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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
Commissioner T. Scott Beck
Commissioner Susan S. Barden
Commissioner Gene McCaskill**

**WCC No. 1818059
Appellate Case No. 2021-000949**

James A. Palmer, Employee,Appellant,

v.

Kemira Chemicals Inc. and American Home Assurance Company,Respondents.

MOTION TO DISMISS APPEAL

CHARTWELL LAW, LLP
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Attorneys for the Respondents

Respondents respectfully request the Court of Appeals to dismiss this appeal because the matter is now settled pursuant to a signed, filed, and approved settlement agreement. This motion is made upon the grounds set forth herein and upon the exhibits attached hereto.

FACTS

This is an appeal from a South Carolina Workers' Compensation claim. The Claimant alleged that he injured his low back on November 7, 2018. The Employer/Carrier denied that the Claimant had proven a compensable injury by accident. On January 13, 2021, Commissioner Avery Wilkerson found that the Claimant had sustained a compensable injury by accident on November 7, 2018. However, he further found that the incident was minor and that the Claimant had reached Maximum Medical Improvement and was not entitled to further medical or indemnity benefits under the Workers' Compensation Act. (Tab A).

Within the statutory period, the unrepresented Claimant filed a Form 30, Application for Review, in this case setting forth the appeal grounds, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 19, 2021. (Tab B).

On July 29, 2021, the Appellate Panel filed an Order affirming the Order of the Full Commission, but amending the original order to include a finding that the Claimant failed to satisfy his burden of proving that his current condition emanates from the November 17, 2018 injury. (Tab C). On August 30, 2021, Claimant served and filed his notice of appeal. (Tab D). This appeal followed.

The parties then agreed to settle the Workers' Compensation claim for \$14,900, and that settlement was approved by Commissioner Melody James pursuant to SC Code § 42-9-390 (2013) and filed on October 21, 2021. (Tab E & F). The Workers' Compensation Commission's file is

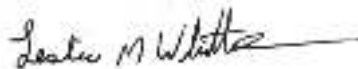
now closed. (Tab F). Upon information and belief, the Claimant has not informed the Court of Appeals that this matter is settled and intends to pursue his appeal at this time.

ARGUMENT AND CONCLUSION

A settlement approved by the Workers' Compensation Commission is not subject to review pursuant to Spivey v. Carolina Crawler, 624 S.E.2d 435, 367 S.C. 154, 2005 S.C. App. LEXIS 270. "Our supreme court has held the full commission has the power to approve a clincher and make it final and binding and not subject to review by the courts under any conditions." Atkins v. Charleston Shipbuilding & Drydock, 206 S.C. 63, 68, 33 S.E.2d 46, 48 (1945); see also Singleton v. Young Lumber Company, 236 S.C. 454, 114 S.E.2d 837 (1960). Spivey v. Carolina Crawler, 624 S.E.2d 435, 437, 367 S.C. 154, 158, 2005 S.C. App. LEXIS 270.

As in Spivey, the settlement agreement in this matter states that the settlement "shall not be reviewable or modifiable by the Workers' Compensation Commission or any court or tribunal." (Tab D, at 3 of Settlement). Pursuant to Spivey, this Court is "without jurisdiction to review the clincher." Spivey v. Carolina Crawler, 624 S.E.2d 435, 437, 367 S.C. 154, 158, 2005 S.C. App. LEXIS 270, *6. Therefore, the Appellant has no issues ripe for review before this Court and his appeal should be dismissed.

Respectfully Submitted,



Leslie M. Whitten
CHARTWELL LAW, LLP
4000 S. Faber Place Drive
Suite 300, Charleston, SC 29405
Attorneys for the Respondents

December 1, 2021
Charleston, South Carolina

DECISION AND ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1818059

JAMES A. PALMER,

Claimant,

vs.

KEMIRA CHEMICALS, INC.,

Employer,

AMERICAN HOME ASSURANCE COMPANY,

Carrier,
Defendants.

HEARING:

Hearing held in Goose Creek, South Carolina
on September 22, 2020.

APPEARANCES:

Leslie M. Whitten, Esquire on behalf of the
Employer/Carrier.

The Employee/Claimant attended the hearing
pro se.

PURPOSE OF HEARING:

To determine the issues as set forth in the
Forms 50 and 51.

DECISION AND ORDER BY:

Avery B. Wilkerson, Commissioner.

DATE FILED:

___ January 13, 2021 _____

STIPULATIONS

At the call of the case, the parties stipulated as follows:

1. That both the Claimant and the Defendants were subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That jurisdiction and sufficiency of the notice of the hearing were admitted.
3. That the Claimant may change his alleged date of injury from November 13, 2018 to November 7, 2018 without objection.
4. That, at the time of the alleged injury, the average weekly wage being earned by the Claimant was the sum of \$1,022.05, resulting in a compensation rate of \$681.40.
5. That venue for this hearing was proper in Berkeley County, South Carolina, pursuant to stipulation by the parties.

APA SUBMISSIONS

The following APA submissions were submitted on behalf of the Employee/Claimant:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
(1)	Concentra Medical Center	11/20/18	8
(2)	McLeod Regional	11/24/18	14
(3)	McLeod Regional	11/26/18	8
(4)	Concentra Medical Center	11/26/18	10
(5)	Concentra Medical Center	11/28/18	4

(6)	Concentra Medical Center	11/30/18	4
(7)	Concentra Medical Center	12/3/18	7
(8)	MRI of Charleston	12/7/18	2
(9)	Concentra Medical	12/12/18	3
(10)	Southeastern Spine Institute	2/13/19	2
(11)	MUSC	9/23/19	6
(12)	MUSC	9/25/19	6
(13)	MUSC	9/30/19	7

The following Exhibits were submitted on behalf of the Employee/Claimant:

Exhibits on behalf of Employee/Claimant:

December 13, 2018 Email to Phil Wren and Shani Matthews; November 7, 2018 Text Message Exchange between James Palmer and Prestina Stull; February 19, 2020 Letter to James Palmer from Shari Donley – McLeod Health Corporate HIPAA Officer; May 27, 2020 Letter from the US Department of Health and Human Services Office for Civil Rights

The following APA submissions were submitted on behalf of the Employer/Carrier:

<u>APA</u>	<u>Name of Provider</u>	<u>Date of Report</u>	<u>No. Pages</u>
(1)	Coleman Family Practice	11/16/2017 – 3/30/2016	1-11
(2)	Conway Medical Center	1/14/2019	12-14
(3)	Concentra	11/10/2018 – 12/12/2018	15-50
(4)	Diagnostics	3/23/2016- 12/7/2018	51-57
(5)	Doctors Care	10/4/2016 - 1/31/2019	58-110
(6)	Georgetown Health Group	3/8/2016 – 3/28/2016	111-115
(7)	Georgetown Memorial Hospital	3/14/2016 – 3/24/2016	116-125
(8)	McLeod Regional Medical Center	11/24/2018 – 11/26/2018	126-153
(9)	MUSC	5/9/2019 – 5/13/2020	154-235

The following Exhibits were submitted on behalf of the Employer/Carrier:

Exhibits on behalf of Employer/Carrier:

Transcript of claimant's deposition; Claimant's recorded statement (recording and transcription); all files provided by the South Carolina Workers' Compensation Commission; Claimant's SLED report; ISO claim search; Claimant's personnel file and payroll records; Records from claimant's Facebook page

CLAIMANT BIOGRAPHICAL

DATE OF BIRTH: 7/27/1973

SEX: Male

MARITAL STATUS: Married

EDUCATION: One year of college

WORK HISTORY: Deputy for Georgetown Sheriff's department; various positions with International Paper; owner of a landscaping business

STATEMENT OF THE CASE

The above case came to be heard before the undersigned Commissioner in Goose Creek, South Carolina, on September 22, 2020 pursuant to notice timely and properly given to all parties of record.

The Claimant alleged that he sustained a compensable injury to his lumbar spine arising out of and in the course and scope of his employment on November 7, 2018. He alleged that he was not at Maximum Medical Improvement and requested further medical treatment for his back.

The Employer/Carrier denied that the Claimant was involved in any work related accident arising out of and in the course and scope of his employment on November 7, 2018. The Employer/Carrier further denied that the Claimant had proven an aggravation of the pre-existing condition to his back. Finally, the Employer/Carrier argued that if the

Claimant was involved in a compensable accident on November 7, 2018, he had reached Maximum Medical Improvement with no permanent disability.

The Employer/Carrier made a motion to leave the record open for an independent medical evaluation with Dr. Aymond on the issue of the pre-existing condition. The Undersigned Commissioner denied this motion.

EVIDENCE OF THE CASE

The Claimant was the only witness to testify on his behalf; prior to the hearing, the Claimant indicated that he planned for his wife to testify, but he also wanted her to help him locate documents throughout the hearing. The Undersigned Commissioner indicated that the Claimant's wife could testify, but only if she remained sequestered until her testimony. The Claimant opted for his wife to help him throughout that hearing rather than have her testify.

The Claimant is 47 years old and is married with 7 children. He attended one year of college and worked as a deputy for Georgetown Sheriff's department, though he did not complete the academy.

Prior to working for the Employer, the Claimant worked for International Paper for about 20 years. He then left International Paper to start a landscaping business. He still has this business, which requires him to operate tractors and dump trucks.

The Claimant's testimony was that he had never been convicted of a crime. However, the record does indicate a misdemeanor conviction in 2005 for unlawful use of a telephone. (Exh C).

When working with International Paper, the Claimant had a workers' compensation claim involving his knees and ankles in 2013. (Exh B p. 340). He had another work injury to his lumbar spine with International Paper in 2016. (Transcript of Deposition p. 10, lines 3-17 & Exh B p. 297). The 2016 back claim settled for \$50,000. (Exh B p. 297-302). The Claimant's testimony was that his injury to his back in 2016 was to the same part of his back as his injury on November 7, 2018. (Exh A, p.238 & Transcript of Deposition p. 21, lines 10-13).

In the Claimant's recorded statement taken by an insurance adjuster at AIG on November 20, 2018, he indicated that his only prior back injury was a pulled muscle in his back in high school. (Exh A, p. 240-241). He also indicated that he had never had a prior workers' compensation claim or injury before. (Exh A p. 241). At the hearing, the Claimant testified that he was in pain on November 20 and had forgotten about his prior claims and the \$50,000 settlement.

The Claimant started working for Kemira in early 2018 and mainly worked on presses on the chemical floor. In October of 2018, he was suspended for being aggressive with a co-worker. (Exh E, p. 380).

The Claimant alleged that on November 7, 2018, he was shoveling chemical and felt a pop in his low back. He said that, at the time, he was working with Larry Richardson, and he said he told Larry right then that he hurt his back. However, he admitted that he waited two weeks before telling his supervisor or requesting to see a doctor; he said he was concerned that if he reported an injury he would lose his job. He said he was eventually terminated for reporting his injury late.

The Claimant submitted a copy of a text dated November 7, 2018, where someone asked “are feeling at least a little better about things?,” and he responded “No. I think I’m in trouble. My back is acting up really bad. May have reaggravated my injury.” (Claimant’s Exh B). The Claimant’s testimony at the hearing was that he was texting with his wife and that he was talking about the incident at work.

Medical records from McLeod Regional Medical Center on November 24, 2018 and November 26, 2018 indicate that the Claimant hurt his back doing yard work at home. (APA 8, p. 126 & 147). On September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant had told McLeod Regional that his records were incorrect and that he was actually injured at work. (Claimant’s APA 2). The letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done. The letter, verbatim, states “[p]atient, James Palmer, has requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating ‘he was doing yard work when he developed severe pain in this [sic] lower back’ while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor this request to amend the medical record to documents the true venue where the incident happened and what actions the patient was taking that the time of the injury.”

The medical records indicate that the Claimant received authorized medical care for his lumbar spine in November and December of 2018 with Concentra Medical Care in the form of physical therapy and steroids. (APA 3). On December 3, 2018, the Claimant indicated that he was pain free. (APA 3, p. 41). At the hearing, the Claimant said that he had lied to the doctors because he wanted to get back to work. He said that he does, in fact, continue to have significant back pain.

The Claimant testified that he is currently working at a waste water treatment plant full time. He has not had to call in sick or leave early due to back pain since starting that job over a year ago. When asked about playing sports with his children, he denied that he did this at all. However, in his deposition the Claimant testified that he did still play basketball with his children. (Transcript of deposition p. 27, lines 14-16). When confronted with this at the hearing, the Claimant said he just meant he could no longer play sports without pain. In his deposition, the Claimant admitted that he had no issues with activities of daily living. (Transcript of deposition p. 26, lines 21-24).

The medical records indicate that the Claimant treated with Dr. Mohamed starting January 14, 2019 because he needed a new primary care physician. (APA 2, p. 12). The Claimant denied that this was the purpose of the visit, but acknowledged that he treated with Dr. Mohamed to address his diabetes and a pulmonary emboli issue. The Claimant alleged at the hearing that he did tell Dr, Mohamed that his back was hurting, but there is nothing in Dr. Mohamed's notes that mention the back. (APA 2). In addition, his physical exam was normal. (Exh 2. p. 13). Also, according to the APA submissions, the Claimant underwent a DOT physical for People Facts on January 31, 2019. (APA 5, p. 91). The records indicate

that the Claimant had no complaints, and his physical was normal. (APA 5, p. 108). At the hearing, the Claimant said that he lied to get the job.

The Claimant attended an independent medical evaluation with Dr. Poletti on February 3, 2019. (Claimant APA 10). Dr. Poletti indicated that the Claimant's back injury in November of 2018 was a new injury. The medical report indicates that the Claimant should return for further treatment as further symptoms arise, to include a microdiscectomy. The Claimant testified at the hearing that he had not returned to Dr. Poletti because he needs to continue to work.

On September 25, 2019, the Claimant went to MUSC and noted a history of back pain, though he said he had been doing well up until September of 2019. (APA 9, p. 197). He was able to return to work the next day, (APA 9, p. 199), and the Claimant admitted at the hearing that he not seen a doctor for his back in the last year. He did, however, return to MUSC on May 13, 2020 to follow up regarding a pulmonary embolism, and the notes from that day indicate that the Claimant's back pain was resolved. (APA 9, p. 225).

Larry Richardson testified for the Employer/Carrier. He testified that he did not wish to testify but had appeared as requested. He acknowledged that he did work with the Claimant shoveling product at some point in November of 2018. However, he did not have any recollection of the Claimant saying he hurt his back. He said the Claimant may or may not have said something, but he does not recall.

Based upon the stipulations of the parties, the testimony and evidence received and produced at the hearing, as well as my personal observation of the witnesses, the undersigned Commissioner finds the following facts based upon the preponderance of the evidence:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Undersigned Commissioner sent his Order Notes to the parties on October 6, 2020.
3. That the Claimant verified at the hearing that he did not wish to retain an attorney.
4. That the Claimant testified that he is 47 years old with seven children.
5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.
6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for \$50,000 in 2016.
7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.
8. That the Claimant testified that he continues to have pain and fragment issues in his back.
9. That the Claimant was terminated by the Employer.
10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.

11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.

12. That the Claimant did not return to Dr. Poletti after February 13, 2019.

13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.

14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.

15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.

16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant “requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating ‘he was doing yard work when he developed severe pain in this [sic] lower back’ while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue where the incident happened and what actions the patient was taking that the time of the injury.”

17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.

18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.

19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.

20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.

21. That, based on the greater weight of the evidence, I find that the Claimant sustained a compensable injury on November 7, 2018.

22. That the November 7, 2018 incident was minor in nature.

23. That the Carrier paid authorized, causally related medicals in November and December of 2018.

24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.

25. That the Claimant had no lost time from the November 7, 2018 accident.

26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.

27. That I find no disability benefits due to the Claimant from this minor injury/accident.

Based upon the above Statement of the Case, Evidence of the Case, and the Findings of Fact, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Café, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).
3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;
4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

Based upon the above Statement of Case, Evidence of the Case, Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER

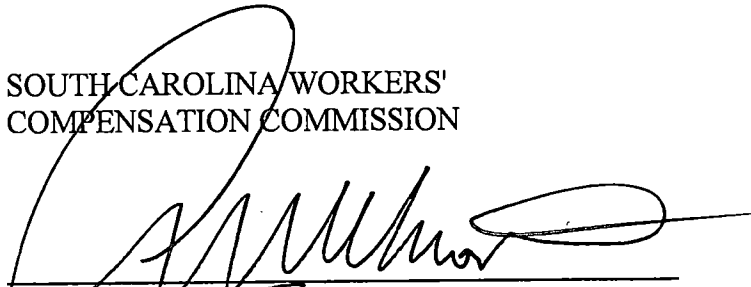
Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018.

No hearing costs or penalties are assessed in this matter.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Avery B. Wilkerson, Jr.
Commissioner

Columbia, SC

Dated: 1-12-2021

Copies served via U.S. Mail upon:

James Palmer

Leslie M. Whitten, Esq.

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 Deborah Hutto on January 13, 2021



Claimant's Name: James A. Palmer SSN: 247-35-1518 Employer's Name: Kemira Chemicals, Inc.
Address: 140 Pilos Road Address: 1514 Bushy Park Road
City: Hemingway State: SC Zip: 29554 City: Goose Creek State: SC Zip: 29445
Home Phone: 843-687-5304 Work Phone: () - Insurance Carrier: American Home Assurance Company
Preparer's Name: N/A Law Firm: N/A Preparer's Phone #: () -

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 11/7/2018
(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).

1) Did the Commissioner err in failing to award additional medical care for the claimant's compensable injury sustained on November 7, 2018?

2) Did the Commissioner err in finding that claimant reached maximum medical improvement for the claimant's compensable injury sustained on November 7, 2018?

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form. I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SC Workers' Compensation Commission

address PO Box 1715, Columbia, SC 29202-1715 on the 19 day of JAN, 2021

by first class postage certified mail personal service electronic service

James A. Palmer
Preparer's Signature

Claimant
Title

jamespalmer5304@gmail.com
Email

11/19/2021
Date

Check this box if you are not represented by an attorney

SCWCC
JAN 21 2021
JUDICIAL

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.

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

WCC FILE 1818059

JAMES A. PALMER,
Claimant,
Employee/Appellant.

vs.

KEMIRA CHEMICALS, INC.,
Employer,

and

AMERICAN HOME ASSURANCE COMPANY,
Carrier,
Defendants/Respondents.

Appellate Panel Review
Columbia, South Carolina
April 19, 2021

Appellate Panel Decision & Order filed
on July 29, 2021.

AFFIRMED WITH AMENDMENTS

The Employee/Claimant, pro se.

Leslie M. Whitten, of Chartwell Law, on behalf of the Employer/Carrier.

STATEMENT OF THE CASE

The above case was heard before Commissioner Avery B. Wilkerson in Goose Creek, South Carolina, on September 22, 2020 pursuant to notice timely and properly given to all parties of record. On January 13, 2021, Commissioner Williams issued the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Undersigned Commissioner sent his Order Notes to the parties on October 6, 2020.
3. That the Claimant verified at the hearing that he did not wish to retain an attorney.
4. That the Claimant testified that he is 47 years old with seven children.
5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.
6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for \$50,000 in 2016.
7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.
8. That the Claimant testified that he continues to have pain and fragment issues in his back.
9. That the Claimant was terminated by the Employer.
10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.
11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.

12. That the Claimant did not return to Dr. Poletti after February 13, 2019.
13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.
14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.
15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.
16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant "requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue where the incident happened and what actions the patient was taking that the time of the injury."
17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.
18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.
19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.
20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.
21. That, based on the greater weight of the evidence, I find that the Claimant sustained a compensable injury on November 7, 2018.
22. That the November 7, 2018 incident was minor in nature.
23. That the Carrier paid authorized, causally related medicals in November and December of 2018.

24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.
25. That the Claimant had no lost time from the November 7, 2018 accident.
26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.
27. That I find no disability benefits due to the Claimant from this minor injury/accident.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Café, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).
3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;
4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

ORDER

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018.

No hearing costs or penalties are assessed in this matter.

Within the statutory period, the unrepresented Claimant filed a Form 30, Application for Review, in this case setting forth the appeal grounds, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 19, 2021. All proffered testimony had been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In his appeal, the Claimant respectfully submitted the following:

1. Did the Commissioner err in failing to award additional medical care for the claimant's compensable injury sustained on November 7, 2018?
2. Did the Commissioner err in finding that claimant reached maximum medical improvement for the claimant's compensable injury sustained on November 7, 2018?

STANDARD OF REVIEW

When reviewing evidence in the award of the Single Commissioner, the Appellate Panel makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. S.C. Code Ann. § 42-17-50 (1985); Lowe v. Am-Can Trans. Servs., Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). An award of benefits may not rest on surmise, conjecture, or speculation but, rather, must be founded on evidence of sufficient substance to afford it a reasonable basis. Linen v. Ruscon Constr. Co., 286 S.C. 67, 332 S.E.2d 211 (1985).

EVIDENCE OF THE CASE

Prior to working for Kemira Water Solutions, the Claimant worked for International Paper for about 20 years. (Transcript of Hearing, p. 14, lines 23-25). He then left International Paper to start a landscaping business. He still has this business, which requires him to operate tractors and dump trucks. (Transcript of Hearing, p. 15, lines 4-11).

When working with International Paper, the Claimant had a workers' compensation claim involving his knees and ankles in 2013. (Exh B p. 340). He had another work injury to his lumbar spine with International Paper in 2016. (Transcript of Deposition p. 10, lines 3-17 & Exh B p. 297). The 2016 back claim settled for \$50,000. (Exh B p. 297-302). The Claimant's testimony was that his injury to his back in 2016 was to the same part of his back as his injury on November 7, 2018. (Exh A, p.238 & Transcript of Deposition p. 21, lines 10-13).

In the Claimant's recorded statement taken by an insurance adjuster at AIG on November 20, 2018, he indicated that his only prior back injury was a pulled muscle in his back in high school. (Exh A, p. 240-241). He also indicated that he had never had a prior workers' compensation claim or injury before. (Exh A p. 241). At the hearing, the Claimant testified that he was in pain on November 20 and does not recall what he said. (Transcript of Hearing, p. 19, lines 10-25).

The Claimant started working for Kemira in early 2018 and mainly worked on presses on the chemical floor. (Transcript of Hearing, p. 20, lines 17-19). In October of 2018, he was suspended for being aggressive with a co-worker. (Exh E, p. 380).

The Claimant alleged that on November 7, 2018, he was shoveling chemical and felt a pop in his low back. (Transcript of Hearing, p. 21, lines 12-15). He admitted that he waited two weeks before telling his supervisor or requesting to see a doctor. (Transcript of Hearing, p. 27, lines 17-20).

Larry Richardson testified for the Employer/Carrier and indicated that he did work with the Claimant shoveling product at some point in November of 2018. (Transcript of Hearing, p. 64, lines 5-7). However, he did not have any recollection of the Claimant saying he hurt his back. He said the Claimant may or may not have said something, but he does not recall. (Transcript of Hearing, p. 64, lines 8-15).

The Claimant submitted a copy of a text dated November 7, 2018, where someone asked "are feeling at least a little better about things?" and he responded "No. I think I'm in trouble. My back is acting up really bad. May have reaggravated my injury." (Claimant's Exh B). The Claimant's testimony at the hearing was that he was texting with his wife and that he was talking about the incident at work. (Transcript of Hearing, p. 22, lines 19-21).

Medical records from McLeod Regional Medical Center on November 24, 2018 and November 26, 2018 indicate that the Claimant hurt his back doing yard work at home. (APA 8, p. 126 & 147). On September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant had told McLeod Regional that his records were incorrect and that he was actually injured at work. (Claimant's APA 2). The letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done. The letter, verbatim, states "[p]atient, James Palmer, has requested that his medical record for the episode of care on November 24, 2018, be amended to

reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor this request to amend the medical record to document the true venue where the incident happened and what actions the patient was taking at the time of the injury."

The medical records indicate that the Claimant received authorized medical care for his lumbar spine in November and December of 2018 with Concentra Medical Care in the form of physical therapy and steroids. (APA 3). On December 3, 2018, the Claimant indicated that he was pain free. (APA 3, p. 41).

The Claimant testified that he is currently working at a waste water treatment plant full time. (Transcript of Hearing, p. 42, lines 9-18). He has not had to call in sick or leave early due to back pain since starting that job over a year ago. (Transcript of Hearing, p. 42, lines 19-23). When asked about playing sports with his children, he denied that he did this at all. (Transcript of Hearing, p. 42, line 24-p. 43, line 1). However, in his deposition the Claimant testified that he did still play basketball with his children. (Transcript of deposition p. 27, lines 14-16). When confronted with this at the hearing, the Claimant said he just meant he could no longer play sports without pain. (Transcript of Hearing, p. 43, lines 2-22). In his deposition, the Claimant admitted that he had no issues with activities of daily living. (Transcript of deposition p. 26, lines 21-24).

The medical records indicate that the Claimant treated with Dr. Mohamed starting January 14, 2019 because he needed a new primary care physician. (APA 2, p. 12). The Claimant denied

that this was the purpose of the visit, but acknowledged that he treated with Dr. Mohamed to address his diabetes and a pulmonary emboli issue. (Transcript of Hearing, p. 50, line 2 – p. 52, line 10). The Claimant alleged at the hearing that he did tell Dr. Mohamed that his back was hurting, (Transcript of Hearing, p. 52, lines 11-14), but there is nothing in Dr. Mohamed's notes that mention the back. (APA 2). In addition, his physical exam, including the musculoskeletal exam, was normal. (Exh 2. p. 13). Also, according to the APA submissions, the Claimant underwent a DOT physical for People Facts on January 31, 2019. (APA 5, p. 91). The records indicate that the Claimant had no complaints, and his physical was normal. (APA 5, p. 108). At the hearing, the Claimant said that he just needed the job. (Transcript of Hearing, p. 54, line 20 – p. 55, 4).

Two weeks after the normal DOT physical, the Claimant attended an independent medical evaluation with Dr. Poletti on February 13, 2019. (Claimant APA 10). Dr. Poletti indicated that the Claimant's back injury in November of 2018 was a new injury. The medical report indicates that the Claimant should return for further treatment as further symptoms arise, to include a microdiscectomy. Dr. Poletti noted that this particular injury would not respond to injection based therapy. Id. The Claimant testified at the hearing that he had not returned to Dr. Poletti because he needs to continue to work. (Transcript of Hearing, p. 60, line 18 – p. 61, line 15).

On September 25, 2019, the Claimant went to MUSC and noted a history of back pain, though he said he had been doing well up until September of 2019. (APA 9, p. 197). He also noted that previously injections had helped him with this back pain. (APA 9, p. 198). He was able to return to work the next day, (APA 9, p. 199), and the Claimant admitted at the hearing that he had not seen a doctor for his back since that September MUSC visit. (Transcript of Hearing, p.

55, lines 15-21). He did, however, return to MUSC on May 13, 2020 to follow up regarding a pulmonary embolism, and the notes from that day make no mention of back pain. (APA 9, p. 225).

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Single Commissioner sent his Order Notes to the parties on October 6, 2020.
3. That the Claimant verified at the hearings that he wished to go forward without an attorney.
4. That the Claimant testified that he is 47 years old with seven children.
5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.
6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for \$50,000 in 2016.
7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.
8. That the Claimant testified that he continues to have pain and fragment issues in his back.
9. That the Claimant was terminated by the Employer.

10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.
11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.
12. That the Claimant did not return to Dr. Poletti after February 13, 2019.
13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.
14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.
15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.
16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant "requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue

where the incident happened and what actions the patient was taking that the time of the injury."

17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.
18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.
19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.
20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.
21. That, based on the greater weight of the evidence, we find that the Claimant sustained a compensable injury on November 7, 2018.
22. That the November 7, 2018 incident was minor in nature.
23. That the Carrier paid authorized, causally related medicals in November and December of 2018.
24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.
25. That the Claimant has failed to satisfy his burden of proving that his current condition emanates from the November 7, 2018 injury.
25. That the Claimant had no lost time from the November 7, 2018 accident.

26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.
27. That no disability benefits are due to the Claimant from this minor injury/accident.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Cafe, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).
3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;
4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

ORDER

Based on the foregoing, the Single Commissioner's order is

AFFIRMED WITH AMENDMENTS

It is hereby:

ORDERED, ADJUDGED, AND DECREED that the Single Commissioner's Order finding the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018 is affirmed;

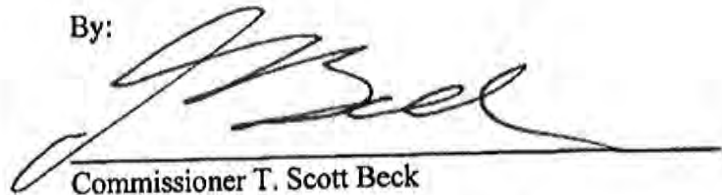
IT IS FURTHER ORDERED that the Single Commissioner's Order finding that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018 is affirmed;

IT IS FURTHER ORDERED that the Claimant has failed to satisfy his burden of proving that his current condition emanates from the November 7, 2018 injury

No hearing costs or penalties are assessed in this matter.


SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

By:

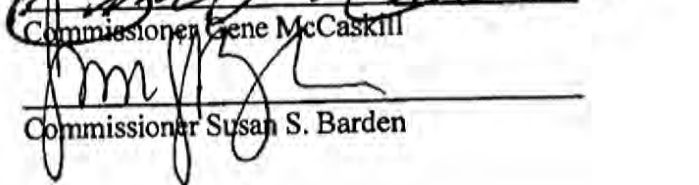


Commissioner T. Scott Beck

CONCURRING:



Commissioner Gene McCaskill



Commissioner 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 Valerie D. Deller on July 29, 2021

August 30, 2021

James Palmer
140 Piles Road
Hemmingway, S.C. 29554


Leslie M. Whitten
4000 S. Faber Place Drive
North Charleston, S.C. 29405

Re: James Palmer v. Kemira Chemicals, Inc. and American Home Insurance Co.
Notice of Intent to Appeal

Dear Ms. Whitten:

Enclosed you will find my Letter for the filing of my Notice of Intent To Appeal, Notice of Intent to Appeal, Proof of Service of a Notice of Appeal, Order and Decision of the South Carolina Worker's Compensation Commission Appellate Panel, and the Letter to the S.C. Worker's Compensation Commission Appellate Panel notifying them of my intent to appeal in this matter.

Sincerely,


James Palmer

Enclosure(s) as stated:

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

September 16, 2000

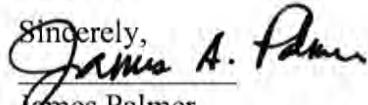
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: James Palmer, Appellant, v. Kemira Chemicals, Inc. and American Home Insurance Company, Respondents, W.C.C. File No.: 1818059

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the decision and order which is to be challenged on appeal.
- (3) A filing fee of \$100.*

Sincerely,

James Palmer
140 Piles Road
Hemmingway, South Carolina 29554
(843)-687-5304
Appellant

cc: Leslie M. Whitten
4000 S. Faber Place Drive
North Charleston, S.C. 29405
(843)-484-4604
Attorney for Respondent

FORM 6
NOTICE OF APPEAL FROM ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

COMMISSIONER T. SCOTT BECK, APPELLATE PANEL REVIEW

WCC FILE NO.: 1818059

Kemira Chemicals, Inc. and
American Home Insurance
Company,

Respondents,

v.

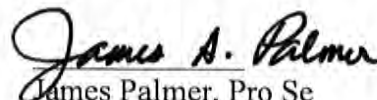
James A. Palmer,

Appellant.

NOTICE OF APPEAL

James A. Palmer appeals the decision of the South Carolina Workers' Compensation Appellate Panel dated July 29, 2021. Appellant received a copy of this decision on August 2, 2021.

August 27, 2021


James Palmer, Pro Se
140 Pilos Road
Hemingway, S.C. 29554
(843)-687-5304
Appellant

Other Counsel of Record:
Leslie M. Whitten
4000 S.Faber Place Drive
North Charleston, S.C. 29405
(843)-484-4604
Attorney for Respondent

FORM 7
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION
COMMISSION
APPELLATE PANEL

T. Scott Beck, Commissioner

W.C.C. File No.: 1818059

Kemira Chemicals, Inc. and
American Home Insurance Company, Respondent,

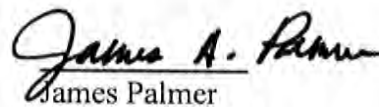
v.

James Palmer, Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Kemira Chemicals Inc. and American Home Insurance by depositing a copy of it in the United States Mail, postage prepaid, on August 30, 2021, addressed to their attorney of record, Leslie M. Whitten, 4000 S. Faber Place Drive, Columbia, South Carolina 29405.

August 30, 2021



James Palmer
140 Pilos Road
Hemingway, South Carolina 29554
(843)-687-5304
Attorney for Appellant

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL

September 16, 2000


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

RE: James Palmer, Appellant, v. Kemira Chemicals, Inc. and American Home Insurance Company, Respondents, W.C.C. File No.: 1818059

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent[s].
- (2) A copy of the decision and order which is to be challenged on appeal.
- (3) A filing fee of \$100.*

Sincerely,

James Palmer
140 Piles Road
Hemmingway, South Carolina 29554
(843)-687-5304
Appellant

cc: Leslie M. Whitten
4000 S. Faber Place Drive
North Charleston, S.C. 29405
(843)-484-4604
Attorney for Respondent

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

WCC FILE 1818059

JAMES A. PALMER,
Claimant,
Employee/Appellant.

vs.

KEMIRA CHEMICALS, INC.,
Employer,

and

AMERICAN HOME ASSURANCE COMPANY,
Carrier,
Defendants/Respondents.

Appellate Panel Review
Columbia, South Carolina
April 19, 2021

Appellate Panel Decision & Order filed
on July 29, 2021.

AFFIRMED WITH AMENDMENTS

The Employee/Claimant, pro se.
Leslie M. Whitten, of Chartwell Law, on behalf of the Employer/Carrier.

STATEMENT OF THE CASE

The above case was heard before Commissioner Avery B. Wilkerson in Goose Creek, South Carolina, on September 22, 2020 pursuant to notice timely and properly given to all parties of record. On January 13, 2021, Commissioner Williams issued the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Undersigned Commissioner sent his Order Notes to the parties on October 6, 2020.
3. That the Claimant verified at the hearing that he did not wish to retain an attorney.
4. That the Claimant testified that he is 47 years old with seven children.
5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.
6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for \$50,000 in 2016.
7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.
8. That the Claimant testified that he continues to have pain and fragment issues in his back.
9. That the Claimant was terminated by the Employer.
10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.
11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.

12. That the Claimant did not return to Dr. Poletti after February 13, 2019.
13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.
14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.
15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.
16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant "requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue where the incident happened and what actions the patient was taking that the time of the injury."
17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.
18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.
19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.
20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.
21. That, based on the greater weight of the evidence, I find that the Claimant sustained a compensable injury on November 7, 2018.
22. That the November 7, 2018 incident was minor in nature.
23. That the Carrier paid authorized, causally related medicals in November and December of 2018.

24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.
25. That the Claimant had no lost time from the November 7, 2018 accident.
26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.
27. That I find no disability benefits due to the Claimant from this minor injury/accident.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Café, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).
3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;
4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

ORDER

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018.

No hearing costs or penalties are assessed in this matter.

Within the statutory period, the unrepresented Claimant filed a Form 30, Application for Review, in this case setting forth the appeal grounds, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 19, 2021. All proffered testimony had been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In his appeal, the Claimant respectfully submitted the following:

1. Did the Commissioner err in failing to award additional medical care for the claimant's compensable injury sustained on November 7, 2018?
2. Did the Commissioner err in finding that claimant reached maximum medical improvement for the claimant's compensable injury sustained on November 7, 2018?

STANDARD OF REVIEW

When reviewing evidence in the award of the Single Commissioner, the Appellate Panel makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. S.C. Code Ann. § 42-17-50 (1985); Lowe v. Am-Can Trans. Servs., Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). An award of benefits may not rest on surmise, conjecture, or speculation but, rather, must be founded on evidence of sufficient substance to afford it a reasonable basis. Linen v. Ruscon Constr. Co., 286 S.C. 67, 332 S.E.2d 211 (1985).

EVIDENCE OF THE CASE

Prior to working for Kemira Water Solutions, the Claimant worked for International Paper for about 20 years. (Transcript of Hearing, p. 14, lines 23-25). He then left International Paper to start a landscaping business. He still has this business, which requires him to operate tractors and dump trucks. (Transcript of Hearing, p. 15, lines 4-11).

When working with International Paper, the Claimant had a workers' compensation claim involving his knees and ankles in 2013. (Exh B p. 340). He had another work injury to his lumbar spine with International Paper in 2016. (Transcript of Deposition p. 10, lines 3-17 & Exh B p. 297). The 2016 back claim settled for \$50,000. (Exh B p. 297-302). The Claimant's testimony was that his injury to his back in 2016 was to the same part of his back as his injury on November 7, 2018. (Exh A, p.238 & Transcript of Deposition p. 21, lines 10-13).

In the Claimant's recorded statement taken by an insurance adjuster at AIG on November 20, 2018, he indicated that his only prior back injury was a pulled muscle in his back in high school. (Exh A, p. 240-241). He also indicated that he had never had a prior workers' compensation claim or injury before. (Exh A p. 241). At the hearing, the Claimant testified that he was in pain on November 20 and does not recall what he said. (Transcript of Hearing, p. 19, lines 10-25).

The Claimant started working for Kemira in early 2018 and mainly worked on presses on the chemical floor. (Transcript of Hearing, p. 20, lines 17-19). In October of 2018, he was suspended for being aggressive with a co-worker. (Exh E, p. 380).

The Claimant alleged that on November 7, 2018, he was shoveling chemical and felt a pop in his low back. (Transcript of Hearing, p. 21, lines 12-15). He admitted that he waited two weeks before telling his supervisor or requesting to see a doctor. (Transcript of Hearing, p. 27, lines 17-20).

Larry Richardson testified for the Employer/Carrier and indicated that he did work with the Claimant shoveling product at some point in November of 2018. (Transcript of Hearing, p. 64, lines 5-7). However, he did not have any recollection of the Claimant saying he hurt his back. He said the Claimant may or may not have said something, but he does not recall. (Transcript of Hearing, p. 64, lines 8-15).

The Claimant submitted a copy of a text dated November 7, 2018, where someone asked "are feeling at least a little better about things?" and he responded "No. I think I'm in trouble. My back is acting up really bad. May have reaggravated my injury." (Claimant's Exh B). The Claimant's testimony at the hearing was that he was texting with his wife and that he was talking about the incident at work. (Transcript of Hearing, p. 22, lines 19-21).

Medical records from McLeod Regional Medical Center on November 24, 2018 and November 26, 2018 indicate that the Claimant hurt his back doing yard work at home. (APA 8, p. 126 & 147). On September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant had told McLeod Regional that his records were incorrect and that he was actually injured at work. (Claimant's APA 2). The letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done. The letter, verbatim, states "[p]atient, James Palmer, has requested that his medical record for the episode of care on November 24, 2018, be amended to

reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor this request to amend the medical record to document the true venue where the incident happened and what actions the patient was taking at the time of the injury."

The medical records indicate that the Claimant received authorized medical care for his lumbar spine in November and December of 2018 with Concentra Medical Care in the form of physical therapy and steroids. (APA 3). On December 3, 2018, the Claimant indicated that he was pain free. (APA 3, p. 41).

The Claimant testified that he is currently working at a waste water treatment plant full time. (Transcript of Hearing, p. 42, lines 9-18). He has not had to call in sick or leave early due to back pain since starting that job over a year ago. (Transcript of Hearing, p. 42, lines 19-23). When asked about playing sports with his children, he denied that he did this at all. (Transcript of Hearing, p. 42, line 24-p. 43, line 1). However, in his deposition the Claimant testified that he did still play basketball with his children. (Transcript of deposition p. 27, lines 14-16). When confronted with this at the hearing, the Claimant said he just meant he could no longer play sports without pain. (Transcript of Hearing, p. 43, lines 2-22). In his deposition, the Claimant admitted that he had no issues with activities of daily living. (Transcript of deposition p. 26, lines 21-24).

The medical records indicate that the Claimant treated with Dr. Mohamed starting January 14, 2019 because he needed a new primary care physician. (APA 2, p. 12). The Claimant denied

that this was the purpose of the visit, but acknowledged that he treated with Dr. Mohamed to address his diabetes and a pulmonary emboli issue. (Transcript of Hearing, p. 50, line 2 – p. 52, line 10). The Claimant alleged at the hearing that he did tell Dr, Mohamed that his back was hurting, (Transcript of Hearing, p. 52, lines 11-14), but there is nothing in Dr. Mohamed's notes that mention the back. (APA 2). In addition, his physical exam, including the musculoskeletal exam, was normal. (Exh 2. p. 13). Also, according to the APA submissions, the Claimant underwent a DOT physical for People Facts on January 31, 2019. (APA 5, p. 91). The records indicate that the Claimant had no complaints, and his physical was normal. (APA 5, p. 108). At the hearing, the Claimant said that he just needed the job. (Transcript of Hearing, p. 54, line 20 – p. 55, 4).

Two weeks after the normal DOT physical, the Claimant attended an independent medical evaluation with Dr. Poletti on February 13, 2019. (Claimant APA 10). Dr. Poletti indicated that the Claimant's back injury in November of 2018 was a new injury. The medical report indicates that the Claimant should return for further treatment as further symptoms arise, to include a microdiscectomy. Dr. Poletti noted that this particular injury would not respond to injection based therapy. Id. The Claimant testified at the hearing that he had not returned to Dr. Poletti because he needs to continue to work. (Transcript of Hearing, p. 60, line 18 – p. 61, line 15).

On September 25, 2019, the Claimant went to MUSC and noted a history of back pain, though he said he had been doing well up until September of 2019. (APA 9, p. 197). He also noted that previously injections had helped him with this back pain. (APA 9, p. 198). He was able to return to work the next day, (APA 9, p. 199), and the Claimant admitted at the hearing that he had not seen a doctor for his back since that September MUSC visit. (Transcript of Hearing, p.

55, lines 15-21). He did, however, return to MUSC on May 13, 2020 to follow up regarding a pulmonary embolism, and the notes from that day make no mention of back pain. (APA 9, p. 225).

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Single Commissioner sent his Order Notes to the parties on October 6, 2020.
3. That the Claimant verified at the hearings that he wished to go forward without an attorney.
4. That the Claimant testified that he is 47 years old with seven children.
5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.
6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for \$50,000 in 2016.
7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.
8. That the Claimant testified that he continues to have pain and fragment issues in his back.
9. That the Claimant was terminated by the Employer.

10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.
11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.
12. That the Claimant did not return to Dr. Poletti after February 13, 2019.
13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.
14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.
15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.
16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant "requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue

where the incident happened and what actions the patient was taking that the time of the injury."

17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.
18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.
19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.
20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.
21. That, based on the greater weight of the evidence, we find that the Claimant sustained a compensable injury on November 7, 2018.
22. That the November 7, 2018 incident was minor in nature.
23. That the Carrier paid authorized, causally related medicals in November and December of 2018.
24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.
25. That the Claimant has failed to satisfy his burden of proving that his current condition emanates from the November 7, 2018 injury.
25. That the Claimant had no lost time from the November 7, 2018 accident.

26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.
27. That no disability benefits are due to the Claimant from this minor injury/accident.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;
2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Cafe, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).
3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;
4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

ORDER

Based on the foregoing, the Single Commissioner's order is

AFFIRMED WITH AMENDMENTS

It is hereby:

ORDERED, ADJUDGED, AND DECREED that the Single Commissioner's Order finding the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018 is affirmed;

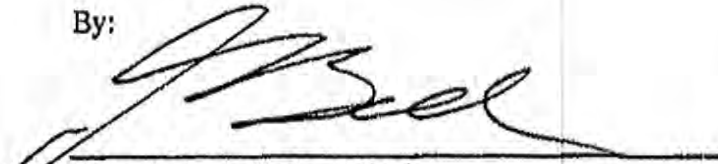
IT IS FURTHER ORDERED that the Single Commissioner's Order finding that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018 is affirmed;

IT IS FURTHER ORDERED that the Claimant has failed to satisfy his burden of proving that his current condition emanates from the November 7, 2018 injury

No hearing costs or penalties are assessed in this matter.


SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

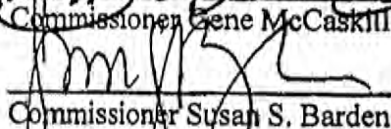
By:



Commissioner T. Scott Beck

CONCURRING:



Commissioner Gene McCaskill

Commissioner Susan S. Barden

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. File No. 1818059

James A. Palmer,
Employee/Claimant

-versus-

**SETTLEMENT AGREEMENT
AND RELEASE**

Kemira Water Solutions,
Employer,

and

American Home Assurance Co.
Carrier/Defendants.

James A. Palmer (hereinafter "Claimant") allegedly sustained an injury by accident arising out of and in the course of his employment with the employer on or about 11/7/2018, the said accident allegedly occurring in Charleston County, South Carolina. An actual bona fide disagreement exists between the Claimant on the one hand and the employer and insurance carrier (hereinafter "Defendants") on the other as to the compensability of the alleged accidental injury, the extent of residual disability, if any, and the amount of compensation for disability, temporary and permanent, partial and total, and compensation for any disfigurement to which the Claimant might be due and for which the Defendants may be liable under the South Carolina Workers' Compensation Act based upon the aforesaid alleged accident and injury.

The parties have negotiated the resolution of any and all outstanding issues and have now reached a final compromise settlement agreement and release under the terms of which the Defendants will pay and the Claimant will accept the sum of **\$14,900.00 (Fourteen Thousand Nine Hundred and no/100 Dollars)** in full payment and compromise settlement of all rights and claims of the Claimant under the South Carolina Workers' Compensation Act based upon and by reason of

the aforesaid alleged accident and injuries, including, without limiting the generality of said agreement, all claims of the said Claimant for compensation of any and every kind under the South Carolina Workers' Compensation Act for disability, temporary and permanent, total and partial, present and future, and all claims for compensation under the South Carolina Workers' Compensation Act for disfigurement and for any change of condition, and all claims under the South Carolina Workers' Compensation Act for any medical, hospital, surgical, and nursing and any other expenses which the Claimant may have incurred in the past or may incur in the present or future so that the Claimant shall have no prior or future right or claim and the Defendants shall have no prior or future liability under the South Carolina Workers' Compensation Act based upon the alleged accident and injuries after the payment and receipt of said sum of **\$14,900.00 (Fourteen Thousand Nine Hundred and no/100 Dollars)**.

The parties specifically agree that this matter is settled on a doubtful and disputed basis with the Defendants maintaining their denial of any liability for any benefits as a result of the alleged accident and that the settlement described herein represents the full extent of any past, present, or future benefits potentially owed by the Defendants in this matter.


It is not the intention of the Defendants to shift responsibility to pay medical expenses to the federal government. However, the Claimant is not yet 62-½ years old and has not applied for social security disability benefits. In addition, this matter is settled on a doubtful and disputed basis for fewer than \$25,000. Therefore, upon information and belief, CMS does not require and will not review any Medicare Set-Aside in this case. As of the date of the approval of this Settlement Agreement and Release by the Commission, the Defendants shall have no further responsibility for the payment of any future medical expenses for the Claimant.

The undersigned Commissioner has explained to the Claimant fully his rights under the South Carolina Workers' Compensation Act. The Claimant hereby represents that he has been fully advised of his rights under the South Carolina Workers' Compensation Act and that he is of the opinion that the proposed settlement is reasonable and fair. The undersigned Commissioner has reviewed the settlement and has explained the terms to the Claimant and Claimant voluntarily and without coercion agreed to the terms. The undersigned Commissioner concurs in the opinion that the settlement is reasonable and fair. Claimant requests the undersigned Commissioner approve this SETTLEMENT AGREEMENT AND RELEASE in accordance with S.C. Code Ann. §42-9-390 (amended July 1, 2007), whereunder this SETTLEMENT AGREEMENT AND RELEASE, when approved by the undersigned Commissioner shall be binding on the parties as an unappealed Order, Decision and Award of the Commission and shall not be reviewable or modifiable by the Workers' Compensation Commission or any court or tribunal consistent with Spivey vs. Carolina Crawler, 624 S.E.2d 435 (Ct. App. 2005).

NOW, THEREFORE, based upon the premises herein and the payment of the sum as aforesaid, the Claimant does hereby release, acquit, and forever discharge the Defendants of and from any and all known and unknown claims under the South Carolina Workers' Compensation Act for disability, temporary and permanent, total and partial, present and future, and all claims for compensation under the South Carolina Workers' Compensation Act for disfigurement and for any change of condition, and all claims under the South Carolina Workers' Compensation Act for any medical, hospital, surgical, and nursing and any other expenses which the Claimant may have incurred in the past or may incur in the present or future connected with the aforesaid alleged accident, injuries and problems sustained by the Claimant after the payment and receipt of said sum of **\$14,900.00 (Fourteen Thousand Nine Hundred and no/100 Dollars)**.


The undersigned Commissioner's signature below represents approval of this SETTLEMENT AGREEMENT AND RELEASE per S.C. Code Ann. §42-9-390 (amended July 1, 2007).

AND IT IS SO ORDERED.



Commissioner


WE CONSENT:



James A. Palmer
Employee

Kemira Water Solutions
Employer

American Home Assurance Co.
Insurance Carrier



Leslie Whitten, Esquire
Chartwell Law
Attorney for the Employer/Insurance Carrier

Select Option: Attorney/Carrier:

WCC #: SSN:

Date Range: -

Status Group:

This information is subject to change and is not to be considered Official Notice from the SC Workers' Compensation Commission.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Report run: 12/01/21 15:12

Report Criteria: WCC#: 1818059

Click WCC# for More Information

WCC #	Caption	D/O/I	Carrier	Attorney for Defendant	Attorney for Claimant	Status
1818059	***CASE CLOSED*** JAMES PALMER -VS- KEMIRA WATER SOLUTIONS	11/13/18	American Home Assurance Co AIGCS-WC Board Mail PO BOX 27007 SHAWNEE MISSION KS 66225 Algawcfr@cha rtisinsurance.c om (866) 642- 5246	Leslie M Whitten Chartwell Law 4000 S. Faber Place Drive, Suite 300 Charleston SC 29405 lwhitten@cha rtwelllaw.com (843) 484- 4604		11/16/21 - Form 19 Processed 11/16/21 Claim Reviewed by Examiner 11/16/21 Claim Closed 11/16/21 Admin Dismissal; Appeal Settled 11/12/21 Form 18 Received 10/22/21 Form 19 Held - Pending Judicial Action 10/21/21 Settlement approved 09/03/21 Notice of intent to appeal to Court of Appeals 07/29/21 Order Served 07/26/21 Settlement not approved at conference 07/16/21 FC Order Assigned

RECEIVED

Dec 01 2021

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

**Commissioner T. Scott Beck
Commissioner Susan S. Barden
Commissioner Gene McCaskill**

**WCC No. 1818059
Appellate Case No. 2021-000949**

James A. Palmer, Employee,Appellant,

v.

Kemira Chemicals Inc. and American Home Assurance Company,Respondents.

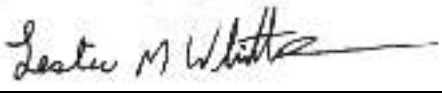
PROOF OF SERVICE

CHARTWELL LAW, LLP
Leslie M. Whitten
4000 S. Faber Place Drive
Suite 300
Charleston, SC 29405
Direct (843) 484-4604
Main (843) 484-6400
Fax (843) 326-4002
lwhitten@chartwelllaw.com
Attorneys for the Respondents

I, Leslie M. Whitten, of Chartwell Law, LLP, do hereby certify that a copy of the Respondent's Motion to Dismiss in the above-captioned matter was served on the Appellant on the following by email:

James A. Palmer
140 Pilos Road
Hemingway, SC 29554

Chartwell Law, LLP

By: 

Charleston, South Carolina

Dated: 12/1/21



LESLIE M. WHITTEN, ESQUIRE
Direct Dial: (843) 484-4604
lwhitten@chartwelllaw.com

Reply To: Charleston Office
4000 S. Faber Place Drive, Suite 300
Charleston, SC 29405
Phone: (843) 484-6400
Facsimile: (843) 326-4002

December 1, 2021

Via Electronic Mail

Honorable Jenny Abbot Kitchings
Clerk of the South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
Dec 01 2021
SC Court of Appeals

Re: James A. Palmer vs. Kemira Water Solutions
WCC File No: 1818059
Appellate Case No. 2021-000949
Claim No.: 555-267189
Date of Injury: 11/13/2018
Our File No: 42002.0082193

Dear Ms. Kitchings:

I represent the employer/carrier with regards to the above-referenced matter. Enclosed for filing please find the Respondent's Motion to Dismiss. I will forward the \$50.00 filing fee under separate cover. Please return a clocked-in copy to me.

Should you have any questions or concerns, please do not hesitate to contact my office.

With kindest regards, I am

Very truly yours,

CHARTWELL LAW, LLP

Leslie Whitten

LMW/ak
Enclosures

cc: Melinda Pickering, AIG Claims, Inc., *via email*
Susan B. Radcliffe, Kemira Chemicals, Inc., *via email*
James A. Palmer, *via email*