year period (between July 26, 2018 and June 27, 2019) in which he never examined or saw Claimant; nor is there any indication in medical records that Dr. Leak ever ordered or requested that Claimant submit to a urine drug screen during this one-year period or any other period. (Deposition of Dr. Leak, *e.g.*, pages 13 and 24-28; Dr. Leak's medical records in their entirety; Hearing Transcript, pages 88-89).

(d) Dr. Leak appears to have written opioid prescriptions more often than he testified to at his deposition, particularly in 2019. Per medical records, Dr. Leak also provided opioids to Claimant as follows: August 6, 2018 (Def. APA pp. 237, 268); August 24, 2018 (Def. APA p. 239); September 10, 2018 (Def. APA p. 240); October 23, 2018 (Def. APA p. 242); November 12, 2018 (Def. APA, p. 243); December 27, 2018 (Def. APA p. 245); January 15, 2019 (Def. APA p. 246); January 17, 2019 (Def. APA, p. 247); January 31, 2019 (Def. APA p. 248); February 15, 2019 (Def. APA p. 249); March 4, 2019 (Def. APA p. 250); March 18, 2019 (Def. APA p. 251); April 1, 2019 (Def. APA p. 252); April 15, 2019 (Def. APA p. 253); May 2, 2019 (Def. APA p. 254); May 20, 2019 (Def. APA p. 255); June 4, 2019 (Def. APA p. 256); June 6, 2019 (Def. APA p. 257); June 25, 2019 (Def. APA p. 258). After a July 27, 2019 face-to-face visit, Dr. Leak continued to prescribe Norco without seeing Claimant on July 30, 2019 (Def. APA p. 261); August 19, 2019 (Def. APA p. 262); and September 9, 2019 (Def. APA p. 263). *See also* Deposition of Dr. Leak, pages 24-25.

(e) Dr. Leak admits that the credentials of Dr. Barrie (whom Defendants have chosen as treating surgeon) are "excellent." (Deposition of Dr. Leak, page 30-31).

(f) Although a wrist fusion as recommended by Dr. Barrie will limit Claimant's wrist motion, it will also address the wrist pain about which Claimant complains; a CMC arthroplasty alleviates thumb pain, and Dr. Leak admits such procedure "does tend to weaken the hand a little bit." (Deposition of Dr. Leak, pages 11-12, 20, and 28-29).

31. Defendants have a general, statutory right to direct treatment. S.C. Code Ann. § 42-15-60. Claimant's conduct has thwarted that ability based upon the APA submissions, whether by her outright refusal to attend appointments or through manipulation by engaging in conduct

resulting in discharge from multiple practices. Regardless of Claimant's belief that Defendants must have her approval prior to naming a physician, such is not the case. Moreover, Commissioner Campbell in his Order of April 24, 2018, states that Claimant is to be treated by a physician of *Defendants'* choosing; and as the Full Commission affirmed Commissioner Campbell's Order, this is the law of the case. The subsequent Consent Order of March 2019 was an agreement of the parties to name Dr. Young as the treating physician who would resume Claimant's treatment. (Order of Commissioner Campbell, page 23, dated April 24, 2018; Consent Order of March 2019; Hearing Transcript, *e.g.*, page 64).

32. As to Dr. Young, I do believe that there *initially* was some confusion or misapprehension on Dr. Young's part as to whether Dr. Young was to function as only a second opinion (Defendants' APA p. 182) or a treating physician, as Claimant told Dr. Young that Claimant wanted to remain Dr. Leak's patient. However, the nature of the relationship was made clear later notwithstanding the fact that Claimant attempted to steer treatment back to Dr. Leak. I base this finding on Dr. Young's records in their entirety.

33. Regardless, Dr. Young will no longer be either "a" or "the" treating physician, as Dr. Young ultimately dismissed Claimant from her practice primarily because of (a) Dr. Young's concern about Claimant receiving opioids "from her *prior* physician" (and Dr. Leak's ongoing prescription of opioids even without medical visits) [emphasis added]. I considered Dr. Young's referrals; however, absent consent of the parties, the Act provides for Defendants to choose medical providers—not for medical providers to choose other specific providers. Regardless, Dr. Young dismissed Claimant from her practice, and now Dr. Young refuses to treat Claimant. (Def. APA pp. 184-189).

34. When Dr. Young refused to treat Claimant any further, Defendants set up an appointment with Dr. Barrie. Notwithstanding the fact that Dr. Barrie graduated from medical school at Tufts in Boston; did her residency in orthopedic surgery at Yale; did her subspecialty training in a hand and microvascular fellowship at the Mayo Clinic in Rochester, Minnesota; and is Board Certified in orthopedic surgery with an emphasis on the hand, wrist, and elbow, Claimant informed Defendants' that she would not be attending the appointment as she was not in agreement with Defendants as to who her provider would be. Defendants offered Claimant transportation, hotel, etc., but Claimant refused until she was advised of a Commission Order to attend. That Claimant has to travel to Fayetteville, NC, is in part a situation of her own making due to her being discharged from several previous providers. (Defendants' APA pp. 413-414, 416, 459; Hearing Transcript, page 104).

35. The Undersigned met with the parties in Conway in June 2020, at which time Defendants sought to have their Form 21 heard and/or a finding of refusal of medical treatment. Over Defendants' objection—and at their expense—the Undersigned, out of an abundance of caution and to give Claimant the benefit of the doubt (based in part upon Claimant's contention that she needed shoulder surgery and that such pathology had been overlooked/missed by evaluating physicians), ordered (a) Claimant to attend an appointment with Dr. Barrie for her wrist (as Claimant had refused to attend a previous appointment with Dr. Barrie), and (b) that Defendants provide an appointment with Dr. McFadden, a well-respected orthopedic surgeon. Even Dr. Leak states that (a) Dr. Barrie is an "excellent hand surgeon and she will provide excellent care to the patient;" and (b) he does not question Dr. Barrie's judgment. (Deposition of Dr. Leak, *e.g.*, pages 7-12, 22, 26, 31, and 33, as contained in Claimant's APA; Defendants' APA p. 459; Order of the Undersigned, dated August 6, 2020).

36. As to the right wrist/hand, Dr. Barrie believes that a wrist arthrodesis is the appropriate treatment for a failed carpectomy (as does Dr. Young), but Claimant told Defendants that she would not be attending the pre-operative appointment on October 12, 2020. If Dr. Barrie is still willing to treat Claimant, Claimant shall attend a previously scheduled pre-operative appointment (February 5, 2021) as well as undergo the surgery that this expert has recommended. If the pre-operative appointment has already been canceled, Defendants shall give Claimant reasonable notice of a re-scheduled appointment. However, no person can be forced to undergo any procedure and Claimant is no exception. If she declines to undergo authorized treatment, Claimant is always free to seek treatment on her own at her own expense outside the confines of workers' compensation and for which Defendants shall have no further liability. If Dr. Barrie refuses to treat Claimant based upon Claimant's failure to attend and/or Claimant's demeanor/conduct, Defendants will have no further responsibility with regard to providing treatment for the wrist. (Claimant's APA, Exhibit B, pp. 365-366; Defendants' APA p. 189).

37. Subject to Claimant's right to appeal, Claimant through her counsel shall promptly notify Defendants and the Undersigned within 21 calendar days of this Order as to Claimant's decision of whether or not to undergo the surgery as recommended by Dr. Barrie. Failure to so notify Defendants will be considered Claimant's refusal of the surgery recommended to address the failed carpectomy performed by Dr. Leak.

38. If Claimant declines to undergo the procedure that two physicians have recommended, Claimant has reached maximum medical improvement, and the Undersigned will determine permanency.

39. As to the left shoulder, Claimant presented at the visit with Dr. McFadden with no tenderness over acromioclavicular joint and good strength. He states that the MRI of Claimant's left shoulder is "basically normal other than a patulous joint." Dr. McFadden cannot find any cause for Claimant's left shoulder pain, finds her at MMI for the shoulder, finds that Claimant can return to regular duty, and assigned a 0% impairment. (Def. APA pp. 422-425).

40. As to the left shoulder, I also considered Claimant's request that Dr. Chambers (Claimant's IME) be named the treating physician for Claimant's shoulder, even though Defendants' right to direct treatment was confirmed in Commissioner Campbell's order and affirmed by the Full Commission. I also considered the testimony and medical records of Dr. Chambers, but give greater weight to the findings of other physicians, as Dr. Chambers admits that his recommendation for arthroscopic shoulder surgery is based upon Claimant's subjective complaints of pain. He also acknowledges that Claimant's asymptomatic AC joint indicates improvement, but he does not explain the difference in presentation to other various providers as set forth herein. He also admits that Claimant has no weakness, no rotator cuff tears, and no SLAP tear. Dr. Chambers also admits that arthritis with impingement is "very common" at Claimant's age. Finally, Dr. Chambers initially states in both written record and deposition testimony that Claimant has "no instability," a finding that other physicians have also documented. (Deposition of Dr. Chambers, *e.g.*, pages 4-5, 16-20, and 23-28).

41. As to temporary total disability benefits, it appears from Commission filings that temporary total disability was paid from April, 2, 2019, through April 8, 2019; April 9, 2019, through April 15, 2019; April 16, 2019, through April 22, 2019; April 23, 2019, through April 29, 2019; April 30, 2019 through May 6, 2019; May 7, 2019, through May 13, 2019; May 14, 2019, through May 20, 2019; May 21, 2019, through May 27, 2019; May 28, 2019, through June

3, 2019; and June 4, 2019, through June 10, 2019. I find that Claimant is not currently owed any TTD benefits, but may be entitled to prospective benefits subject to the dictates of the Act should Dr. Barrie write Claimant completely of work. (Claimant's APA, pp. 552-553; Def. APA p. 379).

42. As Dr. Leak ceased to be an authorized treating physician (and another physician chosen by Claimant/her second attorney/Defendants), the fact that Dr. Leak may have written Claimant out of work in June 2019 does not entitle Claimant to receive temporary compensation benefits. (Deposition of Dr. Leak, pages 13-14; Claimant's APA p. 422). As he is no longer the treating physician at the time of this opinion, I assign the opinion little weight.

43. Based upon all the evidence in the record, I find that Defendants have attempted to provide evaluations/diagnostics/treatment in good faith. Defendants have provided multiple MRIs, an EMG/NCS study, a bone scan, and a subacromial injection. They have provided or attempted to provide treatment with myriad specialists and also provided physical therapy. I base this on the medical evidence in its entirety. It appears that it is Claimant who has thwarted or attempted to thwart treatment through her conduct/manipulation. After a review of the entire record, Claimant's efforts at the Hearing to villainize Defendants fall flat. Over Defendants' objection—and notwithstanding the opinions of multiple physicians stating that Claimant does not need shoulder surgery—the Undersigned gave Claimant the benefit of the doubt by ordering Defendants to provide an evaluation with yet another shoulder specialist—Dr. McFadden. Claimant's request for Dr. Chambers to be her treating physician is also hereby denied.

44. For reasons stated in this Order, the testimony of Claimant cannot be relied upon.

45. Claimant has reached maximum medical improvement for her left shoulder. I base this finding on the findings of Dr. Friedman, Dr. McFadden, and Dr. Woolf. Claimant never requested to return to Dr. Woolf. None of these three physicians has recommended surgery, and I give greater weight to their records/opinions than I give to Dr. Chambers' records/opinions (medical records in their entirety; Hearing Transcript, page 92).

46. Dr. Barrie is the treating physician for the right wrist. Claimant has not reached maximum medical improvement for the wrist unless she refuses the treatment recommended for her by Dr. Barrie, in which event, Claimant will have reached maximum medical improvement for the wrist.

47. Given the fact that the Undersigned has already reviewed the record's approximately 950 pages, the Undersigned shall retain jurisdiction in her discretion for a limited period of time.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Undersigned makes the following conclusions of law:

1. Pursuant to S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over Claimant's claim for benefits.
2. Pursuant to S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603 and the law of the case via prior orders of the Commission, Claimant has an average weekly wage of $761.40, with a corresponding compensation rate of $507.62.
3. Pursuant to S.C. Code Ann. § 42-1-160 and prior order of the Commission, Claimant has sustained compensable acute injuries to the right wrist and left shoulder only.

4. Pursuant to S.C. Code Ann. § 42-15-60, Defendants have provided Claimant with appropriate treatment, and maintain their statutory right to direct treatment in an admitted workers' compensation claim.
5. Pursuant to S.C. Code Ann. § 42-15-60, Dr. Barrie is designated the authorized treating physician for Claimant's right wrist injury, and any non-compliance or lack of cooperation on Claimant's part will result in a finding of maximum medical improvement.
6. Within 21 days of the execution of this Order, Claimant shall inform the Undersigned as to whether she wishes to proceed with the surgical recommendations of Dr. Barrie. If she does not wish to proceed with that treatment, she will be deemed at maximum medical improvement and this matter will be set for a hearing to determine entitlement to permanent disability benefits.
7. Based on the opinions of the various providers for Claimant's left shoulder injury, she has reached maximum medical improvement.
8. Permanent disability benefits based on §§ 42-9-10, -20, or -30 are held in abeyance at this time.
9. Pursuant to S.C. Code Ann. § 42-9-260, no temporary disability benefits are payable at this time; however, they may be payable in the future depending on the opinions of the authorized treating physician.

ORDER

Based on the preceding findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that Dr. Barrie is designated the authorized treating physician for the right wrist.

IT IS FURTHER ORDERED that Claimant shall cooperate with the treatment recommendations of Dr. Barrie, and any failure to cooperate with those recommendations for any reason shall be designated a refusal of medical treatment and will result in her being placed at maximum medical improvement for the right wrist.

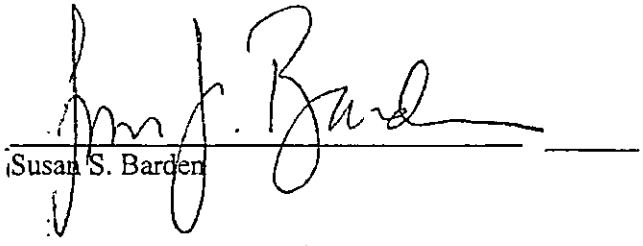
IT IS FURTHER ORDERED that Claimant has 21 days from the date this Order is signed to determine whether she wishes to proceed with the recommendations of Dr. Barrie or to be placed at maximum medical improvement. Such decision shall be provided to the Undersigned in writing within those 21 days.

IT IS FURTHER ORDERED that Claimant has reached maximum medical improvement as a result of her injury to the left shoulder, and permanent disability benefits payable relative to that body part are held in abeyance at this time.

IT IS FURTHER ORDERED that no temporary total disability benefits are payable as of the date of this Order, but those are not foreclosed from being payable in the future in compliance with the prior Order of the Full Commission.

IT IS FURTHER ORDERED that the undersigned Commissioner retains exclusive jurisdiction of this claim until otherwise ordered by the Commission.

AND IT IS SO ORDERED.



Susan S. Barden

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 April 20, 2021

Order served via email:

Walter Barefoot
Walt.barefoot@mgclaw.com

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