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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Order

WCC File No.:1417071

Appellate Case No.: 2019-001643

Joseph Jefferson, Employee,.....Respondent,
v.

South Carolina Department of Transportation, Employer, and
State Accident Fund, Carrier,.....Appellants.

RECORD ON APPEAL

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APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1417071

Joseph Jefferson, Employee,

Claimant/Appellate/Respondent,

vs.

South Carolina Department of Transportation,
Employer, and State Accident Fund, Carrier,

Defendants/Respondent/ Appellants.

Appellate Panel Review held in Columbia,
South Carolina, June 17, 2019 notices
timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

August 29 2019

APPEARANCES:

Claimant/Appellant/Respondent represented by Stephen J. Wukela
of Florence, South Carolina

Defendants/Respondents/ Appellants represented by Erica E. Loudin of Columbia, South
Carolina

I.

STATEMENT OF THE CASE

This matter was decided by the Single Commissioner on the Claimant's Form 50 seeking a ten percent (10%) penalty pursuant to S.C. Code §42-9-90 for the Carrier's failure to make payment of compensation under an award when due. Claimant's Form 50 also sought the payment of medical treatment provided by the authorized treating physician along with attorney's fees and costs pursuant to S.C. Code §42-3-175; which was taken up by the Commission at a separate hearing and decided on a separate order. After hearing of January 16, 2019, the Single Commissioner issued an Order dated February 25, 2019 awarding a ten percent (10%) penalty pursuant to S.C. Code §42-9-90.

The Single Commissioner found:

II. ANALYSIS/FINDINGS

A. S.C. Code §42-9-90, 10% Penalty.

By Order of the Workers' Compensation Commission Appellate Panel, filed and served by the Commission on July 23, 2018, (APA No. 23), the Commission ordered the State Accident Fund to pay the Claimant one hundred nine thousand three hundred ten and 33/100 (\$109,310.33) dollars which, after credit for temporary total disability benefits, left a total award of eighty-nine thousand seven hundred seventeen and 22/100 (\$89,717.22) dollars due as a result of the Panel's finding that the Claimant was totally and permanently disabled.

The evidence of the record reveals that on August 3, 2018, Claimant's counsel emailed defense counsel:

Erica:

Joseph Jefferson is coming into my office for me to advise him about the Order.

It is my intention to advise him not to appeal and I am sure he will want to know what you all intend to do.

Can you tell me what your plans are?

Stephen
(APA No. 24, p. 287).

Defense counsel responded on August 8, 2018:

Hi Stephen,

We will not be appealing the Order.

Erica E. Loudin, Esquire
(APA No. 24, p. 287).

On August 9, 2018, Claimant's counsel responded:

Erica:
Thank you for your email.

Mr. Jefferson advises me that he will not appeal if they do not.

Also, I note that S.C. Code Section 42-9-90 provides that:

"if any installment of compensation payable in accordance with the terms of an award by the commission is not paid by within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten percent thereof."

Section 42-9-240 provides that compensation payable under an award is due seven days from the date of the award. Therefore, by operation of these two statutes, any award that is not paid within three weeks of the date of the award shall result in a penalty of 10%.

Given the fact that the award of \$109,000 was made on July 23, 2018 and the three weeks runs on August 13, (Monday), I am curious as to when the Fund will pay the award.

Please advise.

Stephen
(APA No. 24, p. 286).

Thus, as of August 9, 2018, the Commission's Order was seventeen (17) days old, both parties had indicated they did not intend to appeal, and the Claimant's counsel had made the Carrier aware of his position that, pursuant to the operation of S.C. Code '42-9-90 and '42-9-240, a penalty would accrue if the payment of the award was not made by August 13, four (4) days away.

The record reveals that on August 9 Claimant's counsel also wrote:

Erica:

Your numbers are correct. They can hold the check for another week if they like, 10% sounds pretty good to me.

If not, I will be in Columbia tomorrow afternoon to go sailing. I can drop by and pick up the check.

Up to them.

Stephen J. Wukela
(APA No. 24, p. 285).

Thus, the record establishes that by August 9, 2018, the Fund had no intention of appealing the award, they were aware of the Claimant's contention that a penalty would accrue if the award was not paid by August 13, and Claimant's counsel had offered to go to the Fund and pick up the check.

August 13 came and passed and the award check was not received. On August 14, 2018, Claimant's counsel wrote defense:

Erica:

Today is Tuesday, August 14, 2018.

I have not received a check from the State Fund in satisfaction of the Order of July 23, 2018.

As I indicated in my email of August 9, 2018, by virtue of SC Code

Section 42-9-90 and Section 42-9-240, a 10% penalty accrues to the judgment.

Please advise when I can expect to receive a check in satisfaction of the judgment, along with the penalty.

Stephen J. Wukela (APA No. 24, p. 283).

The defense responded:

Stephen:

Per the adjuster, the check was sent out yesterday (8/13/18) so payment of the award was timely.

Erica E. Loudin, Attorney (APA No. 24, p. 283).

The check, dated August 10, 2018, (APA No. 25, p. 290), was posted by the

Fund on August 13, 2018, (APA No. 25, p. 291), and was not received by the Claimant until August 15, 2018. (APA No. 25, p. 291; APA No. 29, pp. 337-338).

S.C. Code §42-9-90 provides:

"... if any installment of compensation payable in accordance with the terms of an award by the commission is not paid by within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten percent thereof."

The penalty is mandatory, and is triggered when an award by the Commission "...is not paid by within fourteen days after it becomes due..."

"Paid" is a common and familiar word. The layman understands what it means to his mortgage company or his landlord. The Merriam-Webster dictionary defines "pay" as "to satisfy one's debts, duties or obligations; to make requital or payment". The dictionary goes on to define "paid" as the "past tense and past participle of 'pay'". The Commission is cognizant that many practitioners and carriers, are accustomed to using terms like "sent out", "issued", "authorized", "ordered", "processed", "requested", and any number of similarly ambiguous synonyms to describe the status of overdue payments of compensation; however, the statute uses no such vague language. Quite simply, the debt is satisfied when it is paid, not when it is "issued", "sent out", "ordered", or "processed".

The Fund was ordered by this Commission to make a payment to the Claimant, after credit for temporary total disability award, of eighty-nine thousand seven hundred seventeen and 22/100 (\$89,717.22) dollars. The statute provides that if they do not make that payment within three (3) weeks of the Order they shall incur a ten (10%) percent penalty.

The Fund knew the deadline would come, the Claimant's counsel warned the Fund of the deadline, and the Claimant's counsel offered to pick up the check.

The Defendants argue that the term "paid" in §42-9-90 should be read to describe the date on which the installment of compensation is posted to the Claimant. Defendants argue that they posted the payment on August 13, 2018, and that they cannot control when the payment of compensation is received after it has been posted.

The undersigned notes, however, that in this case, the Claimant's counsel offered to physically come to the State Fund and receive the check in hand, and the State Fund declined. Moreover, it is evident that there was no delay in the delivery of the check by the Post Office. The check was posted by the Fund on August 13, 2018 and received by the Claimant on August 15, 2018.

The Fund did not even post the payment until the date it was due; therefore, it could not have been received by the Claimant on the date it was due, no matter how quickly the Post Office acted. Therefore, the Fund's contentions that they cannot control the speed of delivery once posted is not persuasive.

In sum, pursuant to S.C. Code §42-9-90, the payment was due to be received by the Claimant on August 13, 2018. It was not. Thus, a penalty of ten (10%) percent is due.

* * *

ORDER

ORDERED that the State Accident Fund shall, pursuant to S.C. Code §42-9-90, pay to the Claimant a ten (10%) percent penalty in the amount of eight thousand nine hundred seventy-one and 72/100 (\$8,971.72) dollars for failure to timely pay the award of eighty-nine thousand seven hundred seventeen and 22/100 (\$89,717.22) dollars.

This appeal followed:

WE, THE APPELLATE PANEL, having reviewed the evidence of the record, the Single Commissioner's Order, and the briefs and oral arguments of the parties, hereby, AFFIRM, the Decision and Order of the Single Commissioner.

APPELLATE PANEL ANALYSIS/FINDINGS

Based upon the evidence the Single Commissioner's Order, and the briefs and oral arguments submitted by the respective parties pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING:

The Appellant Panel specifically adopts and reiterates, as if set out here in full and verbatim, the analysis and findings of the Single Commissioner. In particular, we find that the Single Commissioner's analysis of the operative language in the S.C. Code §42-9-90 is persuasive.

S.C. Code §42-9-90 provides:

"... if any installment of compensation payable in accordance with the terms of an award by the commission is not paid by within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten percent thereof."

The penalty is mandatory, and is triggered when an award by the Commission "... is not paid by within fourteen days after it becomes due...". (Emphasis added).

As the Single Commissioner held, "Paid" is a common and familiar word. The layman understands what it means to his mortgage company or his landlord. The Merriam-Webster dictionary defines "pay" as "to satisfy one's debts, duties or obligations; to make requital or payment". The dictionary goes on to define "paid" as the "past tense and past participle of 'pay'". The Commission is cognizant that many practitioners and carriers, are accustomed to using terms like "sent out", "issued", "authorized", "ordered", "processed", "requested", and any number of similarly ambiguous synonyms to describe the status of overdue payments of compensation; however, the statute uses no such vague language. Quite simply, the debt is satisfied when it is paid, not when it is "issued", "sent out", "ordered", or "processed".

The majority of the Panel agrees with the Single Commissioner that the Order is satisfied, that is, "paid" when the Carrier delivers money to the Claimant.

Put simply, a debt is paid when the payment is received, not when it is promised, not when payment is posted. This is the common understanding of the term, and the understanding that this Commission is bound to apply.

In dissent, our esteemed colleague points to a North Carolina Court of Appeals decision construing the term "paid" under the North Carolina Worker's Compensation Act. As the dissent correctly points out, South Carolina Courts frequently look to North Carolina's construction of their Worker's Compensation Act when there is lack of precedent in South Carolina. Certainly, the South

Carolina Worker's Compensation Act is modeled on North Carolina's Law. In Morrison v. Public Service Company of North Carolina, Inc., 643 S.E.2d 58 (N.C. Ct. App. 2007), the North Carolina Court of Appeals construed the term "paid" in North Carolina Gen. Stat. §97-18 which is mirrored by its South Carolina counterpart, S.C. Code §42-9-90. In Morrison the parties stipulated to a due date for a settlement payment and the Carrier mailed checks to the Plaintiff's Counsel on that date. The Morrison Court considered whether the Claimant should be awarded a ten percent (10 %) penalty pursuant to the North Carolina counterpart to S.C. Code §42-9-90 because the payments were not received until after the date they were due. In construing the word "paid", the North Carolina Court of Appeals found that definitions of the verb "to pay" center around the verb "to give", such as to give money in return for goods or services. The Court went onto reason that the term "to give" in turn means "to deliver in exchange or recompense, to accord, or to tender to another, to convey or offer for conveyance, or to execute and deliver". Morrison, 643 S.E.2d 58, 62.

Thus, the North Carolina Court reasoned that a late penalty applies "whenever 'any installment of compensation is not paid, [i.e., given, tendered, offered, or delivered] within 14 days after it becomes due', N.C. Gen. Stat. §97-18(g), as opposed to when payment is not received within fourteen (14) days." Morrison v. Public Serv. Co. of N.C., Inc. 643 S.E. 2d 58, 62.

The dissent here concludes that, in the absence of South Carolina precedent, this Commission should adopt the logic of the North Carolina Court of Appeals in construing the term "paid" and find that "pay" means "give", that "give" in turn means "tender", and that an item is tendered when it is offered unconditionally, not when it is received. Thus, under this logic, a debt is "paid" when payment is "tendered" or offered unconditionally; and one may "tender" payment by depositing it in the United States Post Office.

With due respect for the North Carolina Appellate Court, the majority regards this litany of:

"pay means give, give means tender, tender means unconditionally offer, mailed is unconditionally offered, therefore, paid means mailed" as exactly the kind of tortured construction of a plain and ordinary term that our Courts have long and consistently warned against.

As the Single Commissioner held, paid is a common and familiar word; the laymen understands what it means to his mortgage company or his landlord. Quite simply, paid does not mean "the check is in the mail".

Indeed, the North Carolina Courts, themselves, have questioned and limited the holding in Morrison. In Fowler v. Riddle 772 S.E. 2d 873 (N.C. Ct. App. 2015) the North Carolina Court of Appeals distinguished its decision of Morrison. Fowler involved the construction of North Carolina Rule 41 (d) which provides that if a Plaintiff who has once dismissed an action commences the action again based on the same claim against the same Defendant before the payment of costs for the action previously dismissed, the Court shall "make an Order for the payment of such costs by the Plaintiff within thirty (30) days and shall stay the proceedings in the action until the Plaintiff has complied with the Order." North Carolina Rule 41 (d) goes on to provide that "if the Plaintiff does not comply with the Order, the Court shall dismiss the action."

In Fowler, a Plaintiff dismissed and refiled an action based upon the same claim and the North Carolina trial court entered an order requiring that the Plaintiff "shall pay to the Clerk of Court [the costs of the action]..." It went onto provide "If Plaintiffs failed to make that payment within thirty (30) days of the date of this Order, this action would be subject to further order of this Court including dismissal."

The Plaintiff in Fowler posted a check for the costs to the Clerk of Court on the 29th day after the date of the Order. The check was received via US mail by the Clerk of Court on the 31st day. The trial court dismissed the Plaintiff's action for failure to comply with the Order requiring payment

within 30 days. Citing Morrison, the Plaintiff argued that mailing payment to the Clerk within 30 days (rather than actual receipt by the Clerk) satisfied their obligation under the Order. The Fowler Court distinguished Morrison; finding that it involved payment pursuant to a compromise settlement agreement, rather than an order. The Court found that "Unlike in Morrison where the parties stipulated to the due date of the settlement payment, in the present case the trial court entered an order requiring plaintiffs to make payment within thirty (30) days based on Rule 41 (d)." Fowler at 873. The Fowler Court went on to conclude that the plain and ordinary meaning of the word pay required actual delivery. The North Carolina Court held:

As previously stated, "[s]tatutory interpretation properly begins with an examination of the plain words in the statute, because [t]he legislative purpose of a statute is first ascertained by examining the statute's plain language." Wind v. City of Gastonia, 226 N.C. App. 180, 187, 738 S.E. 2d 780, 784 (2013) (citations and quotation marks omitted). The plain language of Rule 41 (d) requires "payment of such costs by the plaintiff within 30 days." We note that N.C. Gen. Stat. §1A-1 Rule 41 does not define "payment." "Nothing else appearing, the Legislature is presumed to have used the words of a statute to convey their natural and ordinary meaning. In the absence of a contextual definition, [*10] courts may look to dictionaries to determine the ordinary meaning of words within a statute." Perkins v. Arkansas Trucking Servs., 351 N.C. 634, 638, 528 S.E.2d 902, 904 (2000) (citations omitted).

Black's Law Dictionary defines "payment" as

1. Performance of an obligation, usu. by the delivery of money. ? Performance may occur by delivery and acceptance of things other than money, but there is payment only if money or other valuable things are given and accepted in partial or full discharge of an obligation. 2. The money or other valuable thing so delivered in satisfaction of an obligation.

Black's Law Dictionary 1150 (7th ed. 1999). Thus, according to the ordinary meaning of the term "payment," a plaintiff who voluntarily dismisses an action or claim must perform by delivering money, specifically the costs of the action, within thirty (30) days. "Payment" only occurs if the costs are "given and accepted" in full discharge of an obligation. Because plaintiffs failed to deliver the costs of the voluntarily dismissed action the defendants within thirty (30) days of the 17 February 2014 order, we affirm the 23 April 2014 order of the trial court dismissing plaintiffs' 8 January 2014 action.

Thus, when construing the word payment in the context of an order, the North Carolina Court

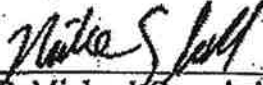
of Appeals, consulting Black's Law Dictionary, interpreted the word payment as to require the actual delivery of money, and found posting insufficient.

Here, as in Fowler, payment was due in satisfaction of an order, not in satisfaction of a settlement agreement, as was the case in Morrison. Even if North Carolina precedent was binding in the case of at bar, that North Carolina has distinguished the precedent of Morrison in cases involving orders rather than settlement agreements. However, North Carolina precedent is not binding on this Commission. While the majority acknowledges with approval our studied colleague's consultation of North Carolina jurisprudence on the question before us, (especially considering the fact that it was not presented by counsel for the parties), we are still constrained by South Carolina Law to apply the plain and ordinary meaning of the term "paid" chosen by the legislature without resulting to subtle or strained constructions of that decidedly everyday word.

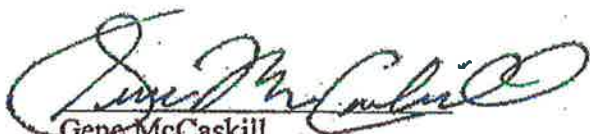
Payment is made when money is received. The State Fund had more than adequate opportunity to deliver the funds necessary to satisfy their obligation under the Order of this Commission in the time mandated by statute. They failed to do so, notwithstanding the fact that the Claimant's counsel offered to come to the Fund in person to receive the check on behalf of his client. Instead, the Fund elected to post the funds the day they were due. By statute, their delay resulted in a mandatory penalty.

For the foregoing reasons, the decision below is AFFIRMED.

IT IS SO ORDERED.



R. Michael Campbell, II


Gene McCaskill
Chair

Commissioner Melody L. James, dissenting.

The appellate courts of South Carolina have not addressed the meaning of the word "paid" in Sec. 42-9-90. A review of our sister state's, North Carolina, opinions, indicate that the North Carolina Court of Appeals has addressed the meaning of "paid" under their similar statute in Morrison v. Public Serv. Co. of N.C., Inc., 182 N.C.App. 707, 643 S.E.2d 58 (N.C. Ct. App. 2007). As such, I find this case law of North Carolina to be persuasive on this issue.

In Morrison, the North Carolina Court of Appeals held:

[T]he employer and administrator tendered or made the settlement payment within twenty-four days, as required to avoid late payment penalty, when employer and administrator mailed checks to claimant's counsel on *last day of the 24-day period, even though checks were received by counsel after expiration of the 24 day period.*" Morrison v. Public Serv. Co. of N.C., Inc., 182 N.C.App. 707, 713, 643 S.E.2d 58, 63 (emphasis added).

The North Carolina Industrial Commission entered an order on May 5, 2004, approving the parties' settlement agreement. Id. at 713, 643 S.E.2d at 63. The defendants were required to make payment within twenty-four days, so either on or before May 29, 2004. Id. May 29, 2004, however, fell on a Saturday and the following Monday was Memorial Day. Id. Thus, the payment deadline was extended to June 1, 2004. Id. See Morris v. L.G. Dewitt Trucking, Inc., 143 N.C.App. 339, 343, 545 S.E.2d 474, 476 (2001) (noting that pursuant to Workers' Compensation Rule 609(8), when the last day of the payment period falls on a weekend or legal holiday, the payment period is tolled until the next day that is not a Saturday, Sunday, or legal holiday). It was uncontested that the defendants mailed the checks to the claimant on June 1, 2004. Morrison, at 714, 643 S.E.2d at 63. The claimant's attorney received the checks on June 2nd and 3rd. Id. at 708, 643 S.E.2d at 60. The North Carolina Court of Appeals found that the defendants properly

tendered or made payment within the twenty-four day period, and thus, the Full Commission did not err in denying the claimant's motion for imposition of a late payment penalty. Id. at 714, 643 S.E.2d at 63.

In conclusion, in the absence of South Carolina precedent, this Commission should adopt the holding of Morrison that a benefit is "paid" upon the defendants mailing the check, even if the check is received by the claimant or their attorney outside the time frame. See Morrison v. Public Serv. Co. of N.C., Inc., 182 N.C.App. 707, 643 S.E.2d 58.

I RESPECTFULLY DISSENT.


Melody L. James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on August 29, 2019

G3
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1417071

Joseph Jefferson, Employee

Claimant,

vs.

South Carolina Department of
Transportation, Employer and State
Accident Fund, Carrier

Defendants.

HEARING:

Held in Sumter, South Carolina, on January 24, 2019

APPEARANCES:

Claimant represented by Stephen J. Wukela, Florence, SC

Defendants represented by Erica Loudin, Columbia, SC

PURPOSE OF HEARING:

To determine issues set forth in Forms 50 and 51 and any
other issues which may have timely come before the
Commission

DECISION AND ORDER:

By: Susan S. Barden, Commissioner

FILED:

February 25, 2019

I. STATEMENT OF THE CASE

This matter is before the Commission on Claimant's Form 50 seeking a ten (10%) percent penalty pursuant to S.C. Code '42-9-90 for the Carrier's failure to make payment of compensation under an award when due. The Claimant also seeks the payment of medical treatment provided by the authorized treating physician, along with attorney's fees and costs pursuant to S.C. Code '42-3-175.

On January 16, 2019, Claimant also filed a Motion captioned "Motion for Attorney's Fees and Costs".

At the hearing of January 24, 2019, the parties submitted APAs and offered arguments based on the evidence. The parties stipulated that no testimony was necessary and requested that the Commission decide the case based on the arguments and the APAs.

II. APA SUBMISSIONS

Claimant's APA Submissions:

APA #	PHYSICIAN/OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA#1- APA#18	Previously submitted at hearing on September 12, 2017			
APA#19	Decision and Order		03/09/16	214-227
APA#20	Decision and Order		03/01/18	228-248
APA#21	Dr. R. Joseph Healy		02/15/18- 08/20/18	249-258
APA#22	Letter from Dr. R. Joseph Healy addressed to Steve Wukela, Attorney at Law		05/16/18	259
APA#23	Appellate Panel Decision and Order		07/23/18	260-282
APA#24	Email Chain between Erica Loudin and Stephen Wukela		08/03/18- 08/14/18	283-289
APA#25	State Accident Fund Check and Envelope		08/10/18 08/13/18	290-291
APA#26	Carolinas Hospital System	Dr. R. Joseph Healy	04/18/18- 04/24/18	292-332

APA#27	Billing Statement	Carolinas Hospital System	04/18/18-04/24/18	333
APA#28	Medical Referral Note and attachment from Dr. R. Joseph Healy.		10/01/18	334-336
APA#29	Affidavit of Jean P Bailey, CLA		01/08/19	337-338

Defendants' APA Submissions/Exhibits:

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	PAGE
30. See APAs Previously submitted at hearing on September 12, 2017		
31. R. Joseph Jefferson, Carolina Health System	02/15/2018-10/02/2018	339-369
32. Life Care Psychology Group LLC	03/21/2018-11/21/2018	370-404

A. Check 1060122
B. Health Insurance Claim Form
C. Medical Referral to McLeod Health & Fitness Center and Medical Membership Info.

III. ANALYSIS/FINDINGS

A. S.C. Code §42-9-90, 10% Penalty.

By Order of the Workers' Compensation Commission Appellate Panel, filed and served by the Commission on July 23, 2018, (APA No. 23), the Commission ordered the State Accident Fund to pay the Claimant one hundred nine thousand three hundred ten and 33/100 (\$109,310.33) dollars which, after credit for temporary total disability benefits, left a total award of eighty-nine thousand seven hundred seventeen and 22/100 (\$89,717.22) dollars due as a result of the Panel's finding that the Claimant was totally and permanently disabled.

The evidence of the record reveals that on August 3, 2018, Claimant's counsel emailed defense counsel:

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It is my intention to advise him not to appeal and I am sure he will want to know what you all intend to do.
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Stephen
(APA No. 24, p. 287).

Defense counsel responded on August 8, 2018:

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Erica E. Loudin, Esquire
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On August 9, 2018, Claimant's counsel responded:

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Section 42-9-240 provides that compensation payable under an award is due seven days from the date of the award. Therefore, by operation of these two statutes, any award that is not paid within three weeks of the date of the award shall result in a penalty of 10%.

Given the fact that the award of \$109,000 was made on July 23, 2018 and the three weeks runs on August 13, (Monday), I am curious as to when the Fund will pay the award.

Please advise.

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(APA No. 24, p. 286).

Thus, as of August 9, 2018, the Commission's Order was seventeen (17) days old, both parties had indicated they did not intend to appeal, and the Claimant's counsel had made the Carrier aware of his position that, pursuant to the operation of S.C. Code '42-9-90 and '42-9-240, a penalty would accrue if the payment of the award was not made by August 13, four (4) days away.

The record reveals that on August 9 Claimant's counsel also wrote:

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Thus, the record establishes that by August 9, 2018, the Fund had no intention of appealing the award; they were aware of the Claimant's contention that a penalty would accrue if the award was not paid by August 13, and Claimant's counsel had offered to go to the Fund and pick up the check.

August 13 came and passed and the award check was not received. On August 14, 2018, Claimant's counsel wrote defense:

Erica:

Today is Tuesday, August 14, 2018.

I have not received a check from the State Fund in satisfaction of the Order of July 23, 2018.

As I indicated in my email of August 9, 2018, by virtue of SC Code

Section 42-9-90 and Section 42-9-240, a 10% penalty accrues to the judgment.

Please advise when I can expect to receive a check in satisfaction of the judgment, along with the penalty.

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The defense responded:

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The check, dated August 10, 2018, (APA No. 25, p. 290), was posted by the Fund on August 13, 2018, (APA No. 25, p. 291), and was not received by the Claimant until August 15, 2018. (APA No. 25, p. 291; APA No. 29, pp. 337-338).

S.C. Code ' 42-9-90 provides:

“... if any installment of compensation payable in accordance with the terms of an award by the commission is not paid by within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten percent thereof.”

The penalty is mandatory, and is triggered when an award by the Commission “...is not paid by within fourteen days after it becomes due...”.

“Paid” is a common and familiar word. The layman understands what it means to his mortgage company or his landlord. The Merriam-Webster dictionary defines “pay” as “to satisfy one’s debts, duties or obligations; to make requital or payment”. The dictionary goes on to define “paid” as the “past tense and past participle of ‘pay’”. The Commission is cognizant that many practitioners and carriers, are accustomed to using terms like “sent out”, “issued”, “authorized”,

"ordered", "processed", "requested", and any number of similarly ambiguous synonyms to describe the status of overdue payments of compensation; however, the statute uses no such vague language. Quite simply, the debt is satisfied when it is paid, not when it is "issued", "sent out", "ordered", or "processed".

The Fund was ordered by this Commission to make a payment to the Claimant, after credit for temporary total disability award, of eighty-nine thousand seven hundred seventeen and 22/100 (\$89,717.22) dollars. The statute provides that if they do not make that payment within three (3) weeks of the Order they shall incur a ten (10%) percent penalty.

The Fund knew the deadline would come, the Claimant's counsel warned the Fund of the deadline, and the Claimant's counsel offered to pick up the check.

The Defendants argue that the term "paid" in §42-9-90 should be read to describe the date on which the installment of compensation is posted to the Claimant. Defendants argue that they posted the payment on August 13, 2018, and that they cannot control when the payment of compensation is received after it has been posted.

The undersigned notes, however, that in this case, the Claimant's counsel offered to physically come to the State Fund and receive the check in hand, and the State Fund declined. Moreover, it is evident that there was no delay in the delivery of the check by the Post Office. The check was posted by the Fund on August 13, 2018 and received by the Claimant on August 15, 2018. The Fund did not even post the payment until the date it was due; therefore, it could not have been received by the Claimant on the date it was due, no matter how quickly the Post Office acted. Therefore, the Fund's contention that they cannot control the speed of delivery once posted is not persuasive.

In sum, pursuant to S.C. Code §42-9-90, the payment was due to be received by the

Claimant on August 13, 2018. It was not. Thus, a penalty of ten (10%) percent is due.

B. McLeod Health & Fitness Referral

The Claimant complains that on October 1, 2018 Dr. Healy, the Claimant's authorized treating physician, referred the Claimant to McLeod Health & Fitness for a "medical membership" to improve the symptoms of Claimant's cervical spondylosis and disc disease which Claimant argues is an accepted body part. (APA No. 28, pp. 334-336).

The Carrier refused to authorize this referral and Claimant seeks an Order requiring the Carrier to pay for the referral. Defendants argue that they should not be required to pay for a health membership for the Claimant because this service is not "medical treatment," as such; nor was it initially recommended by Dr. Healy. They argue that this service is a personal training membership with a gym. They contend that the fact that the gym is located in a hospital does not qualify the service as medical treatment. Moreover, they argue that they would have no way to assess the Claimant's progress.

APA No. 28, p. 336, attached to Dr. Healy's referral, defines medical membership as:

Medical Memberships are three-month individual membership, which are professional supervised and designed for individuals diagnosed with a medical condition. These memberships provide a positive resource for patients upon the exit of physical therapy and/or rehabilitative programs. These memberships are formatted to bridge the gap between therapy and general wellness through the use of educated and experienced professionals.

(APA No. 28, p. 336).

The description goes on to indicate that a three (3) month membership costs two hundred fifty-five and 00/100 (\$255.00) dollars per month.

The undersigned notes that the treatment by Dr. Healy is not, in fact, just a personal membership at a health club but, rather, a "medical membership," professionally supervised and designed for individual with a medical condition and only available on the referral of a physician.

The treatment is provided by McLeod Hospital's Health & Fitness Center and its cost of two hundred fifty-five (\$255.00) dollars per month is vastly less expensive than a typical course of physical therapy; therefore, the undersigned finds that the treatment will tend to lessen the Claimant's period of disability, and the Carrier shall provide one (1) three (3) month membership for services limited to treating Claimant's cervical spine only to improve Claimant's cervical spondylosis and disc disease. The Carrier shall not be required to provide treatment for other conditions or further medical membership except by further Order of the Commission upon evaluation further physician referral, or upon agreement of the parties.

**C. Unpaid Medical and Prescriptions and Attorney's Fees
and Fees and Costs Pursuant to S.C. Code §42-1-75.**

Claimant alleges that the Defendants have failed and refused to provide certain recommended medical and prescription treatment recommended by the authorized treating physician and that they should be ordered to pay for such treatment, along with attorney's fees and costs. In particular, Claimant alleges that:

On April 19, 2018, Dr. Healy admitted Claimant to Carolinas Hospital System after the Claimant presented at his office with headaches, blurred vision, and blood pressure of 220/125. (APA No. 26, pp. 292-332). While in the hospital, Dr. Healy concluded that "pain was felt to be responsible for blood pressure issues and cervical epidural was requested." (APA No. 26, p. 312). Cervical epidural along with a cervical MRI and other tests were performed at Carolinas Hospital System on the orders of Dr. Healy during that admission. Nevertheless, the Carrier has refused to pay for such treatment for an admitted condition by the authorized treating physician.

On May 16, 2018, Dr. Healy wrote a narrative describing the admission as a result of accelerated hypertension and a TIA and opined "cervical spine injury causing accelerated hypertension and as a consequence necessitating admission and a repeat epidural as well as

adjustment of anti-hypertensives.” Dr. Healy also noted “W/C is not paying for pt’s medications.” (APA No. 22, p. 256).

The Claimant contends that the Carrier has failed and refused to pay for this hospitalization and the Claimant has been billed over sixty thousand (\$60,000.00) dollars as a result. (APA No. 27, p. 333).

The Defendants argue that they are not responsible to pay for this hospitalization because they contend that the Claimant was admitted for a TIA and encephalopathy, not his cervical spine injury. Defendants contend that any treatment rendered to Claimant during the hospital stay for his cervical spine pain was rendered by Dr. Healy without seeking authorization from or giving notice to the Carrier. Defendants argue the May 16, 2018 narrative is not persuasive because Dr. Healy states his opinion in a personal letter to Claimant’s attorney – which they argue is not a medical note. Defendants deny Claimant’s allegations that they have refused to provide medical treatment recommended by Dr. Healy and assert that treatment for the cervical spine would have been authorized had it been requested. Defendants contend the hospitalization was for health issues unrelated to Claimant’s workers’ compensation claim that should be handled by Medicare.

The Defendants further argue that it is premature to address Claimant’s Motion for Attorney’s Fees and Costs pursuant to Regulation 67-215 which provides that a Commissioner may consider motions after opposing parties have had ten (10) days’ notice. It appears the instant Motion was filed with the Commission on January 16, 2019, (8 days before the 01/24/19 hearing), and served upon defense counsel, Erica Loudin, and upon the State Accident Fund on that same date.

Regulation 67-1602(D) provides that when a Form does not apply to particular issue a hearing may be requested by motion.

It is also evident that the Claimant sought the medical, attorney's fees and costs in question in his Form 50 and the Pre-hearing Brief, both of which were filed and served more than ten (10) days prior to the hearing. It is not clear that a Motion was actually required, given the Claimant's Forms 50 and 58 arguments seeking the same relief.

Nevertheless, in light of the Defendants' objections, the Claimant agreed to allow the issue of unpaid medical and penalties therefor contained in Claimant's Motion and Section II of Claimant's Pre-hearing Brief to be heard and decided in a separate hearing to be scheduled by the Commission. Moreover, the record on these issues shall remain open pending such separate hearing.

Therefore, it is,

ORDER

ORDERED that the State Accident Fund shall, pursuant to S.C. Code §42-9-90, pay to the Claimant a ten (10%) percent penalty in the amount of eight thousand nine hundred seventy-one and 72/100 (\$8,971.72) dollars for failure to timely pay the award of eighty-nine thousand seven hundred seventeen and 22/100 (\$89,717.22) dollars; It is,

FURTHER ORDERED that the Defendants shall pay for a three (3) month McLeod Health & Fitness membership referred by Dr. R. Joseph Healy; It is,

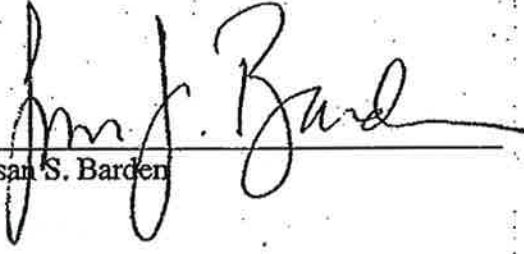
FURTHER ORDERED that the question of unpaid medical and prescriptions including the April 19, 2018 hospitalization and resulting medical treatment by Dr. R. Joseph Healy is held in abeyance until it can be heard by this Commission in an additional hearing which shall be scheduled; It is,

FURTHER ORDERED that the issue of attorney's fees and costs as a result of any unpaid medical or prescriptions which are the subject the Motion filed by Claimant's counsel on January 16, 2019, and his Form 58, Section II, is held in abeyance until it can be heard and decided at the additional hearing described above, which shall be scheduled by the Commission. And,

IT IS SO ORDERED.

Columbia, SC

February 25, 2019


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 February 25, 2019

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1417071

Joseph Jefferson, Employee,

Claimant/Appellate/Respondent,

vs.

South Carolina Department of Transportation,
Employer, and State Accident Fund, Carrier,

Defendants/Respondent/Appellants.

Appellate Panel Review held in Columbia,
South Carolina, May 21, 2018 notices
timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed
7/23, 2018

APPEARANCES:

Claimant/Appellant/Respondent represented by Stephen J. Wukela
of Florence, South Carolina

Defendants/Respondents/Appellants represented by Erica E. Loudin and Shannon T. Poteat
of Columbia, South Carolina

I. STATEMENT OF THE CASE

This matter was decided on Claimant's Form 50 seeking an award of permanency. This claim is three (3) years old.

Claimant has been an employee of the SC Department of Transportation for twenty (20) years. He suffered an admitted injury on September 17, 2014 when, while working for the SCDOT, he and five (5) of his co-workers were lifting a concrete mixer weighing six hundred seventy (679) pounds. (APA No. 8). While moving the mixer, its weight shifted and pinned the Claimant to the ground, with the drum striking him on the head. The record indicates that the Claimant does not have a clear recollection of whether he was knocked unconscious or not, however, he reported suffering dizziness, loss of balance, and pain in his head, neck and back. (APA No. 13, p. 191). The injury occurred at the end of the day's work and the Claimant went home. Claimant returned to work and continued to work between September 18 and October 5 with severe headaches, pain in his neck and back and both upper extremities, as well as numbness and tingling in the upper extremities.

The pain became so severe that on October 4 he present to McLeod Regional Medical Center. In addition to pain in his head, headaches, and pain in his neck and upper extremities and back, Claimant also had dizziness, blurred vision, loss of balance, nausea and vomiting. Claimant has not been able to return to work since. The Workers' Compensation Carrier did not initially authorize treatment and Claimant, on his own, saw his family doctor at East Clarendon Medical Center on October 20, 2014 with complaints of vertigo and severe headaches.

On October 20, 2014, the nurse practitioner at East Clarendon assessed neck pain, back pain, dizziness, high blood pressure, ordered x-rays of his cervical spine, thoracic spine, and lumbar spine and referred him to a neurologist. (APA No. 13, p. 192).

The State Fund did not authorize that treatment.

Claimant, on November 4, complained to his family doctor of loss of balance and dizziness again. The nurse practitioner again referred him to a neurologist which the State Fund still did not authorize. In fact, the Claimant alleges that the Fund obstructed his efforts to obtain the referral from his health insurance. (APA No. 13, p. 192). The Claimant saw his family doctor again on November 17, 2014 with neck pain and headaches so severe he felt nauseated. There he complained of tingling in his face consistent with headache, as well as dizziness and blurred vision. The family doctor continued the Claimant out of work until evaluated by a neurologist. (APA No. 13, pp. 192-193).

On November 25, 2014, at the State Fund's direction, Claimant presented to Doctor's Care. The doctor there returned him to full duties and told him to follow up with his primary care physician or neurologist. (APA No. 13, p. 193).

On December 15, 2014, three (3) months after the Claimant's head injury and two (2) months after his family doctor first recommended that he see a neurologist, the State Fund finally authorized Claimant to see neurologist, Dr. Joseph Healy. At that visit, the Claimant complained of head injury, loss of balance and disequilibrium, headaches, neck pain, and paresthesias in the upper extremities bilaterally. Dr. Healy noted positive Adson's maneuver, i.e. the loss of radial pulse in the arm when the head is rotated. Dr. Healy diagnosed closed head injury, cervical strain, post-traumatic headache, and thoracic outlet syndrome, and ordered cervical spine films, invasive cerebrovascular exam, noninvasive thoracic outlet studies, as well as an EEG and transcranial doppler to assess his headaches, and kept him out of work. (Id.).

The Fund accepted the claim as compensable and paid temporary total disability benefits beginning in December 2014.

On April 16, 2015, Dr. Healy performed an MRI of the Claimant's cervical spine which showed mild stenosis at C3-4, C4-5, and C5-6.

He admitted Claimant again on April 16, 2015 to Carolinas Hospital System with increased headaches, trouble talking, and hypertension. While in the hospital, Dr. Healy ordered a cervical epidural steroid injection, which provided the Claimant some temporary relief, and Dr. Healy indicated Claimant may need additional epidural steroid injections on discharge on April 18, 2015. (*Id.*).

On June 1, 2015 and August 27, 2015, Dr. Healy diagnosed the Claimant with depression and recommended counseling. The State Fund then ceased paying for Dr. Healy or any treatment recommended by Dr. Healy; including epidural steroid injections and Dr. Healy's referral to Life Care Counseling for counseling.

Claimant filed a Form 50 requesting a hearing to obtain this treatment, and on March 16, 2016, the Commission found that the Claimant suffered a compensable injury to his neck, head, and psyche and ordered treatment at the hands of Dr. Healy and psychologist Michael Roycroft, MA, LPC, NCC. (APA No. 13). The Claimant has treated with these providers since.

On April 25, 2017, Dr. Healy was deposed for a second time. Dr. Healy opined that the Claimant was at maximum medical improvement, (Depo. Healy, p. 9, line 22 - p. 10, line 2), and that he was restricted to no lifting and no ambulating. (Depo. Healy, p. 10, lines 3-10). He further testified that Claimant had persistent symptoms of closed head injury, dizziness, disequilibrium, headaches, neck pain, paresthesias, and fatigue. (Depo. Healy, p. 12, lines 10-15). He also testified that the Claimant requires a walker to balance. (Depo. Healy, p. 15, line 17 - p. 16, line 9).

On May 31, 2017, Counselor Roycroft was deposed regarding his diagnosis of depression and PTSD. He testified that Claimant's resulting symptoms included loss of memory and concentration and social isolation. (Depo. Roycroft, p. 33, line 6 - p. 34, line 19).

Vocational expert Adger Brown opined, without contradiction, that the Claimant is totally and permanently disabled. (APA No. 17). Claimant has been approved for disability retirement by the S.C. Retirement System, (APA No. 15), and for Social Security disability. (APA No. 14).

The Claimant requested a hearing, arguing that he has suffered physical brain damage, is totally and permanently disabled, and is entitled to lifetime indemnity benefits pursuant to S.C. Code §42-9-10(C). In the alternative, the Claimant argued that he is permanently and totally disabled and sought a lump sum payment of the balance of five hundred (500) weeks of indemnity benefits, along with lifetime medical pursuant to S.C. Code §42-9-10(A).

The Single Commissioner issued an Order finding the Claimant totally and permanently disabled within the meaning of §42-9-10(A) and awarding five hundred (500) weeks of benefits.

The Commissioner found:

FINDINGS OF FACT

After the hearing and giving careful consideration to the documentary evidence, medical records, and the testimony of the above individuals,

1. I find the parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with Joseph Jefferson being the Claimant, and SC Department of Transportation, being the Employer.

2. I find that pursuant to S.C. Code §42-1-40 the Claimant's average weekly wage is Four Hundred Eighty-Four and 06/100 (\$486.06) Dollars a week resulting in a compensation rate of Three Hundred Twenty-Two and 71/100 (\$322.71) Dollars.

3. I find that pursuant to S.C. Code §42-1-160 the Claimant sustained an injury by accident out of and in the course of his employment to the cervical discs of his neck, head and psyche on September 17, 2014, when, while trying to lift a concrete mixer with his co-workers, the weight of the mixer shifted and the mixer fell onto Claimant, striking him on the head.

4. I find that, pursuant to S.C. Code §42-15-20, the Employer received notice of the accident within ninety (90) days of the accident of September 17, 2014.

5. I find that pursuant to S.C. Codes §42-9-10 (A), and §42-15-60(c) the Defendants are responsible for all causally related medical treatment rendered to Claimant as a result of the accident, including medical treatment rendered by McLeod Regional Medical Center, Dr. Kate Smith, Andrew Gullledge, FNP, Carolinas Hospital System, Dr. R. Joseph Healy, and Michael Roycroft, MA, LPC, NCC, along with such reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care that the Claimant shall require, from the date of the injury to the date of this Order, and continuing for the Claimant's lifetime, without regard to any limitations in the Act.

6. I find that the Claimant reached maximum medical improvement on June 7, 2017.

7. I find that the Claimant is permanently and totally disabled pursuant to South Carolina Code §42-9-10 and is therefore entitled to five hundred (500) weeks of compensation at the weekly rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars.

8. I find that, pursuant to S.C. Code §42-9-301 and R. 67-1605, the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount set out herein.

RULINGS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, it is the determination of this Commissioner:

1. Under §42-1-130, the Claimant was a covered Employee at the time in question; and under §42-1-140, the Defendant-Employer was a covered Employer under the Act.

2. Under §42-1-40, the Claimant's average weekly wage is Four Hundred Eighty-four and 06/100 (\$484.06) Dollars a week resulting in a compensation rate of Three Hundred Twenty-Two and 71/100 (\$322.71) Dollars.

3. Under §42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment.

4. Under §42-15-20, the Claimant gave proper notice of the accident to the Employer.

5. Under §42-9-10(A) and §42-15-60(c), the Employer is required to furnish adequate and proper medical care for the Claimant's lifetime.

6. Under §42-9-10, the Claimant has reached maximum medical improvement and is totally and permanently disabled.

7. Under §42-9-10, the Claimant is totally and permanently disabled and is therefore entitled to Five Hundred (500) weeks of compensation at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars; in particular:

(a) The Claimant is entitled to temporary total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 140 week period of October 2, 2014, the first date of disability, through June 7, 2017, the date the Claimant reached maximum medical improvement, totaling Forty-five Thousand One Hundred Seventy-nine and 40/100 (\$45,179.40) Dollars; which amounts the Defendants have paid and shall receive credit, therefore;

(b) The Defendants shall pay Claimant permanent and total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 360 week period of June 7, 2017, the date of maximum medical improvement, through the balance of 500 weeks;

(c) The Defendants shall receive credit for total disability benefits paid after June 7, 2017.

8. Under S.C. Code §42-9-301 and R. 67-1605 the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars, said amount calculated at follows:

(a) One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars representing permanent total disability benefits for the 360 week period from June 7, 2017 for the balance of 500 weeks, said amount commuted to present value as of January 26, 2018, at 2.25%, in the lump sum amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars

(b) Defendants shall receive credit of this amount for all payments made after June 7, 2017.

(c) Said payment of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars shall be allocated as follows:

Thirty-six Thousand Four Hundred Thirty-six and 77/100 (\$36,436.77) Dollars toward the payment of attorney's fees and Two Thousand Two Hundred Fifty-four and 76/100 (\$2,254.76) Dollars toward the payment of costs and Seventy Thousand Six

Hundred Eighteen and 80/100 (\$70,618.80) Dollars in disability compensation benefits at the rate of Forty-eight and 04/100 (\$48.04) Dollars per week commencing January 26, 2018 for a period of 1470 weeks thereafter, which is the Claimant's life expectancy pursuant to §19-1-50 of the Code of Laws of South Carolina, 1976, As Amended, James v. Anne's, Inc., 2010 S.C. Lexis 340 (S.C. Oct. 25, 2010), and by the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

The Single Commissioner did not address whether the Claimant suffered "physical brain damage" within the meaning of §42-9-10(C). The Defendants appealed arguing the Claimant is not totally and permanently disabled. The Claimant cross-appealed arguing that the Commissioner should have found "physical brain damage".

EVIDENCE

I. STIPULATIONS

Counsel for the parties stipulated at the hearing before the Single Commissioner to the following:

1. That the purpose of the hearing is to determine issues set forth in the Forms 50 and 51 and any other issues which may timely come before the Commissioner;
2. Notice of the hearing was timely and properly served upon all parties of interest;
3. Venue, set in Sumter County, is proper.

II. EVIDENCE

Under the South Carolina Administrative Procedures Act, the following records were submitted into evidence before the Single Commissioner:

Claimant's APA Submissions:

APA #	PHYSICIAN/OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA#1		McLeod Regional Medical Center	10/04/14 10/05-07/14	1-10 11-20

	Billing Statements		10/22/14 01/01-02/15	21-27 28-39 40-44
APA#2	Dr. Kate Smith Celia M. Herring, APRN-C	East Clarendon Medical Center	10/20/14-11/25/14	45-57
APA#3	Andrew Gullledge, FNP	Doctors Care, Sumter	11/25/14	58-68
APA#4	Dr. R. Joseph Healy Billing Statement	R. Joseph Healy, MD, PA	12/15/14-09/22/15	69-96 97-110
APA#5	Carolinas Hospital System Dr. R. Joseph Healy Billing Statements		01/20-30/15 04/13-18/15	111-130 131-140 140a-m
APA#6	Michael Roycroft, MA, LPC, NCC Form 14-B	LifeCare Psychology	06/11/15-07/15/15	141-151
APA#7	Dr. Karl A. Lozanne	Columbia Neurosurgical Associates	08/18/15	152-159
APA#8	Specifications and diagram for Stow MS20H Plaster/Mortar Mixer			160-161
APA#9	Deposition of Dr. R. Joseph Healy		10/19/15	
APA#10	Dr. R. Joseph Healy		04/29/15-09/15/16	162-174
APA#11	Michael Roycroft, MA, LPC, NCC Form 14-B		04/20/16-05/24/17 06/05/17	175-187
APA#12	Dr. Andrew Rhea	Form 14-B	05/08/17	188
APA#13	Decision and Order SCWCC		03/16/16	189-203
APA#14	Notice of Award	Social Security Administration	11/22/15	204-208
APA#15	SC Retirement Systems	Notice of Retirement Eligibility	04/13/16	209-211
APA#16	Deposition of Dr. R. Joseph Healy		04/25/17	
APA#17	J. Adger Brown, Jr., MA, CDMS		05/23/17	212-213
APA#18	Deposition of Michael Roycroft, MA, LPC, NCC		05/31/17	

Defendants' APA Submissions:

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>PAGE</u>
Defendants APA 1: McLeod Regional Medical Center	10/04/14 -10/22/14	1 - 10
Defendants APA 2: Dr. Joseph Healy	01/05/15-06/17/15	11-67
Defendants APA 3: East Clarendon Medical Center	11/17/14-03/31/17	68-77
Defendants APA 4: LifeCare Psychology Group	07/25/16-07/26/17	78-189
Defendants APA 5: Florence Neurosurgery & Spine Center	11/15/16	190-191
Defendants APA 6: East Clarendon Medical Center Progress Note	12/02/16-02/16/17	192-205
Defendants APA 7: Barbara Sarb, DO	05/31/16-02/16/17	

Defendants' Exhibits:

<u>EXHIBITS</u>	<u>DATE OF REPORT</u>	<u>PAGE</u>
Defendants A: Joseph Jefferson Deposition	April 5, 2017	A1-A17
Defendants B: Dr. Joseph Healy Deposition, 2015	October 19, 2015	B1-B39
Defendants C: Dr. Joseph Healy Deposition, 2017	April 25, 2017	C1-C5
Defendants D: Michael Roycroft Deposition	May 31, 2017	D1-D18

TESTIMONY

In addition to the above set out APAs, Exhibits, and depositions, the Single Commissioner received into evidence the live testimony of the Claimant.

WE, THE APPELLATE PANEL, have reviewed the evidence of the record, the Single Commissioner's Order, and the briefs and oral arguments of the parties, and we hereby, AFFIRM WITH AMENDMENTS, the Decision and Order of the Single Commissioner.

APPELLATE PANEL FINDINGS OF FACT

Based upon the evidence submitted by the respective parties pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. We find the parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with Joseph Jefferson being the Claimant, and SC Department of Transportation, being the Employer.

This finding is based upon stipulation of the parties at the commencement of the hearing.

2. We find that pursuant to S.C. Code §42-1-40 the Claimant's average weekly wage is Four Hundred Eighty-Four and 06/100 (\$486.06) Dollars a week resulting in a compensation rate of Three Hundred Twenty-Two and 71/100 (\$322.71) Dollars.

This finding is based upon the Employer's Form 20.

3. We find that pursuant to S.C. Code §42-1-160 the Claimant sustained an injury by accident out of and in the course of his employment to the cervical discs of his neck, head and psyche on September 17, 2014, when, while trying to lift a concrete mixer with his co-workers, the weight of the mixer shifted and the mixer fell onto Claimant, striking him on the head.

This finding is the law of the case pursuant to the Commissioner's unappealed Order of March 16, 2016; with which findings the Appellate Panel concurs.

4. We find that, pursuant to S.C. Code §42-15-20, the Employer received notice of the accident within ninety (90) days of the accident of September 17, 2014.

This finding is based on the admissions of the Defendants in the Form 51.

5. We find that pursuant to S.C. Codes §42-9-10 (A), and §42-15-60(c) the Defendants are responsible for all causally related medical treatment rendered to Claimant as a result of the accident, including prior medical treatment rendered by McLeod Regional Medical Center, East Clarendon Medical Center, Doctors Care - Sumter, Carolinas Hospital System, Dr. R. Joseph Healy, and Michael Roycroft, MA, LPC, NCC, along with such reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care that the Claimant shall require, as a result of the work-related injuries, from the date of the injury to the date of this Order, and continuing for the Claimant's lifetime, without regard to any limitations in the Act.

6. We find that the Claimant reached maximum medical improvement on June 7, 2017.

This finding is based upon the April 25, 2017 deposition testimony of Dr. R. Joseph Healy, (Depo. Healy, p. 9, line 22 - p. 10, line 2); and the Form 14B of Michael Roycroft, MA, LPC, NCC dated June 5, 2017, (APA No. 11, p. 187).

7. We find that the Claimant is permanently and totally disabled pursuant to South Carolina Code §42-9-10(A) and is therefore entitled to five hundred (500) weeks of

compensation at the weekly rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars.

This finding is based on the above set out evidence. In particular, Claimant is 50 years old, has a 10th grade education, has poor reading and writing ability attributable to a combination of his limited education and his current difficulties with concentration and memory. (See Tr. p. 15, lines 2-7 and Claimants' APA No. 17, p. 215)

Claimant is a maintenance worker, has been employed with the SC Department of Transportation since 1986, over 30 years. (*Id.*)

Claimant has been out of work, receiving temporary total disability benefits, since October 9, 2014 as a result of this admitted accident when while trying to life a concrete mixer with his co-workers, the weight of the mixer shifted and fell onto the Claimant, striking him on the head.

The Claimant's work with the SC Department of Transportation involved, "some gas and stick welding, operated heavy equipment, such as trackhoes, graders, and loaders, drove the dump truck, did manual labor, such as pulling cables, digging trenches by hand, and smoothing and leveling asphalt. This type of work was semi-skilled employment typically performed at the medium-to-heavy level of physical exertion. The skills associated with this employment are limited but also task-specific, with limited, if any transferability to any other type of work." (APA No. 17, p. 215).

It is the law of the case that the Claimant suffered injuries to the cervical discs of his neck, head and his psyche. Dr. Healy, the Claimant's authorized treating neurologist, testified that as a result of the accident, the Claimant suffered a closed head injury along with symptoms of dizziness, disequilibrium, headaches, neck pain, paresthesias and fatigue. (Depo. Healy,

04/25/17 - p. 12, lines 5 - 15) Dr. Healy went on to testify that the Claimant was limited to sedentary work that he cannot walk, cannot lift and has poor balance. (Depo. Healy, 04/25/17 - p. 10, lines 3 - 10; p. 12, line 20 - p. 13, line 4). In fact, Dr. Healy testified that he requires the use of a walker. (Depo. Healy, p. 15, line 17 - p. 16, line 9).

On May 31, 2017, Counselor Roycroft was deposed regarding his diagnosis of depression and PTSD. He testified that Claimant's resulting symptoms included loss of memory and concentration and social isolation. (Depo. Roycroft, p. 33, line 6 - p. 34, line 19). Mr. Roycroft testified that his psychological conditions impaired him for work. (Depo. Roycroft, p. 28, lines 7-11; p. 33, line 6 - p. 34, line 19).

The Claimant offered the uncontradicted vocational opinion of J. Adger Brown, (APA No. 17), who found the Claimant was totally disabled.

Moreover, the Claimant argues that the State of South Carolina itself, (the Defendant in this case), concluded that the Claimant was unable to perform his previous employment with the SC Department of Transportation and awarded him disability retirement. (Tr. p. 9, lines 1-7 and APA No. 15).

The Claimant also points out that the Social Security Administration has found the Claimant totally and permanently disabled and entitled to Social Security benefits. (APA No. 14).

While the Appellate Panel is cognizant that the findings of the Social Security Administration and the South Carolina Retirement System are not binding on the Commission, and that their standards are different than the standard to be applied in this tribunal, their findings do support the uncontradicted opinion of the vocational expert who opined as to the Claimant's total and permanent disability.

The Defendants argue on appeal that the Claimant is not totally and permanently disabled, pointing to the opinions of neurosurgeons, Dr. Karl Lozanne and Dr. Andrew Rhea. In particular, Dr. Lozanne performed a neurosurgical evaluation on August 18, 2015 and opined that the Claimant could return to gainful employment. (APA No. 7, p. 157). Dr. Lozanne's neurosurgical opinion was in contrast to the opinion of the Claimant's treating neurologist, Dr. R. Joseph Healy, who testified on October 19, 2015, that the Claimant was unable to work and that he required psychological treatment. (See APA No. 4, pp. 82-84; APA No. 4, p. 93; Depo. Healy - 10/19/15 - p. 23, lines 8-11).

On November 24, 2015 at a previous hearing, this Commission was presented with the opinion of Dr. Healy, the Claimant's treating neurologist, that the Claimant was not able to work and required psychological treatment, contrasted with the opinion of Dr. Lozanne, the independent medical examiner, that the Claimant could return to work. (APA No. 13). The Commission weighed those opinions and found, on March 16, 2016, that the Claimant was totally disabled, entitled to weekly benefits and entitled to psychological treatment by Counselor Michael Roycroft.¹ (APA No. 13, pp 196-199). That is to say, on March 16, 2016, the Commission weighed Dr. Lozanne's opinion with Dr. Healy's and found Dr. Healy more persuasive, as we do here.

Moreover, the Commissioner's findings of March 16, 2016 were unappealed by the Fund and are the law of the case. Dr. Lozanne's independent medical evaluation is no more persuasive now that it was in March 2016.

¹ Commissioner Wilkerson was, in fact, the Hearing Commissioner who issued the March 6, 2016 Order. Commissioner Wilkerson advised the parties of this coincidence at the Appellate Panel hearing on May 21, 2018. Neither of the parties objected to Commissioner Wilkerson sitting on the instant hearing.

The Fund also relies on the second independent medical evaluation, this time by neurosurgeon, Dr. Andrew Rhea. Dr. Rhea's report, (Defendants' APA No. 5, p. 190), reflects that he "was asked to see him regarding cervical issues." (APA No. 5, p. 190). Dr. Rhea concluded that he "would not recommend surgical treatment for this Claimant." (APA No. 5, p. 191). He then completed a Form 14B indicating that the Claimant was able to return to work with no restrictions. (APA No. 12, p. 188).

There is no indication in the record that Dr. Rhea evaluated the Claimant's symptoms of headaches, dizziness and disequilibrium. This is not surprising given the fact that the Fund asked Dr. Rhea, a neurosurgeon, to consider whether the Claimant was a candidate for cervical spine surgery. The Claimant's treating neurologist did evaluate those symptoms and testified the Claimant required the use of a walker and limited the Claimant to sedentary work.

There is also no evidence that Dr. Rhea considered the Claimant's work related psychological symptoms of anxiety, depression, and post-traumatic stress disorder with resulting loss of memory, loss of concentration and social isolation; which the Claimant's authorized treating counselor Michael Roycroft, MA, LP, NCC testified, prevented the Claimant from working.

In any event, the Panel gives greater weight to the testimony of Dr. Healy, the Claimant's authorized treating neurologist, who testified that the Claimant's work related dizziness and disequilibrium limited him to sedentary work. (Depo. Healy - 04/25/17, p. 10, lines 3-10)

Moreover, from the psychological perspective alone, the uncontradicted testimony of Counselor Roycroft, Claimant's authorized treating counselor, was that the Claimant's severe

anxiety, depression, PTSD and resulting loss of memory, loss of concentration, social isolation and suicidal ideations leaves the Claimant unable to work. (APA No. 18)

Furthermore, this strong medical evidence by the authorized treating providers, which we find persuasive, supports the uncontradicted opinion of the Claimant's vocational expert that the Claimant is totally and permanently disabled.

8. We find that, pursuant to S.C. Code §42-9-301 and R. 67-1605, the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount set out herein.

This finding is based on the fact that the Claimant sought a lump sum payment of benefits to which the Defendants made no objection, and upon the Single Commissioner's unappealed finding that a lump sum payment and James v. Anne's allocation would benefit the Claimant given that he is a Social Security Disability beneficiary.

9. We find that the Claimant failed to meet the burden of proof necessary to establish that he suffered permanent and severe brain damage within the meaning of S.C. Code §42-9-10(C), Crisp v. South Co., Inc., 401 S.C. 627(2013), and Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124(2013).

In support of his contention that the Claimant has suffered permanent and severe brain damage, the Claimant argues that the law of the case is that the Claimant suffered injuries to the cervical discs of his neck, head and his psyche. The Claimant argues that Dr. Healy, the Claimant's authorized treating neurologist, testified that as a result of the accident, the Claimant suffered a closed head injury with symptoms of dizziness, disequilibrium, headaches, neck pain, paresthesias and fatigue. (Depo. Healy, 04/25/17, p. 12, lines 5-15; p. 17, line 22 – p. 18, line 3). The Claimant points out that Dr. Healy went on to testify that the Claimant was limited

to sedentary work that he cannot walk, cannot lift and has poor balance. (Depo. Healy; 04/25/17, p. 10, lines 3 - 10; p. 12, line 20 - p. 13, line 4). In fact, Dr. Healy testified that the Claimant requires the use of a walker. (Depo. Healy, p. 15, line 17 - p. 16, line 9).

While this is certainly evidence of a severe and debilitating work related condition, as we find above; we find that this evidence is not sufficient to meet the burden of establishing severe and permanent brain damage as necessary to trigger lifetime benefits under S.C. Code §42-9-10(C).

Dr. Healy ordered a number of various diagnostic tests, including cervical spine films, invasive cerebrovascular exam, noninvasive thoracic outlet studies, EEG and Transcranial Doppler exam, all of which were normal. Dr. Healy later testified at his deposition on October 19, 2015 that all objective findings and diagnostics of Claimant's head were normal, (Depo. Dr. Healy, 10/19/15, p. 31, lines 14 - 25), and that there was no neurological issue. (Depo. Dr. Healy, 10/19/15, p. 37, lines 7 - 17).

This evidence is insufficient to establish the high standard of permanent and severe brain damage within the meaning of S.C. Code §42-9-10(C), Crisp v. South Co., Inc., 401 S.C. 627(2013), and Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124(2013).

RULINGS OF LAW

In view of the above set out Findings of Fact and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS A MATTER OF LAW:

1. We find the parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with Joseph Jefferson being the Claimant, and SC Department of Transportation, being the Employer.

2. We find that pursuant to S.C. Code §42-1-40 the Claimant's average weekly wage is Four Hundred Eighty-Four and 06/100 (\$486.06) Dollars a week resulting in a compensation rate of Three Hundred Twenty-Two and 71/100 (\$322.71) Dollars.

3. We find that pursuant to S.C. Code §42-1-160 the Claimant sustained an injury by accident out of and in the course of his employment to the cervical discs of his neck, head and psyche on September 17, 2014, when, while trying to lift a concrete mixer with his co-workers, the weight of the mixer shifted and the mixer fell onto Claimant, striking him on the head.

4. We find that, pursuant to S.C. Code §42-15-20, the Employer received notice of the accident within ninety (90) days of the accident of September 17, 2014.

5. We find that pursuant to S.C. Codes §42-9-10 (A), and §42-15-60(c) the Defendants are responsible for all causally related medical treatment rendered to Claimant as a result of the accident, including prior medical treatment rendered by McLeod Regional Medical Center, East Clarendon Medical Center, Doctors Care Sumter, Carolinas Hospital System, Dr. R. Joseph Healy, and Michael Roycroft, MA, LPC, NCC, along with such reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care that the Claimant shall require, as a result of his work-related injuries, from the date of the injury to the date of this Order, and continuing for the Claimant's lifetime, without regard to any limitations in the Act.

6. We find that the Claimant reached maximum medical improvement on June 7, 2017.

7. We find that the Claimant is permanently and totally disabled pursuant to South Carolina Code §42-9-10 and is therefore entitled to five hundred (500) weeks of compensation at the weekly rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars.

8. We find that, pursuant to S.C. Code §42-9-301 and R. 67-1605, the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount set out herein.

9. We find that the Claimant failed to meet the burden of proof necessary to establish that he suffered permanent and severe brain damage within the meaning of S.C. Code §42-9-10(C), Crisp v. South Co., Inc., 401 S.C. 627(2013), and Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124(2013).

ORDER

IT IS, THEREFORE, ORDERED that the Form 50 regarding the Claimant's injury of September 17, 2014, under the Workers' Compensation File No. 1417071, is found to be a compensable accident. It is,

FURTHER ORDERED that the Claimant is permanently and totally disabled pursuant to South Carolina Code §42-9-10 and is therefore entitled to Five Hundred (500) weeks of compensation at the weekly rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars; in particular:

(a) The Claimant is entitled to temporary total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 140 week period of October 2, 2014, the first date of disability, through June 7, 2017, the date the Claimant reached maximum medical improvement, totaling Forty-five Thousand One Hundred Seventy-nine and

40/100 (\$45,179.40) Dollars; which amounts the Defendants have paid and shall receive credit, therefore;

(b) The Defendants shall pay Claimant permanent and total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 360 week period of June 7, 2017, the date of maximum medical improvement, through the balance of 500 weeks;

(c) The Defendants shall receive credit for total disability benefits paid after June 7, 2017.

FURTHER ORDERED that, pursuant to S.C. Code §42-9-301 and R.67-1605, the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars, said amount calculated as follows:

(a) One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars representing permanent total disability benefits for the 360 week period from June 7, 2017 for the balance of 500 weeks, said amount commuted to present value as of January 26, 2018, at 2.25%, in the lump sum amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars.

(b) The Defendants shall receive credit off this amount for all payments made after June 7, 2017.

FURTHER ORDERED that said lump sum payment of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars shall be allocated as follows:

Thirty-six Thousand Four Hundred Thirty-six and 77/100 (\$36,436.77) Dollars toward the payment of attorney's fees and Two Thousand Two Hundred Fifty-four and 76/100 (\$2,254.76) Dollars toward the payment of costs and Seventy Thousand Six Hundred Eighteen and 80/100 (\$70,618.80) Dollars in disability compensation benefits at the rate of Forty-eight and 04/100 (\$48.04) Dollars per week commencing January 26, 2018 for a period of 1470 weeks thereafter, which is the Claimant's life.

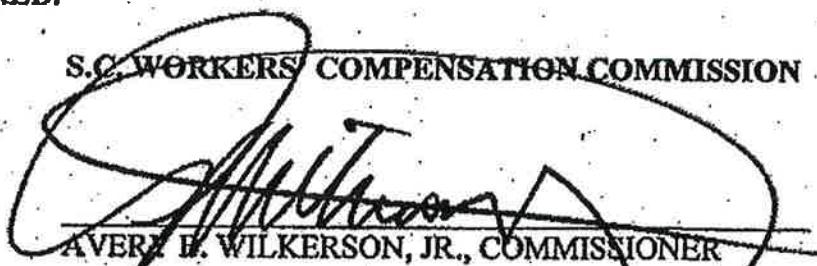
expectancy pursuant to §19-1-50 of the Code of Laws of South Carolina, 1976, As Amended, James v. Anne's, Inc., 2010 S.C. Lexis 340 (S.C. Oct. 25, 2010), and by the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

FURTHER ORDERED pursuant to S.C. Codes §2-9-10(A) and §42-15-60(c) the Defendants are responsible for all causally related medical treatment rendered to Claimant as a result of the accident, including prior medical treatment rendered by McLeod Regional Medical Center, East Clarendon Medical Center, Doctors Care - Sumter, Carolinas Hospital System, Dr. R. Joseph Healy, and Michael Roycroft, MA, LPC, NCC, along with such reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care that the Claimant shall require, as a result of his work-related injuries, from the date of the injury, to the date of this Order, and continuing for the Claimant's lifetime, without regard to any limitation in the Act.

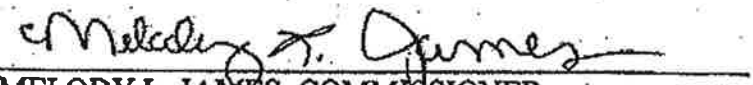
The Single Commissioner's Order of March 1, 2018, is, therefore,
AFFIRMED WITH AMENDMENTS.

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION


AVERY H. WILKERSON, JR., COMMISSIONER


GENE MCCASKILL, CHAIR


MELODY L. JAMES, COMMISSIONER

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By *Eugenia* on July 23, 2018

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NUMBER: 1417071

Joseph Jefferson, Employee

Claimant,

vs.

South Carolina Department of
Transportation, Employer and State
Accident Fund, Carrier

Defendants.

HEARING:

Held in Sumter, South Carolina, on September 12, 2017

APPEARANCES:

Claimant represented by Stephen J. Wukela, Florence, SC

Defendants represented by Ramie Shalabi, Columbia, SC

PURPOSE OF HEARING:

To determine issues set forth in Forms 50 and 51 and any
other issues which may have timely come before the
Commission

DECISION AND ORDER:

By: Aisha G. Taylor, Commissioner

FILED:

March 1, 2018

I. STIPULATIONS

Counsel for the parties stipulated at the hearing to the following:

1. That the purpose of the hearing is to determine issues set forth in the Forms 50 and 51 and any other issues which may timely come before the Commissioner;
2. Notice of the hearing was timely and properly served upon all parties of interest;
3. Venue, set in Sumter County, is proper.

II. EVIDENCE

Under the South Carolina Administrative Procedures Act, the following records were submitted into evidence:

Claimant's APA Submissions:

APA #	PHYSICIAN/OTHER	GROUP/AGENCY	DATE OF REPORT	PAGES
APA#1	Billing Statements	McLeod Regional Medical Center	10/04/14 10/05-07/14 10/22/14 01/01-02/15	1-10 11-20 21-27 28-39 40-44
APA#2	Dr. Kate Smith Celia M. Herring, APRN-C	East Clarendon Medical Center	10/20/14-11/25/14	45-57
APA#3	Andrew Gullede, FNP	Doctors Care, Sumter	11/25/14	58-68
APA#4	Dr. R. Joseph Healy Billing Statement	R. Joseph Healy, MD, PA	12/15/14-09/22/15	69-96 97-110
APA#5	Carolinas Hospital System Dr. R. Joseph Healy Billing Statements		01/20-30/15 04/13-18/15	111-130 131-140 140a-m
APA#6	Michael Roycroft, MA, LPC, NCC Form 14-B	LifeCare Psychology	06/11/15-07/15/15	141-151
APA#7	Dr. Karl A. Lozanne	Columbia Neurosurgical Associates	08/18/15	152-159
APA#8	Specifications and diagram for Stow MS20H Plaster/Mortar Mixer			160-161

APA#9	Deposition of Dr. R. Joseph Healy		10/19/15	
APA#10	Dr. R. Joseph Healy		04/29/15-09/15/16	162-174
APA#11	Michael Roycroft, MA, LPC, NCC Form 14-B		04/20/16-05/24/17 06/05/17	175-187
APA#12	Dr. Andrew Rhea	Form 14-B	05/08/17	188
APA#13	Decision and Order SCWCC		03/16/16	189-203
APA#14	Notice of Award	Social Security Administration	11/22/15	204-208
APA#15	SC Retirement Systems	Notice of Retirement Eligibility	04/13/16	209-211
APA#16	Deposition of Dr. R. Joseph Healy		04/25/17	
APA#17	J. Adger Brown, Jr., MA, CDMS		05/23/17	212-213
APA#18	Deposition of Michael Roycroft, MA, LPC, NCC		05/31/17	

Defendants' APA Submissions:

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>PAGE</u>
Defendants APA 1: McLeod Regional Medical Center	10/04/14 -10/22/14	1 - 10
Defendants APA 2: Dr. Joseph Healy	01/05/15-06/17/15	11-67
Defendants APA 3: East Clarendon Medical Center	11/17/14-03/31/17	68-77
Defendants APA 4: LifeCare Psychology Group	07/25/16-07/26/17	78-189
Defendants APA 5: Florence Neurosurgery & Spine Center	11/15/16	190-191
Defendants APA 6: East Clarendon Medical Center Progress Note	12/02/16-02/16/17	192-205
Defendants APA 7: Barbara Sarb, DO	05/31/16-02/16/17	

Defendants' Exhibits:

<u>EXHIBITS</u>	<u>DATE OF REPORT</u>	<u>PAGE</u>
Defendants A: Joseph Jefferson Deposition	April 5, 2017	A1-A17
Defendants B: Dr. Joseph Healy Deposition, 2015	October 19, 2015	B1-B39
Defendants C: Dr. Joseph Healy Deposition, 2017	April 25, 2017	C1-C5
Defendants D: Michael Roycroft Deposition	May 31, 2017	D1-D18

III. STATEMENT OF THE CASE

This matter is before the Commission on Claimant's Form 50 seeking an award of permanency. This claim is three (3) years old.

Claimant has been an employee of the SC Department of Transportation for twenty (20) years. He suffered an admitted injury on September 17, 2014 when, while working for the SCDOT, he and five (5) of his co-workers were lifting a concrete mixer weighing six hundred seventy (679) pounds. (APA No. 8). While moving the mixer, its weight shifted and pinned the Claimant to the ground, with the drum striking him on the head. The record indicates that the Claimant does not have a clear recollection of whether he was knocked unconscious or not, however, he reported suffering dizziness, loss of balance, and pain in his head, neck and back. (APA No. 13, p. 191). The injury occurred at the end of the day's work and the Claimant went home. Claimant returned to work and continued to work between September 18 and October 5 with severe headaches, pain in his neck and back and both upper extremities, as well as numbness and tingling in the upper extremities.

The pain became so severe that on October 4 he present to McLeod Regional Medical Center. In addition to pain in his head, headaches, and pain in his neck and upper extremities and back, Claimant also had dizziness, blurred vision, loss of balance, nausea and vomiting. McLeod Regional admitted the Claimant, performed a head CT which was read as normal; a CT of the abdomen and pelvis which were unremarkable; a CT of his chest which did not reveal any acute abnormalities. The consulted with neurologist, Dr. Michael Hodge, who ordered an MRI of the brain on October 6, 2014, which did not show any acute findings. The Claimant was discharged on October 7, 2014 with a primary diagnosis of acute labyrinthitis, i.e. an inflammation of the inner ear or nerves that connect the inner ear to the brain. (APA No. 13, pp. 191-192).

The Claimant was instructed by the physician at McLeod to be on bed rest, and follow up with his family doctor in one (1) week.

Claimant has not been able to return to work since October 9, 2014. The Workers' Compensation Carrier did not initially authorize treatment and Claimant, on his own, saw his family doctor at East Clarendon Medical Center on October 20, 2014 with complaints of vertigo and severe headaches.

On October 20, 2014, the nurse practitioner at East Clarendon assessed neck pain, back pain, dizziness, high blood pressure, ordered x-rays of his cervical spine, thoracic spine, and lumbar spine and referred him to a neurologist. (APA No. 13, p. 192).

The State Fund did not authorize that treatment.

The Claimant continued to see his family doctor and on October 22, 2014, when he was continuing to complain of severe headaches, pain in the top of his head radiating to his neck, x-rays of his neck and low back were performed at McLeod Regional Medical Center showing spondylosis but no fracture.

Claimant, on November 4, complained to his family doctor of loss of balance and dizziness again. The nurse practitioner again referred him to a neurologist which the State Fund still did not authorize. In fact, the Claimant alleges that the Fund obstructed his efforts to obtain the referral from his health insurance. (APA No. 13, p. 192). The Claimant saw his family doctor again on November 17, 2014 with neck pain and headaches so severe he felt nauseated. There he complained of tingling in his face consistent with headache, as well as dizziness and blurred vision. The family doctor continued the Claimant out of work until evaluated by a neurologist. (APA No. 13, pp. 192-193).

On November 25, 2014, at the State Fund's direction, Claimant presented to Doctor's Care. The doctor there returned him to full duties and told him to follow up with his primary care physician or neurologist. (APA No. 13, p. 193).

On December 15, 2014, three (3) months after the Claimant's head injury and two (2) months after his family doctor first recommended that he see a neurologist, the State Fund finally authorized Claimant to see Dr. Joseph Healy. At that visit, the Claimant complained of head injury, loss of balance and disequilibrium, headaches, neck pain, and paresthesias in the upper extremities bilaterally. Dr. Healy noted positive Adson's maneuver, i.e. the loss of radial pulse in the arm when the head is rotated. Dr. Healy diagnosed closed head injury, cervical strain, post-traumatic headache, and thoracic outlet syndrome, and ordered cervical spine films, invasive cerebrovasculare exam, noninvasive thoracic outlet studies, as well as an EEG and transcranial doppler to assess his headaches, and kept him out of work. (*Id.*)

The Fund accepted the claim as compensable and paid temporary total disability benefits beginning in December 2014.

On January 1, 2015, while home with his girlfriend, Claimant passed out and fell to the ground. His girlfriend, Sally Lesesne, took him to McLeod Regional Medical Center Emergency Room with complaints of headaches and dizziness. They followed him with a head CT where they found no evidence of acute intracranial hemorrhage and no acute intracranial abnormalities. (*Id.*)

On January 20, 2015, he presented to Dr. Healy's office. Dr. Healy noted the fall on January 1, noted that he had dizziness, slurred speech, and confusion. Dr. Healy admitted him to Carolinas Hospital System on January 25, 2015 for 24-hour EEG which showed no evidence of seizure and he was discharged with a rolling walker and a prescription for physical therapy.

Dr. Healy has continued to treat Claimant since that time with complaints of severe head and neck pain, dizziness. Dr. Healy admitted him again on April 13, 2015, at Carolinas Hospital System with those complaints where an EEG monitor was again performed. (APA No. 13, p. 194).

On April 16, 2015, Dr. Healy performed an MRI of the Claimant's cervical spine which showed mild stenosis at C3-4, C4-5, and C5-6.

He admitted Claimant again on April 16, 2015 to Carolinas Hospital System with increased headaches, trouble talking, and hypertension. While in the hospital, Dr. Healy ordered a cervical epidural steroid injection, which provided the Claimant some temporary relief, and Dr. Healy indicated Claimant may need additional epidural steroid injections on discharge on April 18, 2015. (*Id.*)

On June 1, 2015 and August 27, 2015, Dr. Healy diagnosed the Claimant with depression and recommended counseling. The State Fund then ceased paying for Dr. Healy or any treatment recommended by Dr. Healy; including epidural steroid injections and Dr. Healy's referral to Life Care Counseling for counseling.

Claimant filed a Form 50 requesting a hearing to obtain this treatment, and on March 16, 2016, the Commission found that the Claimant suffered a compensable injury to his neck, head, and psyche and ordered treatment at the hands of Dr. Healy and psychologist Michael Roycroft, MA, LPC, NCC. (APA No. 13) The Claimant treated with these providers over the next year.

On April 25, 2017, Dr. Healy was deposed for a second time. Dr. Healy opined that the Claimant was at maximum medical improvement, (Depo. Healy, p. 9, line 22 - p. 10, line 2), and that he was restricted to no lifting and no ambulating. (Depo. Healy, p. 10, lines 3-10). He further testified that Claimant had persistent symptoms of dizziness, disequilibrium, closed head injury,

headaches, neck pain, paresthesias, and fatigue. (Depo. Healy, p. 12, lines 10-15). He also testified that the Claimant requires a walker to balance. (Depo. Healy, p. 15, line 17 - p. 16, line 9).

On May 31, 2017, Counselor Roycroft was deposed regarding his diagnosis of depression and PTSD. He testified that Claimant's resulting symptoms included loss of memory and concentration and social isolation. (Depo. Roycroft, p. 33, line 6 - p. 34, line 19).

Vocational expert Adger Brown opined, without contradiction, that the Claimant is totally and permanently disabled. (APA No. 17). Claimant has been approved for disability retirement by the S.C. Retirement System, (APA No. 15), and for Social Security disability. (APA No. 14).

The Claimant contends that he has suffered physical brain damage, is totally and permanently disabled, and is entitled to lifetime indemnity benefits pursuant to S.C. Code §42-9-10(C). In the alternative, the Claimant contends that he is permanently and totally disabled and seeks a lump sum payment of the balance of five hundred (500) weeks of indemnity benefits, along with lifetime medical pursuant to S.C. Code §42-9-10 (A).

Claimant filed a Form 50 seeking permanency on August 24, 2016. This hearing was set for September 12, 2017, by notice dated July 25, 2017. Prior to the call of the case, Defendants moved to postpone the hearing in order to obtain a psychological IME, and to conduct discovery in light of the Claimant's vocational report dated May 23, 2017.

Claimant opposed the Motion, arguing:

The Defendants have had ample opportunity to obtain both in the long life of this case. This is admitted accident of September 17, 2014. After the authorized treating neurologist, Dr. Healy, recommended psychological treatment on June 1, 2015, and Defendants refused, the Claimant filed the first Form 50 in this claim dated July 30, 2015; alleging psychological injury and

seeking psychological treatment. In the meantime, the Claimant obtained psychological treatment, on his own, at the hands of Michael Roycroft, MA, LPC, MCC.

On November 24, 2015, the parties litigated among other things, Claimant's allegation of a psychological injury.

At that hearing, the Fund argued that, if the Commission found that the psychological condition was related, the Fund should be permitted to pick a psychologist separate from the one Claimant had been treating with for six (6) months at his own expense.

By Order of March 19, 2016, Commissioner Wilkerson found:

I find, as Dr. Healy testified, the Claimant's psychological condition is related to the injury. Further, The Fund had an opportunity to accept their authorized treating physician's recommendations and direct the Claimant's psychological care. They failed to do so.

Therefore, I find that the Claimant is entitled to psychological treatment by counselor, Michael Roycroft, MA, LPC, NCC. The fund is certainly entitled to obtain an Independent Medical Examination under §42-15-80. Nevertheless, I find that Dr. R. Joseph Healy and Michael Roycroft, MA, LPC, NCC, are authorized treating providers and that the Fund is responsible for their treatment for such additional time as will lessen the period of disability. (Order 03/19/16, pp. 10-11) (Emphasis added).

Thus, over 2 years ago, the authorized treating neurologist recommended psychological treatment. The Fund had the right and the opportunity to pick the psychologist.

They did nothing.

Over 21 months ago, the Commission designated a treating psychologist due to the Fund's failure to do so. The Commission specifically advised the Fund of their right to obtain an IME.

The Fund did nothing.

On February 6, 2017, over six (6) months ago, the parties mediated the case unsuccessfully, after which the Claimant's counsel notified the Defense of his intention to seek an award of total and permanent disability and offer a vocational opinion in support at hearing.

The Fund did nothing.

Three months ago, on May 31, 2017, the authorized treating psychologist testified at deposition, that the Claimant was at MMI and unable to work (as had the treating neurologist at deposition of April 25, 2017). The Claimant filed a Form 50 seeking total and permanent disability on June 5, 2017.

The Fund did nothing.

Now, having sat on their hands for over 2 years, on the eve of a hearing on permanency, and after the Claimant served them with a pre-hearing brief and APAs including the depositions of both treating providers and a vocational report, the Defendants ask the Court to postpone the hearing so that they can obtain a psychological IME and a competing vocational opinion.

The Fund has had ample opportunity to prepare their case. Their request should be denied.

By Order of September 7, 2017, the Undersigned denied the Defendants' Motion to Postpone, finding:

Defendants' Motion to Postpone is denied. I find Defendants were afforded due process and have had ample time prior to the September 12, 2017 hearing to complete discovery. By prior Order of Commissioner Wilkerson dated March 19, 2016, Defendants were advised of their right to obtain a psychological IME, which they failed to do. Likewise, I find Defendants have had notice of Claimant's pleading of permanent and total disability Form 50 Request for Hearing dated June 5, 2017. The hearing is currently set for September 12, 2017 in Sumter, South Carolina.

IV. FINDINGS OF FACT

After the hearing and giving careful consideration to the documentary evidence, medical records, and the testimony of the above individuals,

1. I find the parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with Joseph Jefferson being the Claimant, and SC Department of Transportation, being the Employer.

This finding is based upon stipulation of the parties at the commencement of the hearing.

2. I find that pursuant to S.C. Code §42-1-40 the Claimant's average weekly wage is Four Hundred Eighty-Four and 06/100 (\$486.06) Dollars a week resulting in a compensation rate of Three Hundred Twenty-Two and 71/100 (\$322.71) Dollars.

This finding is based upon the Employer's Form 20.

3. I find that pursuant to S.C. Code §42-1-160 the Claimant sustained an injury by accident out of and in the course of his employment to the cervical discs of his neck, head and psyche on September 17, 2014, when, while trying to lift a concrete mixer with his co-workers, the weight of the mixer shifted and the mixer fell onto Claimant, striking him on the head.

This finding is the law of the case pursuant to the Commissioner's unappealed Order of March 16, 2016; with which findings the undersigned Commissioner concurs.

4. I find that, pursuant to S.C. Code §42-15-20, the Employer received notice of the accident within ninety (90) days of the accident of September 17, 2014.

This finding is based on the admissions of the Defendants in the Form 51.

5. I find that pursuant to S.C. Codes §42-9-10 (A), and §42-15-60(c) the Defendants are responsible for all causally related medical treatment rendered to Claimant

as a result of the accident, including medical treatment rendered by McLeod Regional Medical Center, Dr. Kate Smith, Andrew Gullledge, FNP, Carolinas Hospital System, Dr. R. Joseph Healy, and Michael Roycroft, MA, LPC, NCC, along with such reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care that the Claimant shall require, from the date of the injury to the date of this Order, and continuing for the Claimant's lifetime, without regard to any limitations in the Act.

6. I find that the Claimant reached maximum medical improvement on June 7, 2017.

This finding is based upon the April 25, 2017 deposition testimony of Dr. R. Joseph Healy, (Depo. Healy, p. 9, line 22 - p. 10, line 2); and the Form 14B of Michael Roycroft, MA, LPC, NCC dated June 5, 2017, (APA No. 11, p. 187).

7. I find that the Claimant is permanently and totally disabled pursuant to South Carolina Code §42-9-10 and is therefore entitled to five hundred (500) weeks of compensation at the weekly rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars.

This finding is based on the above set out evidence. In particular, Claimant is 50 years old, has a 10th grade education, has poor reading and writing ability attributable to a combination of his limited education and his current difficulties with concentration and memory. (See Tr. p. 15, lines 2-7 and Claimants' APA No. 17, p. 215)

Claimant is a maintenance worker, has been employed with the SC Department of Transportation since 1986, over 30 years. (*Id*).

Claimant has been out of work, receiving temporary total disability benefits, since October 9, 2014 as a result of this admitted accident when while trying to life a concrete mixer with his co-workers, the weight of the mixer shifted and fell onto the Claimant, striking him on the head.

The Claimant's work with the SC Department of Transportation involved, "some gas and stick welding, operated heavy equipment, such as trackhoes, graders, and loaders, drove the dump truck, did manual labor, such as pulling cables, digging trenches by hand, and smoothing and leveling asphalt. This type of work was semi-skilled employment typically performed at the medium-to-heavy level of physical exertion. The skills associated with this employment are limited but also task-specific, with limited, if any transferability to any other type of work." (APA No. 17, p. 215).

It is the law of the case that the Claimant suffered injuries to the cervical discs of his neck, head and his psyche. Dr. Healy, the Claimant's authorized treating neurologist, testified that as a result of the accident, the Claimant suffered a closed head injury along with symptoms of dizziness, disequilibrium, headaches, neck pain, paresthasias and fatigue. (Depo. Healy, 04/25/17 - p. 12, lines 5 - 15). Dr. Healy went on to testify that the Claimant was limited to sedentary work that he cannot walk, cannot lift and has poor balance. (Depo. Healy, 04/25/17 - p. 10, lines 3 - 10; p. 12, line 20 - p. 13, line 4). In fact, Dr. Healy testified that he requires the use of a walker. (Depo. Healy, p. 15, line 17 - p. 16, line 9).

On May 31, 2017, Counselor Roycroft was deposed regarding his diagnosis of depression and PTSD. He testified that Claimant's resulting symptoms included loss of memory and concentration and social isolation. (Depo. Roycroft, p. 33, line 6 - p. 34, line 19). Mr. Roycroft

testified that his psychological conditions impaired him for work. (Depo. Roycroft, p. 28, lines 7-11; p. 33, line 6 - p. 34, line 19).

The Claimant offered the uncontradicted vocational opinion of J. Adger Brown, (APA No. 17), who found the Claimant was totally disabled.

Moreover, the Claimant argues that the State of South Carolina itself, (the Defendant in this case), concluded that the Claimant was unable to perform his previous employment with the SC Department of Transportation and awarded him disability retirement. (Tr. p. 9, lines 1-7 and APA No. 15).

The Claimant also points out that the Social Security Administration has found the Claimant totally and permanently disabled and entitled to Social Security benefits. (APA No. 14).

While this Commission is cognizant that the findings of the Social Security Administration and the South Carolina Retirement System are not binding on the Commission, and that their standards are different than the standard to be applied in this tribunal, their findings do support the uncontradicted opinion of the vocational expert who opined as to the Claimant's total and permanent disability.

The Defendants argue that the Claimant is not totally and permanently disabled, pointing to the opinions of neurosurgeons, Dr. Karl Lozanne and Dr. Andrew Rhea. In particular, Dr. Lozanne performed a neurosurgical evaluation on August 18, 2015 and opined that the Claimant could return to gainful employment. (APA No. 7, p. 157). Dr. Lozanne's neurosurgical opinion was in contrast to the opinion of the Claimant's treating neurologist, Dr. R. Joseph Healy, who testified on October 19, 2015, that the Claimant was unable to work and that he required

psychological treatment. (See APA No. 4, pp. 82-84; APA No. 4, p. 93; Depo. Healy - 10/19/15 - p. 23, lines 8-11).

On November 24, 2015 at a previous hearing, this Commission was presented with the opinion of Dr. Healy, the Claimant's treating neurologist, that the Claimant was not able to work and required psychological treatment, contrasted with the opinion of Dr. Lozanne, the independent medical examiner, that the Claimant could return to work. (APA No. 13). The Commission weighed those opinions and found, on March 16, 2016, that the Claimant was totally disabled, entitled to weekly benefits and entitled to psychological treatment by Counselor Michael Roycroft. (APA No. 13, pp. 196-199). That is to say, on March 16, 2016, the Commission weighed Dr. Lozanne's opinion with Dr. Healy's and found Dr. Healy more persuasive, as do I here.

Moreover, the Commissioner's findings of March 16, 2016 were unappealed by the Fund and are the law of the case. Dr. Lozanne's independent medical evaluation is no more persuasive now that it was in March 2016.

The Fund also relies on the second independent medical evaluation, this time by neurosurgeon, Dr. Andrew Rhea. Dr. Rhea's report, (Defendants' APA No. 5, p. 190), reflects that he "was asked to see him regarding cervical issues." (APA No. 5, p. 190). Dr. Rhea concluded that he "would not recommend surgical treatment for this Claimant." (APA No. 5, p. 191). He then completed a Form 14B indicating that the Claimant was able to return to work with no restrictions. (APA No. 12, p. 188).

There is no indication in the record that Dr. Rhea evaluated the Claimant's symptoms of headaches, dizziness and disequilibrium. This is not surprising given the fact that the Fund asked Dr. Rhea, a neurosurgeon, to consider whether the Claimant was a candidate for cervical spine

surgery. The Claimant's treating neurologist did evaluate those symptoms and testified the Claimant required the use of a walker and limited the Claimant to sedentary work.

There is also no evidence that Dr. Rhea considered the Claimant's work related psychological symptoms of anxiety, depression, and post-traumatic stress disorder with resulting loss of memory, loss of concentration and social isolation; which the Claimant's authorized treating counselor Michael Roycroft, MA, LP, NCC testified, prevented the Claimant from working.

In any event, the undersigned gives greater weight to the testimony of Dr. Healy, the Claimant's authorized treating neurologist, who testified that the Claimant's work related dizziness and disequilibrium limited him to sedentary work. (Depo. Healy - 04/25/17, p. 10, lines 3-10)

Moreover, from the psychological perspective alone, the uncontradicted testimony of Counselor Roycroft, Claimant's authorized treating counselor, was that the Claimant's severe anxiety, depression, PTSD and resulting loss of memory, loss of concentration, social isolation and suicidal ideations leaves the Claimant unable to work. (APA No. 18)

Furthermore, this strong medical evidence by the authorized treating providers, which I find persuasive, supports the uncontradicted opinion of the Claimant's vocational expert that the Claimant is totally and permanently disabled.

8. I find that, pursuant to S.C. Code §42-9-301 and R. 67-1605, the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount set out herein.

This finding is based on the fact that the Claimant sought a lump sum payment of benefits to which the Defendants made no objection, and upon the Commissioner's finding that a lump

sum payment and James v. Anne's allocation would benefit the Claimant given that he is a Social Security Disability beneficiary.

V. RULINGS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, it is the determination of this Commissioner:

1. Under §42-1-130, the Claimant was a covered Employee at the time in question; and under §42-1-140, the Defendant-Employer was a covered Employer under the Act.
2. Under §42-1-40, the Claimant's average weekly wage is Four Hundred Eighty-four and 06/100 (\$484.06) Dollars a week resulting in a compensation rate of Three Hundred Twenty-Two and 71/100 (\$322.71) Dollars.
3. Under §42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment.
4. Under §42-15-20, the Claimant gave proper notice of the accident to the Employer.
5. Under §42-9-10(A) and §42-15-60(c), the Employer is required to furnish adequate and proper medical care for the Claimant's lifetime.
6. Under §42-9-10, the Claimant has reached maximum medical improvement and is totally and permanently disabled.
7. Under §42-9-10, the Claimant is totally and permanently disabled and is therefore entitled to Five Hundred (500) weeks of compensation at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars; in particular:
 - (a) The Claimant is entitled to temporary total disability benefits at the rate of Three Hundred Twenty-two and

71/100 (\$322.71) Dollars per week for the 140 week period of October 2, 2014, the first date of disability, through June 7, 2017, the date the Claimant reached maximum medical improvement, totaling Forty-five Thousand One Hundred Seventy-nine and 40/100 (\$45,179.40) Dollars; which amounts the Defendants have paid and shall receive credit, therefore;

(b) The Defendants shall pay Claimant permanent and total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 360 week period of June 7, 2017, the date of maximum medical improvement, through the balance of 500 weeks;

(c) The Defendants shall receive credit for total disability benefits paid after June 7, 2017.

8. Under S.C. Code §42-9-301 and R. 67-1605 the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars, said amount calculated at follows:

(a) One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars representing permanent total disability benefits for the 360 week period from June 7, 2017 for the balance of 500 weeks, said amount commuted to present value as of January 26, 2018, at 2.25%, in the lump sum amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars.

(b) Defendants shall receive credit of this amount for all payments made after June 7, 2017.

(c) Said payment of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars shall be allocated as follows:

Thirty-six Thousand Four Hundred Thirty-six and 77/100 (\$36,436.77) Dollars toward the payment of attorney's fees and Two Thousand Two Hundred Fifty-four and 76/100 (\$2,254.76) Dollars toward the payment of costs and Seventy Thousand Six Hundred Eighteen and 80/100 (\$70,618.80) Dollars in disability compensation benefits at the rate of Forty-eight and 04/100 (\$48.04) Dollars per week commencing January 26, 2018 for a period of 1470 weeks

thereafter, which is the Claimant's life expectancy pursuant to §19-1-50 of the Code of Laws of South Carolina, 1976, As Amended, James v. Anne's, Inc., 2010 S.C. Lexis 340 (S.C. Oct. 25, 2010), and by the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

ORDER

IT IS, THEREFORE, ORDERED that the Form 50 regarding the Claimant's injury of September 17, 2014, under the Workers' Compensation File No. 1417071, is found to be a compensable accident. It is,

FURTHER ORDERED that the Claimant is permanently and totally disabled pursuant to South Carolina Code §42-9-10 and is therefore entitled to Five Hundred (500) weeks of compensation at the weekly rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars; in particular:

(a) The Claimant is entitled to temporary total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 140 week period of October 2, 2014, the first date of disability, through June 7, 2017, the date the Claimant reached maximum medical improvement, totaling Forty-five Thousand One Hundred Seventy-nine and 40/100 (\$45,179.40) Dollars; which amounts the Defendants have paid and shall receive credit, therefore;

(b) The Defendants shall pay Claimant permanent and total disability benefits at the rate of Three Hundred Twenty-two and 71/100 (\$322.71) Dollars per week for the 360 week period of June 7, 2017, the date of maximum medical improvement, through the balance of 500 weeks;

(c) The Defendants shall receive credit for total disability benefits paid after June 7, 2017.

FURTHER ORDERED that, pursuant to S.C. Code §42-9-301 and R.67-1605, the Claimant is entitled to a lump sum payment of the above set out benefits in the total amount of

One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars, said amount calculated as follows:

(a) One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars representing permanent total disability benefits for the 360 week period from June 7, 2017 for the balance of 500 weeks, said amount commuted to present value as of January 26, 2018, at 2.25%, in the lump sum amount of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars.

(b) The Defendants shall receive credit off this amount for all payments made after June 7, 2017.

FURTHER ORDERED that said lump sum payment of One Hundred Nine Thousand Three Hundred Ten and 33/100 (\$109,310.33) Dollars shall be allocated as follows:

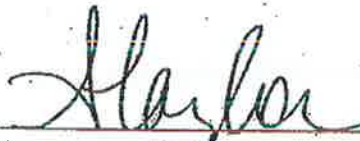
Thirty-six Thousand Four Hundred Thirty-six and 77/100 (\$36,436.77) Dollars toward the payment of attorney's fees and Two Thousand Two Hundred Fifty-four and 76/100 (\$2,254.76) Dollars toward the payment of costs and Seventy Thousand Six Hundred Eighteen and 80/100 (\$70,618.80) Dollars in disability compensation benefits at the rate of Forty-eight and 04/100 (\$48.04) Dollars per week commencing January 26, 2018 for a period of 1470 weeks thereafter, which is the Claimant's life expectancy pursuant to §19-1-50 of the Code of Laws of South Carolina, 1976, As Amended, James v. Anne's, Inc., 2010 S.C. Lexis 340 (S.C. Oct. 25, 2010), and by the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

FURTHER ORDERED pursuant to S.C. Codes §2-9-10(A) and §42-15-60(c) the Defendants are responsible for all causally related medical treatment rendered to Claimant as a result of the accident, including medical treatment rendered by McLeod Regional Medical Center, Dr. Kate Smith, Andrew Gullledge, FNP, Carolinas Hospital System, Dr. R. Joseph Healy, and Michael Roycroft, MA, LPC, NCC, along with such reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment

or care that the Claimant shall request, from the date of the injury, to the date of this Order, and continuing for the Claimant's lifetime, without regard to any limitation in the Act.

No hearing costs are assessed in this instance.

S.C. WORKERS' COMPENSATION COMMISSION



Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

March 1, 2018

By: Renee Smith, Administrative Assistant to Commissioner Taylor

WUKELA LAW FIRM

Steve Wukela, Jr.
Benjamin D. Moore
Christi B. McDaniel
Stephen J. Wukela
Patrick J. McLaughlin
Pheobe A. Clark
Frank C. Swaggard

403 Second Loop Road
P.O. Box 13057
Florence, SC 29504-3057

(843) 669-5634
FAX (843) 669-5150

August 27, 2018

Honorable Amy Bracy
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia SC 29202-1715

Re: WCC File No. 1417071
Claimant: Joseph Jefferson
Employer: SCDOT
Date of Accident: 09/17/14

Dear Ms. Bracy:

Please be advised that this office represents the Claimant, Joseph Jefferson, regarding the above-entitled claim against the South Carolina Department of Transportation. This office was retained to represent the Claimant on May 7, 2015.

Enclosed please find an original and one (1) copy of a Form 50 in this matter, which I would appreciate your filing. Please note that we are requesting a hearing at this time. I have also enclosed our office check in the sum of Twenty-Five (\$25.00) Dollars representing the filing fee.

I am, by copy of this letter, serving the Employer and the Carrier in this matter with the Form 50.

With kind regards, I am

Sincerely,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:jpb
Enclosures

cc: SC Department of Transportation
PO Box 191
Columbia SC 29202

Erica E. Loudin
Shannon T. Poteat
3600 Forest Drive, Ste. 204
Columbia SC 29204

SC State Accident Fund
PO Box 102100
Columbia SC 29221



Claimant's Name: Joseph Jefferson SSN: 250-21-9249 Employer's Name: SC Department of Transportation
Address: 1295 Narrow Paved Road Address: PO Box 191
City: Lynchburg State: SC Zip: 29080 City: Columbia State: SC Zip: 2920
Home Phone: () Work Phone: () Insurance Carrier: SC State Accident Fund

Preparer's Name: Stephen J. Wukela Law Firm: Wukela Law Firm Preparer's Phone #: 843-669-5634

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: 09-17-14

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☒ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to the cervical discs of his neck, his head, brain, and psyche on 09/17/14 in Sumter County, State of South Carolina.
2. Body part(s) affected are: the cervical discs of his neck, his head, brain, and psyche.
Briefly describe how the accident occurred. Claimant and co-workers lifted a concrete mixer to move to a different area of the job site; while moving the concrete mixer, the weight shifted and the mixer fell onto Claimant, striking him in the head.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 09-17-14 in the following manner: Told lead man and supervisor on 09-18-14; supervisor told Claimant that he already knew.

☒ 7. Due to injury, the claimant is in need of (check one):

☒ (a) medical examination and treatment for: the cervical discs of his neck, his head, brain, and psyche

☒ (b) additional medical examination and treatment for: the cervical discs of his neck, his head, brain, and psyche

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
Various dates and times from date of accident through present date

☒ 9. Due to the Injury, the Claimant has permanent disability of the following nature and extent (check one):

☒ (1) General Disability: ☒ Total ☐ Partial

☒ (2) Specific Disability: ☒ Total ☐ Partial ☐ (3) Wage Loss

9a. ☐ A determination of permanent disability is premature at this time.

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the Injury, the Claimant was paid weekly wages of \$484.06, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
None other than this Employer

11. Further grounds or unusual aspects of claim: Failure to provide medical; failure to pay medical; Claimant requests a 10% penalty pursuant to §42-9-90 for failure to timely pay an award.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident: Dr. Kate Smith; Doctors' Care, Sumter, SC; McLeod Regional Medical Center; Carolinas Hospital System; Dr. R. Joseph Healy; LifeCare, Psychology Group, Florence SC

11b. To the best of your knowledge, did you have any prior permanent disability? No If yes, describe:

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: 30 minutes

☒ 13b. I am requesting a hearing. A \$25 fee is required.

☐ Mediation

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

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

I certify I have reviewed this document pursuant to Reg. 67-211 by delivering a copy to SCDOT, PO Box 191, Columbia, SC 29202; Paige Hilton, SC State Accident Fund, PO Box 10210, Columbia, SC 29221; Erica E. Loudin, 3600 Forest Drive, Suite 204, Columbia, SC 29204, on the 27 day of August, 2014, by ☐ in person ☒ certified mail ☐ personal service.

I verify the content of this form is accurate and true to the best of my knowledge.

Preparer's Signature: Stephen J. Wukela Attorney for Claimant Stephen@wukelalaw.com
Title: Email: Date: 8/27/18

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-605 as well as Reg. 67-1801.

WCC Form 50
Revised 7/13

50

Employee's Notice of Claim and/or
Request for Hearing

CERTIFICATE OF SERVICE

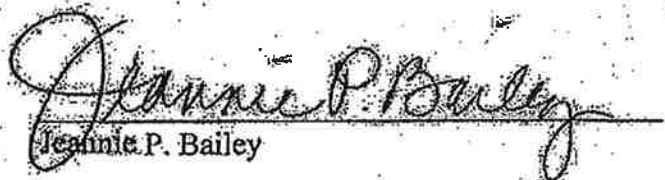
The undersigned, Jeannie P. Bailey, of the Wukela Law Firm, hereby certifies that on the 27 day of August, 2018, she did place in an envelope, with first class postage prepaid, a copy of the Form 50 regarding Joseph Jefferson v. SC Department of Transportation WCC File No. 1417071, and deposited same in the United States Mail. Said envelope being addressed to the following person(s):

Honorable Amy Bracy
Judicial Director
SC Workers' Compensation Commission
PO Box 1715
Columbia SC 29202-1715

SC Department of Transportation
PO Box 191
Columbia SC 29202

Ms. Page Hilton
Attorney at Law
SC State Accident Fund
PO Box 102100
Columbia SC 29221

Erica E. Loudin, Esquire
Shannon T. Poteat
Attorneys at Law
3600 Forest Drive, Suite 204
Columbia SC 29204


Jeannie P. Bailey

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE

CHARLESTON

COLUMBIA

CHARLOTTE

RALEIGH

ATLANTA

MYRTLE BEACH

Erica E. Loudin
Direct (803) 227-2894
Fax (803) 782-2527
eeloudin@wjlaw.net

3600 Forest Drive, Suite 204
Columbia, SC 29204
www.wjcbaw.com

September 26, 2018

Via E-mail

Judicial Analysts

South Carolina Workers' Compensation Commission

P.O. Box 1715

Columbia, SC 29202

Re: Joe Jefferson vs. SC Department of Transportation
WCC File No.: 1417071 DOI: 9/17/2014
Carrier: State Accident Fund - Claim No.: 2014-003316
WJC&B File No.: 0385.01248

Dear Judicial Analysts:

Enclosed please find defendants' Form 51 in the above-referenced matter. By copy of this correspondence, a copy of our Form 51 is being provided directly to Stephen J. Wukela, claimant's counsel.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



Erica E. Loudin

BEL/cdl

Enclosure

cc (w/enclosure): Stephen J. Wukela, Esquire (via e-mail)
Mrs. Larisa Benson (via e-mail)



Claimant's Name: Joseph Jefferson SSN: 250-21-9249 Employer's Name: South Carolina Department of Transportation
Address: 1295 Narrow Paved Road Address: PO Box 191
City: Lynchburg State: SC Zip: 29080 City: Columbia State: SC Zip: 29202
Home Phone: _____ Work Phone: _____ Insurance Carrier: State Accident Fund
Preparer's Name: Erica E. Loudin Law Firm: Willson Jones Carter & Baxley, P.A. Preparer's Phone #: (803) 227-2894

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

Date of Injury or Illness: 9/17/2014

1. It is ☒ Admitted ☐ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Defendants admit injuries to the head, neck, and psyche. All other alleged injuries are denied.
2. It is ☒ Admitted ☐ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See above No. 1.
3. It is ☒ Admitted ☐ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See above No. 1.
4. It is ☒ Admitted ☐ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See above No. 1.
5. It is ☒ Admitted ☐ Denied notice of injury was given the employer. The reasons for denial are:
See above No. 1.
6. It is ☐ Admitted ☒ Denied the employee ☒ Needs ☒ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
Claimant is currently receiving authorized treatment.
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
Claimant received award of permanent and total disability benefits.
8. It is ☒ Admitted ☐ Denied the employee is permanently disabled. The reasons for denial are:
Pursuant to Appellate Panel Decision & Order filed 7/23/18
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement
10. It is contended that an average weekly wage of \$ 484.04 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and to assert defenses as they become aware of them. Defendants deny Claimant's entitlement to 10% penalty pursuant to §42-9-90 because all disability benefits were timely paid to claimant. This matter was previously litigated to conclusion and Defendants contend that claimant's subsequent request for the penalty is frivolous. Therefore, Defendants are seeking payment of legal costs incurred to defend this action.

☐ Mediation

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

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Stephen J. Wukela, Esquire/Judicial Analysis
Address Stephen@wukelalaw.com/judicialanalysis@wcc.sc.gov on the 26th day of September 2018, by:
☐ first class postage ☐ certified mail ☐ personal service ☒ electronic service

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Erica E. Loudin
Title

eloudin@wjlaw.net
Email

9/26/18
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1417071

Joe Jefferson,)
Claimant,)
v.)
South Carolina Department of)
Transportation,)
Employer,)
and)
State Accident Fund,)
Carrier/Defendants.)

FULL COMMISSION HEARING

Monday, June 17, 2019
2:59 p.m. - 3:17 p.m.

The Full Commission Hearing was heard before Commissioners Melody L. James, T., R. Michael Campbell, II, and Gene McCaskill; Chair, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Panel A, Columbia, South Carolina, on the 17th day of June, 2019, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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 Attorney for the Claimant/Respondent

Erica E. Loudin, Esquire
 Willson, Jones, Carter & Baxley, P.A.
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 Columbia, South Carolina 29204
 Attorney for the Defendants/Appellants

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EXHIBITS

(No Exhibits were marked at this hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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CALL TO ORDER:

COURT REPORTER: Today is June 17th, 2019. This is South Carolina Workers' Compensation Case Number 1417071. This is the case of Joe Jefferson, Claimant, versus South Carolina Department of Transportation and State Accident Fund, the Carrier. The Appellant is the Defendant, represented by Erica Loudin. The Respondent is represented by Stephen Wukela. Each side is allowed 10 minutes for oral argument and the appellant three minutes in reply. You are requested to argue the grounds of exceptions and stay within the record.

COMMISSIONER MCCASKILL: All right. Ms. Loudin?

DEFENDANT'S/APPELLANT'S POSITION:

MS. LOUDIN: Thank you, Your Honor. May it please the Court. My name is Erica Loudin and I am here on behalf of the Defendant/Appellants in this matter. Today we're here to talk about just one word, specifically, the meaning of the word paid, and as it applies to section 42-9-90 and the 10 percent penalty that is imputed for untimely payments of a Commission award. The question that we're here about and are seeking an answer to is, when is an award considered to



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1 be paid under the statute so as to satisfy the
2 timely payment requirements? Is that timing
3 considered to be upon mailing the award check
4 or upon receipt of the check by the Claimant?
5 It's the Appellant's position that an award is
6 considered to be paid upon mailing within the
7 21 days period that is prescribed by the
8 statutes. We contend that it discharged
9 Defendant's liability for compensation and
10 Respondents will argue the opposite. That it
11 -- that Defendant's liability is not discharged
12 until that check is received by the Claimant
13 and that receipt must be within the 21 day
14 period. And our position is based on several
15 reasons. First of which is 42-9-90
16 specifically provides that the penalty applies
17 when an award is not paid. It does not state
18 that the penalty applies when an award is not
19 received. It's our position that the statute
20 is very clear. The term -- the words are
21 unambiguous. If the legislature intended for
22 payment to be satisfied upon receipt then they
23 would have written the statute in such a way.
24 **COMMISSIONER MCCASKILL:** Why would they necessarily
25 do that? I mean, my house payment is not paid,



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1 no matter when I mailed it, until it's
2 received.

3 MS. LOUDIN: And that's a house payment, Your Honor

4

5 COMMISSIONER MCCASKILL: And I understand that.

6 MS. LOUDIN: So our argument on that is that a house
7 payment and workers' compensation benefits are
8 not similar, they're not one in the same.

9 COMMISSIONER MCCASKILL: No, but paid is the same.

10 Paid is paid.

11 MS. LOUDIN: That is the general understanding of
12 term paid, but I -

13 COMMISSIONER MCCASKILL: I looked. I thought about
14 this last night and I looked. The only thing
15 I could think of other than, you know, there
16 might be some other things in our Act that --
17 but not this. You know, your taxes are
18 considered paid when you mail 'em.

19 MS. LOUDIN: Yes, Your Honor.

20 COMMISSIONER MCCASKILL: But there -- but there's a
21 -- I looked it up. It's U.S. code, section
22 7506. It's part of the IRS code -

23 MS. LOUDIN: Right.

24 COMMISSIONER MCCASKILL: --- but it specifically says
25 that. Does this specifically say that?



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1 MS. LOUDIN: That payment is -

2 COMMISSIONER CAMPBELL: Is perfected when you mail
3 it?

4 MS. LOUDIN: No, but, Your Honor, it does -- it also
5 does not say that payment is perfected upon
6 receipt. And we're here today to talk about
7 the Workers' Compensation Act, and it's our
8 position that workers' comp benefits are not
9 the same as taxes, they're not the same as a
10 mortgage, they're not the same as other types
11 of payments that we make in life. Workers'
12 comp benefits are subject to specific statutes
13 of the Act and this term, I guess you could
14 say, is also defined by a common practice of
15 the Commission. TTD benefits are considered to
16 be paid upon mailing and TTD benefits and a
17 permanency award are both compensation under
18 the Act. Therefore, it's our position that
19 these two types of benefits should not be
20 treated differently in terms of discharging the
21 Defendant's liability for payment. This issue
22 is also not addressed by our Act specifically,
23 it's not addressed by a case law here and so
24 it's somewhat of a novel issue. And when we
25 have a novel issue we look to the laws of other



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1 states for guidance, and specifically the
2 Georgia Workers' Comp Act addressed this
3 primary issue. The Georgia Workers' Comp Act
4 states that -- I'll paraphrase, but Defendant's
5 liability is discharged when paid --
6 Defendant's liability for benefits is
7 discharged when it is paid upon mailing. So
8 because we don't have any case law, we don't
9 have any guidance within our own state,
10 Appellants will argue that we should look to
11 the Workers' Comp Act of Georgia, which
12 specifically deals with the issue we are here
13 to talk about today.

14 **COMMISSIONER JAMES:** Ms. Loudin, just a question of
15 tendering and other principals with regards to
16 tendering a payment. I can tender something to
17 you and you -- this is not the facts here, but
18 you may not accept that payment that I have
19 tendered to you. Would this not be similar to
20 this situation?

21 **MS. LOUDIN:** So I think, if I understand, yes, Your
22 Honor.

23 **COMMISSIONER JAMES:** If I tender a payment to you --
24 in fact there was some discussions prior to
25 this going in the mail about picking up the



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1 check, correct?

2 MS. LOUDIN: Correct.

3 COMMISSIONER JAMES: The check wasn't -- I don't
4 remember the actual factual pattern, but that
5 the check wasn't ready yet. But none the less,
6 your statement of putting it in the mail
7 actually tendered payment?

8 MS. LOUDIN: Yes, Your Honor, that would be our
9 position.

10 COMMISSIONER JAMES: There is case law in other
11 states with regards to the fact that you tender
12 a payment by putting it in the mail when it
13 comes to the particular issue?

14 MS. LOUDIN: Yes. Yes. And so ---

15 COMMISSIONER MCCASKILL: Refresh my memory. Why is
16 the payment made at the end of the window in
17 which to make it?

18 MS. LOUDIN: Your Honor, that question I cannot
19 specifically answer for you, why the payment
20 was mailed out on the date that it was. All I
21 can say is that the payment was mailed within
22 the 21 day time period prescribed by the
23 statute so -

24 COMMISSIONER MCCASKILL: But if it had been mailed a
25 week earlier it would have been received in



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1 that time period, in all probability.

2 MS. LOUDIN: That is correct. That's possibly
3 correct, absent any unforeseen issues with the
4 mail.

5 COMMISSIONER MCCASKILL: I said probably.

6 MS. LOUDIN: So in response to that, you know, if we
7 were to consider paid to be upon receipt there
8 are all kinds of unforeseen issues that could
9 arise. That places an undue burden on the
10 Defendants to track every single check or to
11 hand deliver every single check. Defendants
12 don't have the opportunity to direct deposit a
13 check, so when you -- when you -- when a
14 payment is contingent upon a persons receipt
15 there's all kinds of third party factors that
16 could interfere with that payment and
17 Defendants would be unnecessarily punished or
18 fined in this case just because the payment was
19 not received within 21 days. And again, Your
20 Honor, going back to that point, if payment was
21 considered to be upon receipt we believe that
22 there would be all kinds of unnecessary
23 litigation coming up on this issue. Every time
24 an award check was late, considered, you know,
25 in one persons mind may not be late in the



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1 Defendant's mind, but we would all be here
2 clogging up the Commissions docket arguing over
3 when a TTD check or when an award check was
4 paid. So, Your Honor, it is the Appellant's
5 position that this term is defined by not only
6 the common practice of the Act, that TTD is
7 considered paid upon mailing. TTD is
8 compensation, an award check is compensation
9 under the Act. Therefore, the two should be
10 treated the same. We would further argue that
11 the Georgia Workers' Comp Act specifically
12 addressing this issue should have -- it should
13 have some bearing on our interpretation of term
14 here, simply because our own Act doesn't
15 address it. And finally, Your Honor, the
16 statutory section excuses a untimely payment
17 for circumstances outside of the Defendant's
18 control. So we would argue that by placing the
19 check in the care of a third party, that third
20 party being the U.S. Mail, warrants this
21 excusable -- this excuse under this provision.
22 We don't control the mail, we -- that is the
23 only mechanism that we can pay the check, you
24 know, absent other procedures being put into
25 place. If we were able to direct deposit them



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1 -- I understand that Mr. Wukela offered to come
2 and pick up the check, but he gave us a
3 specific time period and the check was not
4 going to be ready in that time period, so why
5 should Defendant's be punished for not being
6 able to take opportunity at that specific time?
7 Thank you.

8 **COMMISSIONER MCCASKILL:** Thank you. You'll have
9 three minutes in reply. Mr. Wukela?

10 **CLAIMANT'S/ RESPONDENT'S POSITION:**

11 **MR. WUKELA:** May it please the Commission.
12 Defendant's are worried about unforeseen
13 circumstances when they place a check in the
14 hands of a third party, but none of that was in
15 play here. They placed it in the hands of the
16 post office the day it was due.

17 **COMMISSIONER JAMES:** Just so we're clear, would you
18 agree we do not have a case law that impresses
19 what paid means in this particular sense?

20 **MR. WUKELA:** You're exactly right, Commissioner.

21 **COMMISSIONER JAMES:** Would you agree that we have a
22 sister state, North Carolina, that has modeled
23 -- we have modeled much of our Act after?

24 **MR. WUKELA:** North Carolina, yes, Commissioner.

25 **COMMISSIONER JAMES:** And we look to North Carolina



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1 with regards to a lot of guidance and things
2 that they've addressed before we have?

3 MR. WUKELA: We do, Your Honor.

4 COMMISSIONER JAMES: Okay. Are you aware that
5 there's actually a decision out of North
6 Carolina that addressed this particular issue?

7 MR. WUKELA: Not one that construes the word paid, I
8 don't believe, Commissioner. Unless I've
9 overlooked it.

10 COMMISSIONER JAMES: Actually, I believe there is
11 one. I call y'all's attention to *Morrison*
12 *versus Public Service Company of North Carolina*
13 that's addressed this very issue.

14 MR. WUKELA: I'd be happy to brief that,
15 Commissioner. I am not aware of the *Morrison*
16 case or -- I don't believe that the specific
17 language in the North Carolina statute, if I
18 recall, is the same as the South Carolina
19 statute. Defense counsel points to the Georgia
20 statute, which says -- used the phrase paid
21 upon mailing.

22 COMMISSIONER JAMES: And the North Carolina statute
23 doesn't have paid upon mailing. The North
24 Carolina statute says paid.

25 MR. WUKELA: Well --



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1 COMMISSIONER JAMES: So that takes me to part of
2 the analysis of that case that I want to ask
3 about. It uses the word tender. Would you --
4 do you not agree that putting it in the mail is
5 tender pursuant that the statute provides that
6 it's paid or tendered?

7 MR. WUKELA: No, ma'am, I don't.

8 COMMISSIONER JAMES: Okay.

9 MR. WUKELA: The statute uses the word paid. The
10 term paid -- what our courts have told us is
11 that we are to construe language in statutes by
12 their plain and ordinary meaning. Webster's
13 tell us what paid means? It means that the
14 debt is satisfied. In fact, it defines pay as
15 to satisfy a debt. It defines paid as the past
16 tense of pay. The question is when is the debt
17 satisfied? Now, as Your Honor points out, my
18 mortgage payment is satisfied when it's
19 received, the rent is satisfied when it's
20 received. I suspect that when I tell Ms. Bracy
21 (sic) I want to file a Form 50 and my filing
22 fee will be satisfied when it's received. This
23 isn't an offer.

24 COMMISSIONER MCCASKILL: Would you agree that your
25 pleading isn't perfected until that filing fee



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1 is paid?

2 MR. WUKELA: It never is. It will be returned to me
3 and the pleading would not be filed unless my
4 filing fee has been paid, it has been received.
5 This was an Order, Commissioner. This wasn't
6 an offer, this wasn't anything but what the
7 party had been required to do by statute. And
8 also, as Commissioner points out, what we are
9 talking about is three weeks. And what I think
10 is important in this context is the background
11 of this case. This was a total and permanent
12 award. An award where the claimant had been
13 receiving temporary total for three years. An
14 award where the voc report was uncontradicted.
15 They were on social security disability, they
16 were on disability retirement. The Defendant's
17 chose to appeal that award. That award was
18 affirmed by the Appellant panel. Two weeks
19 passed and we still hadn't received payment.
20 I wrote the Defense and said, you realize this
21 statute exist, you realize it's due on the 13th
22 of March -- or August. I'll come by and pick
23 it up. The answer was no. And instead they
24 chose to place it in the mail on the day it was
25 due and it could not be delivered to claimant



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1 by the due date. Now, the legislature hasn't
2 chosen to use the word mailed, they haven't
3 chose to use the word tender, they haven't
4 chosen to use the word served, or any other
5 process issue or any other synonyms that we get
6 often times from carriers. They chose to use
the word paid. And in the common parlance,
which our courts have urged parties and courts
to apply, paid means satisfied. And there
weren't any unforeseen issues. It could not
have been delivered to the Claimant by the date
it was due. The Fund had every opportunity for
weeks to give it -- to deliver it to the
Claimant. The Claimant's attorney offered to
come to the Fund and pick the check up.
Instead they waited until the day it was due
and put it in the mail. My rent would be late.
My mortgage payment would be late. The filing
fee, my claim would have been filed past the
statute if I had delivered it to the Commission
and told them the filing fee was in the mail on
the day it was due. Commissioner, I am not
familiar with the Morrison case. I did do
research on Larson's and Lexus and I didn't
reveal that case. I'd be happy to brief that

If paid means
satisfied - mailed
but never when
check actually
got payment -
at when OC
receives



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1 case if it please the Commission.

2 COMMISSIONER JAMES: That's fine. It's advisory.

3 We'll look at it.

4 MR. WUKELA: Thank you.

5 COMMISSIONER MCCASKILL: Ms. Loudin, you have three
6 minutes.

7 REPLY:

8 MS. LOUDIN: Thank you. Just in response to the
9 Respondent's point on the two week delay that
10 went by. The Respondent's client was
11 continuing to receive TTD during those two
12 weeks. So I would like to point out for the
13 record that he was receiving money throughout
14 that time period. So he didn't go three weeks
15 without a check. And as far as the terms that
16 the statute chose not to use, it also chose not
17 to use the term received. So we would argue
18 again that payment is considered satisfied upon
19 the date that the check is tendered or placed
20 in the mail so as to discharge Defendant's from
21 liability of payment. Again, I reiterate that
22 if we were to -- if we were to interpret the
23 term paid as meaning satisfaction upon receipt
24 that would, one, bring a whole host of other
25 issues involving litigation. And, Your Honor,



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1 I think the Act is clear in the way that the
2 benefits are considered to be paid for
3 temporary benefits. Therefore, those benefits
4 for a PPD award should be treated the same way.
5 Thank you.

6 COMMISSIONER MCCASKILL: Thank y'all very much.

7 That concludes this proceeding.

8 (There being nothing further, the full commission
9 hearing concluded at 3:17 p.m.)
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From: Stephen J. Wukela <Stephen@wukelalaw.com>
Sent: Tuesday, August 14, 2018 3:14 PM
To: stephen2@wukelalaw.com
Subject: FW: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316

From: Erica E. Loudin [mailto:eeloudin@wjlaw.net]
Sent: Tuesday, August 14, 2018 12:39 PM
To: 'Stephen J. Wukela'
Cc: Shannon T. Poteat
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316

Stephen:

Per the adjuster, the check was sent out yesterday (8/13/18) so payment of the award was timely.

WJC&B

WILLSON JONES CARTER
& BAXLEY, P.A.

Erica E. Loudin, Attorney
eeloudin@wjlaw.net
3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
Phone: (803) 227-2894
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wicblaw.com

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From: Stephen J. Wukela [mailto:Stephen@wukelalaw.com]
Sent: Tuesday, August 14, 2018 12:19 PM
To: Erica E. Loudin <eeloudin@wjlaw.net>
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316

Erica:

Today is Tuesday, August 14, 2018.

I have not received a check from the State Fund in satisfaction of the Order of July 23, 2018. As I indicated in my email of August 9, 2018; by virtue of SC Code Section 42-9-90 and Section 42-9-240, a 10% penalty accrues to the judgment.

Please advise when I can expect to receive a check in satisfaction of the judgment, along with the penalty.

Stephen J. Wukela
Wukela Law Firm

PO Box 13057
Florence SC 29504
stephen@wukelalaw.com
843-669-5634

From: Erica E. Loudin [<mailto:eeloudin@wjlaw.net>]
Sent: Friday, August 10, 2018 12:44 PM
To: 'Stephen J. Wukela'
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

She said it could be the end of the day or possibly Monday.

WJC&B

WILLSON JONES CARTER
& BAXLEY, P.A.

Erica E. Loudin, Attorney
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From: Stephen J. Wukela [<mailto:stephen@wukelalaw.com>]
Sent: Friday, August 10, 2018 9:34 AM
To: Erica E. Loudin <eeloudin@wjlaw.net>
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Lake Murray.

We'll be there around 3:00.

Stephen

From: Erica E. Loudin [<mailto:eeloudin@wjlaw.net>]
Sent: Friday, August 10, 2018 8:47 AM
To: 'Stephen J. Wukela'
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Good morning,

Sorry to be just getting back to you, I didn't get back from Myrtle Beach until about 8:30 last night. Sounds like you're going to have an awesome weekend though—where are you sailing?

Let me confirm with the adj and let you know. What time will you be in town?



WILLSON JONES CARTER
& BAXLEY, PA.

Erica E. Loudin, Attorney
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From: Stephen J. Wukela [<mailto:Stephen@wukelalaw.com>]
Sent: Thursday, August 9, 2018 4:10 PM
To: Erica E. Loudin <eeloudin@wjlaw.net>
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Erica:

Your numbers are correct. They can hold the check for another week if they like, 10% sounds pretty good to me.

If not, I will be in Columbia tomorrow afternoon to go sailing. I can drop by and pick up the check.

Up to them.

Stephen J. Wukela
Wukela Law Firm
PO Box 13057
Florence SC 29504
stephen@wukelalaw.com
843-669-5634

From: Erica E. Loudin [<mailto:eeloudin@wjlaw.net>]
Sent: Thursday, August 09, 2018 3:01 PM
To: Stephen J. Wukela
Subject: Re: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Final award calculations:

Last ttd check = 8/5/18

6/7/17 - 8/5/18 = 60 w, 5 d (60.7143) x \$322.71 = \$19,593.11 credit owed

\$109,310.33 - 19,593.11 = \$89,717.22 due to CI

Do you agree?

Erica E. Loudin, Esquire
Willson Jones Carter & Baxley, PA
3600 Forest Drive Suite 204
Columbia, SC 29204
Direct Dial: 803-227-2894
Sent from my iPhone

On Aug 9, 2018, at 2:27 PM, Erica E. Loudin <eeloudin@wjlaw.net> wrote:

Check will be cut tomorrow - will get you the final numbers shortly.

Erica E. Loudin, Esquire
[Willson Jones Carter & Baxley, PA](#)
3600 Forest Drive Suite 204
Columbia, SC 29204
[Direct Dial: 803-227-2894](tel:803-227-2894)
Sent from my iPhone

On Aug 9, 2018, at 12:03 PM, Stephen J. Wukela <Stephen@wukelalaw.com> wrote:

Erica:

Thank you for your email.

Mr. Jefferson advises me that he will not appeal if they do not.

Also, I note that S.C. Code Section 42-9-90 provides that "if any installment of compensation ... payable in accordance with the terms of an award by the commission is not paid by within fourteen days after it becomes due, as provided in Section 42-9-240, there shall be added to such unpaid installment an amount equal to ten percent thereof. ..."

Section 42-9-240 provides that compensation payable under an award is due seven days from the date of the award. Therefore, by operation of these two statutes, any award that is not paid within three weeks of the date of the award shall result in a penalty of 10%.

Given the fact that the award of \$109,000 was made on July 23, 2018 and the three weeks runs on August 13, (Monday), I am curious as to when the Fund will pay the award.

Please advise.

Stephen J. Wukela
Wukela Law Firm
PO Box 13057
Florence SC 29504
stephen@wukelalaw.com
843-669-5634

From: Erica E. Loudin [<mailto:eeloudin@wjlw.net>]
Sent: Wednesday, August 08, 2018 8:44 AM
To: Stephen J. Wukela
Subject: Re: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Hi Stephen,

We will not be appealing the Order.

Erica E. Loudin, Esquire
Willson Jones Carter & Baxley, PA
3600 Forest Drive Suite 204
Columbia, SC 29204
Direct Dial: 803-227-2894
Sent from my iPhone

On Aug 3, 2018, at 5:20 PM, Stephen J. Wukela <Stephen@wukelalaw.com> wrote:

Erica:

Joseph Jefferson is coming into my office for me to advise him about the Order.

It is my intention to advise him not to appeal and I am sure he will want to know what you all intend to do.

Can you tell me what your plans are?

Stephen.

From: Erica E. Loudin [<mailto:eeloudin@wjlw.net>]
Sent: Thursday, June 21, 2018 12:44 PM
To: 'Tamela Charles'; 'Stephen J. Wukela'
Cc: jbailey@wukelalaw.com
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

I had a long telephone call with her this morning and have attached a copy with the requested revisions in comments. They aren't major, just

a few clarifications, but if you'd like to discuss please give me a call—I'll be in the office all day, thanks!

<image001.png>

Erica E. Loudin, Attorney
eeloudin@wjlaw.net
3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
Phone: (803) 227-2894
Fax: (803) 782-2527
wjclaw.com

This message may be protected by the attorney/client privilege, attorney work product or other privileges. If you receive this message in error, please send a reply, delete the message immediately and do not forward this message to any other person.

From: Tamela Charles [<mailto:tcharles@wukelalaw.com>]
Sent: Thursday, June 21, 2018 9:00 AM
To: Erica E. Loudin <eeloudin@wjlaw.net>
Cc: jbailey@wukelalaw.com
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Erica:

How long should that take?

~Stephen~

From: Erica E. Loudin [<mailto:eeloudin@wjlaw.net>]
Sent: Wednesday, June 20, 2018 3:23 PM
To: 'Tamela Charles'
Cc: 'jbailey@wukelalaw.com'
Subject: RE: WCC #: 1417071 Joe Jefferson vs. SC Department of Transportation 2014-003316: Jefferson v. SCDOT 1604963

Tamela,

I've reviewed the proposed Appellate Panel Order, however I am waiting for the adjuster to confirm she's laid eyes on it. Would you mind asking Stephen to hold off on submitting it to the Commission until I've confirmed the client has reviewed? Thank you!

<image002.png>

Erica E. Loudin, Attorney
eeloudin@wjlaw.net
3600 Forest Drive, Suite 204
Columbia, South Carolina 29204
Phone: (803) 227-2894
Fax: (803) 782-2527
wjclaw.com

From: Tamela Charles [mailto:tcharles@wukelalaw.com]
Sent: Wednesday, June 13, 2018 1:29 PM
To: Shannon T. Poteat <stpoteat@wjlaw.net>; Erica E. Loudin
<eeloudin@wjlaw.net>
Cc: Jeannie Bailey <jbailey@wukelalaw.com>
Subject: WCC #: 1417071 Joe Jefferson vs. SC Department of
Transportation 2014-003316: Jefferson v. SCDOT 1604963

Good Afternoon Ladies:

Please find attached the proposed Appellate Panel Order
in the above-referenced matter in accordance with the
Commission's preference.

I will forward the proposed Order to the Commission in
one week if I do not hear any objections from you.

Kind regards,

~Stephen J. Wukela~

*Tamela C. Charles
Legal Assistant to Steve Wukela, Jr.
Wukela Law Firm
403 Second Loop Road (29505)
P.O. Box 13057 (29504)
Florence, South Carolina
(843) 669-5634
(843) 669-5150 (facsimile)*

State Accident Fund

P.O. Box 102100
Columbia, SC, 29221-5000
(803) 896-5800

Vendor XXXXX4593 STEVE WUKELA JR Check 1060122 Date 8/10/2018

Reference	Date	Description	Amount	Total
1135813	8/10/2018	Claim (2014-3316) SETL-F: 08/10/2018 -	89,717.22	89,717.22
Total			89,717.22	89,717.22

Payments in this case are in accordance with the South Carolina Workers' Compensation Act.
If you have any questions regarding your payments, please contact the State Accident Fund at 803/896-5800.

THIS DOCUMENT HAS A MICRO SIGNATURE LINE

STATE ACCIDENT FUND

P.O. Box 102100
Columbia, SC 29221-5000
(803) 896-5800

Wells Fargo Bank, N.A.
Columbia, SC 29226
11-24/1210

CHECK NO
1060122

Eighty-Nine Thousand Seven Hundred Seventeen and 22/100*****

89,717.22

COPY

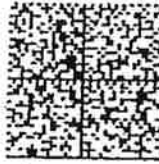
PAY TO THE ORDER OF
JOE JEFFERSON
WUKELA LAW FIRM
PO Box 13057
Florence, SC 29504-3057

VOID AFTER 6 MONTHS

[Handwritten Signature]

State Accident Fund

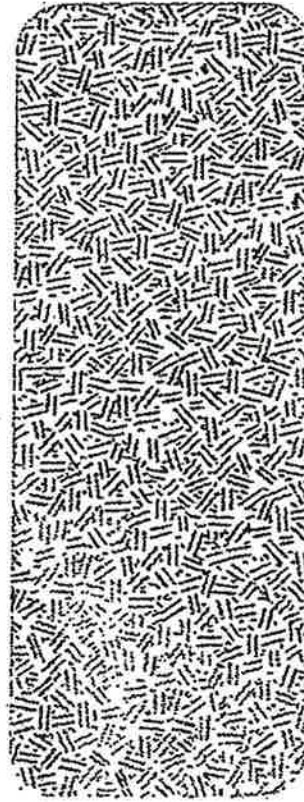
P.O. Box 102100 COLUMBIA, S.C. 29221-5000



U.S. POSTAGE PITNEY BOWES

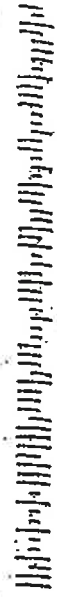


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02 4M
0000350002 AUG. 13, 2018



*Recd
8/15/18*

2950433057 B410



BEFORE THE WORKER'S COMPENSATION COMMISSION

WCC File No. 1417071

Joseph Jefferson, Employee,

Claimant,

vs.

South Carolina Department of Transportation,
Employer, and the State Accident Fund,
Carrier,

Defendants.

AFFIDAVIT

PERSONALLY APPEARED before me JEAN P. BAILEY, who, after first being duly sworn, deposes and states:

1. That I am a paralegal employed by the Wukela Law Firm and working for Stephen J. Wukela.

2. That, as part of my duties in working for Stephen J. Wukela, I open all mail addressed to Stephen J. Wukela.

3. That, when checks are received in the mail, I write on the envelopes the date they are received.

4. That, on August 15, 2018, an envelope addressed:

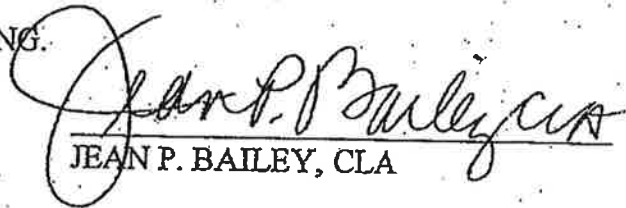
PAY TO THE ORDER OF
JOE JEFFERSON
WUKELA LAW FIRM
PO Box 13057
Florence, SC 29504-3057

was received in the day's mail, was opened by me, and on the outside front of the envelope I wrote:

"Rcvd 8/15/18".

5. The envelope contained a check in the amount of Eighty-Nine Thousand Seven Hundred Seventeen and 22/100 (\$89,717.22) Dollars, a copy of which is contained in APA No. 29; pp. 337-

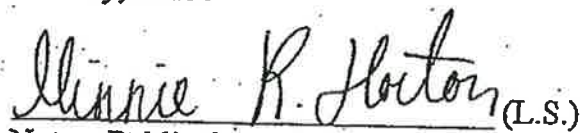
FURTHER AFFIANT SAITH NOTHING.


JEAN P. BAILEY, CLA

SWORN to before me

this 8 day of

January, 2019.

 (L.S.)

Notary Public for an in South Carolina.

My commission expires: April 13, 2028.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Order

WCC File No.:1417071

Appellate Case No.: 2019-001643

Joseph Jefferson, Employee,.....Respondent,
v.

South Carolina Department of Transportation, Employer, and
State Accident Fund, Carrier,.....Appellants.

CERTIFICATE OF COUNSEL

Appellants, by and through their undersigned counsel, certify that the Record on Appeal complies with Rules 209, 210, and 267, SCACR.



J. Gabriel Coggiola, Esquire
Willson, Jones, Carter & Baxley
3600 Forest Drive, Suite 204
Columbia, SC 29204
(803) 227-2884
jgcoggiola@wjcblaw.com
Attorney for Appellants

March 11, 2022
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Full Commission Appellate Panel Order

WCC File No.:1417071

Appellate Case No.: 2019-001643

Joseph Jefferson, Employee,.....Respondent,

v.

South Carolina Department of Transportation, Employer, and
State Accident Fund, Carrier,.....Appellants.

PROOF OF SERVICE

I certify that I have properly served the **Record on Appeal and Certificate of Counsel**, by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses on February 25, 2020:

Mr. Stephen J. Wukela, Esquire
403 Second Loop Road
P.O. Box 13057
Florence, South Carolina
29504-3057

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

[Signature page to follow]



Erica L. Starnes, Esquire
Willson, Jones, Carter & Baxley
3600 Forest Drive, Suite 204
Columbia, SC 29204
(803) 227-2894
elstarnes@wjlaw.net
Attorney for Appellants

March 26, 2020
Columbia, South Carolina

