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SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 2016365

Diana L. McClellan,

APPELLANT
CLAIMANT,

vs.

WE Communities,

EMPLOYER,

AND

Farmington Casualty Company,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held on February 22, 2022, per notices
timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed
April 21, 2022

APPEARANCES:

Appellant/Claimant represented by W. Grady Jordan, Esquire
of Easley, South Carolina.

Defendants/Respondents represented by Franklin D.
Guerrero, Esquire of Willson Jones Carter & Baxley, P.A. of
Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on June 24, 2021, in Greenville, South Carolina. On September 15, 2021, he issued the following Order:

IT IS HEREBY ORDERED Claimant reached maximum medical improvement on January 26, 2021.

IT IS FURTHER ORDERED that Claimant has sustained 2% permanent partial disability to the right shoulder as a result of her right collarbone injury and is entitled to six weeks of compensation at the compensation rate of \$437.19.

IT IS FURTHER ORDERED that Claimant has failed to meet her burden of proof that she sustained an injury to her back arising out of and in the course of her employment.

IT IS FURTHER ORDERED that Claimant has no permanent partial disability to her right collarbone.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

In his Decision and Order, dated September 15, 2021, Commissioner Campbell made the following specific Findings of Fact and Conclusions of Law:

Findings of Fact

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Diana L. McClellan as Employee-Claimant and WE Communities as Employer and Farmington Casualty Company as Carrier, Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to October 22, 2020, on which date she did sustain an injury to the right collarbone arising out of and

in the course of her employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits.

3. That the average weekly wage of Employee at the time of the above-described accident was \$655.75 with a corresponding compensation rate of \$437.19 applicable in this matter.

4. Claimant alleges – in addition to the right collarbone – she sustained a causally related accident to her back when she fell out of her bed.

5. Claimant underwent various evaluations and treatments for her admitted and alleged work-related injuries.

6. On January 27, 2021, in his medical note, authorized treating physician Dr. Scott T. Watson of Blue Ridge Orthopaedics opined, “Fracture is healed, she can advance activities as tolerated, work without restrictions and follow up as needed.” (Defendants’ APA #1, p. 31)

7. On February 17, 2021, Dr. Watson completed a Form 14B, indicating that Claimant had reached MMI on January 20, 2021. Dr. Watson assigned Claimant a 0% impairment to the right shoulder as a result of the right clavicle fracture. Dr. Watson assigned no permanent physical limitations and recommended no additional medical treatment. (Defendants’ APA #1, p. 33)

8. On April 12, 2021, in an independent medical evaluation for Claimant, Dr. Walter Grady opined, “All of my professional medical opinions are rendered to within a reasonable degree of medical certainty, more certain than not, felt to be causally-related to the patient’s on-the-job injury and his/her current medical condition. Using the AMA Guide to Permanent Impairment, Fifth Edition, I would rate the patient as having an 11% lumbar impairment and an 8% total whole person impairment.” (Claimant’s APA #20, p. 370) Dr. Grady made this medical opinion without any knowledge of Claimant’s prior back condition.

9. Claimant testified that her collarbone injury has completely resolved, and she is not requesting any further treatment. This finding is based on the following:

- Q: Okay. Now is it – is it true that the pain in your collarbone has completely resolved?
A: Yes. (Hr. Tr. p. 29, ln. 5-7)
Q: And you have – you’re not requesting any additional treatment for that collarbone, correct?
A: No. (Hr. Tr. p. 29, ln. 8-11)

10. Therefore, I find that there is no evidence of medical impairment or permanent partial disability to Claimant’s right collarbone/clavicle. This finding is based on the record as a whole.

11. Given the inconsistencies between Claimant’s hearing testimony, deposition testimony, and the medical records, I cannot afford her testimony full weight. This finding is based on the record as a whole and the following:

- a. Claimant’s prior back pain:
 - i. Claimant presented to Dr. David Michael Boyer for an evaluation of her back on December 14, 2020. Dr. Boyer stated, “She denies prior injury to the back.” (Defendants’ APA #6, p. 144)
 - ii. In the medical note from Dr. Grady, Claimant was asked, “Have you received any prior treatment related to this same problem for which we are evaluating you for today?” Claimant responded, “No.” (Claimant’s APA #20, p. 367). At the hearing, Claimant admitted that she failed to disclose her history of back pain to Dr. Grady. (Hr. Tr. pp. 68-69)
 - iii. On March 7, 2012, Claimant requested “referral to pain management for chronic lumbar pain due to herniated disc.” (Defendants’ APA #3 p. 43)
 - iv. On June 21, 2012, Sharon Headrick, P.A. stated Claimant “wants to try something else other than Vicodin says its [sic] no longer working to control her lumbar pain. Developed a lower lumbar herniated disc 6yrs [sic] ago from a fall.” (Defendants’ APA #3, p. 45)
 - v. At the hearing, Claimant initially testified that she had some back pain prior

to the date of injury but “nothing long term.” (Hr. Tr. p. 41, ln. 7-9)

vi. Once confronted with the prior medical records, Claimant agreed that she treated for low back pain for more than a year while in California:

Q: Do you admit that while you lived in California, you treated for years for chronic low back pain?

A: I don't know if it was years, but yes.

Q: More than one year?

A: On and off, I would assume, yes. (Hr. Tr. p. 46, ln. 16-21)

b. Claimant's prior motor vehicle accident:

i. At the hearing, Claimant testified that she had been in a prior motor vehicle accident. (Hr. Tr. p. 42)

ii. Claimant testified at her deposition:

Q: Have you ever been injured in a car wreck?

A: No. (Claimant Depo. Tr. p. 17, ln. 12-13)

iii. On cross-examination at the hearing, Claimant testified:

Q: Have you ever been injured in a car accident? In your deposition, you said no. Is that true?

A: Yes. I mean, that's true. I've never – I mean, I've been in a car accident, and I've gone to the doctors, but I've never been injured where I had to keep going back to the doctors, or I mean, anything like that.” (Hr. Tr. p. 42, ln. 13-17)

iv. A medical note from Orangecrest Medical Clinic in Riverside, California dated September 7, 2011 states that Claimant was in a motor vehicle accident in July, was rear ended by two different vehicles, and since then her back has been causing her more pain than usual. (Defendant's APA p. 40)

v. Once being confronted with the medical record, Claimant testified:

Q: You injured your back in a car accident; is that correct?

A: That's – I wouldn't – I wouldn't say that, no.

Q: You would say you did not injure your back in the car accident?

A: I believe it says that I was in a car accident, and then it was bothering me. So I don't know if it was because of the car accident I went to the doctors to see about. I don't know.

Q: Your back pain was worse following the car accident, but you're not sure if it was because of the car accident.

A: I'm assuming it was. I don't – I don't believe I had any x-rays or anything like that, so I don't know. (Hr. Tr. p. 43, ln. 6-21)

c. Claimant's previous incidents falling out of her bed:

i. Claimant testified in her deposition that she does not remember falling out of bed prior to the work accident. She testified, "Not that I remember." (Claimant Depo. Tr. p. 28)

ii. However, at the hearing, Claimant testified that she now remembers the previous incidents of her falling out of bed because she has reviewed "some medical records." (Hr. Tr. p. 38)

d. Claimant's description of falling out of bed on November 19, 2020 or November 20, 2020:

i. Claimant testified at the hearing, "I believe I had slipped, you know, butt first down onto the floor." (Hr. Tr. p. 17)

ii. Claimant testified at her deposition, "And when **my feet hit the floor**, I had scooted up but lost my balance, I guess, and fell on my butt." (emphasis added) (Claimant Depo. Tr. p. 12)

iii. Claimant also testified in her deposition, "**I don't recall my feet hitting the floor**, just my butt hitting the floor." (emphasis added) (Claimant Depo. Tr. p. 54)

iv. At the hearing, Claimant ultimately testified that she does not recall her feet hitting the floor before her buttocks. (Hr. Tr. p. 37)

12. Based on Claimant's testimony that she had prior falls from her bed, I cannot find that Claimant's sling she was wearing for her admitted collarbone injury caused or contributed to her fall from bed that allegedly injured her back. To do so would be speculative at best. I based this

finding on the record as a whole, including but not limited to:

- a) A note from Corona Doctor's Medical Clinics from February 20, 2015, states, "On 2/6/15, she fell from the bed and hyperextended her left knee." (Defendants' APA #5, p. 90)
 - i. Claimant testified this incident occurred when her left knee buckled while stepping off her bed after cleaning a ceiling fan. (Hr. Tr. pp. 19-20)
- b) On May 8, 2020, Claimant presented to AnMed Health Clemson with complaints of right hip pain after slipping off the bed and falling on her right hip earlier that day while she was putting her socks on. (Defendants' APA #18, p. 370)
 - i. Claimant testified this incident was in November of 2019 when she was putting on a sock and slipped off the edge of the bed and fell on her right hip. (Hr. Tr. p. 19)

13. I find that Claimant was assessed with "lumbar herniated disc" prior to the work accident and Claimant provided no medical opinion that the fall out of bed aggravated a pre-existing condition. This finding is based on the record as a whole and Defendants' APA #3 p. 43.

14. Given that Dr. Walter Grady was unaware of Claimant's prior back issues at the time of his evaluation and pursuant to Rummage v. BGF Industries, Op. No. 5822 (S.C. Ct. App. Filed May 19, 2021), I simply cannot rely on Dr. Grady's opinion regarding medical causation of Claimant's back condition. This finding is based on the record as a whole.

15. I find that Claimant failed to meet her burden of proof that she sustained an injury to her back, arising out of and in the course of employment. Therefore, Claimant's request for benefits under the Act for her back is hereby denied. This finding is based on the record as a whole including, but not limited to, Findings of Fact 11, 12, 14 and the following discrepancies regarding the date of injury to the back:

a. Claimant's Form 50, dated March 23, 2021, states, "Claimant fell out of bed on 11/21/2020." (emphasis added)

i. During direct examination, Claimant testified:

Q: Okay. Now can you explain to Commissioner Campbell what happened on November 19th of 2020? (emphasis added)

A: Yes. I was getting out of bed to get ready for work, and I had – I don't believe my feet were all the way to the floor as I was getting up. And I had fallen straight onto my tailbone I believe I put my left arm to try to catch myself. I don't believe my arm got to the floor before my bottom did. (Hr. Tr. p. 15, ln. 14-23)

ii. On cross-examination, Claimant testified, "I don't remember, but I don't – I might be a day off of when I fell out of bed." (Hr. Tr. p. 61, ln. 22-23)

b. On November 19, 2020, Claimant presented to Golden Corner Family Practice with complaints of pain in both hands. There is no mention of Claimant falling off her bed.

(Defendants' APA #7, p.189)

c. On November 21, 2020, Claimant presented to OMH Emergency Room with acute low back pain after slipping while getting out of bed "2 days ago," which would be November 19, 2020. (Defendants' APA #9, p. 201)

d. Claimant presented to the OMH Emergency Room on November 24, 2020 with complaints of back pain and stated she slipped and fell "5 days ago," which would be November 19, 2020. (Defendants' APA #9, p. 209)

16. Claimant is at MMI as of January 26, 2021 for her admitted collarbone injury. This finding is based on the record as a whole.

17. Claimant has sustained 2% permanent partial disability to her right shoulder as a result of her right collarbone injury. This finding is based on Claimant's testimony and the medical records of Dr. Watson.

18. Claimant is entitled to a lump sum award.

19. Claimant is not entitled to additional medical treatment, as none has been recommended by the authorized treating physician, Dr. Watson.

Conclusions of Law

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

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

2. Under § 42-1-160, Claimant did sustain an injury to her right collarbone by accident arising out of and in the course and scope of her employment on October 22, 2020.

3. Under § 42-15-60, Claimant was entitled to medical, hospital and other authorized treatment until January 26, 2021, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of her disability.

4. Under §42-9-30(14), Claimant is awarded 2% permanent partial disability to the right shoulder.

5. Under Reg. 67-1101, Claimant has suffered no permanent partial disability to the collarbone.

6. Under §42-9-35, Claimant failed to carry her burden of proving that she suffered an aggravation of her pre-existing lumbar spine condition.

7. Under §42-1-160, Claimant has failed to carry her burden of proving she sustained an injury to her back arising out of and in the course of employment.

On September 24, 2021, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties prior to oral argument presented to the Appellate Panel on February 22, 2022. By appeal, counsel for Claimant submitted the following grounds *verbatim* for review:

1. Did the Single Commissioner err in concluding in the Finding of fact that, “Based on Claimant’s testimony that she had prior falls from her bed, I cannot find that Claimant’s sling she was wearing for her admitted collarbone injury caused or contributed to her fall from bed that allegedly injured her back. To do so would be speculative at best?”
2. Did the Single Commissioner err in drawing an illogical bridge between a prior fall from the bed and the fall from the bed in November 2020? This was an error.
3. Did the Single Commissioner err in basing his decision that Claimant’s sling could not have contributed to her fall from bed on the fact that she had fallen out of bed in the past?
4. Did the Single Commissioner err in essentially finding Claimant did fall from her bed, but that he could not find that the, “sling she was wearing for her admitted collarbone injury caused or contributed to her fall from bed?” This was an error of law.
5. Did the Single Commissioner err in not finding Claimant was unable to catch herself as she slipped out of her bed due to the sling she was wearing when there was no evidence contrary to her testimony as to the mechanism of the fall? This was an error of law.
6. Did the Single Commissioner err in not considering or mentioning in his Order the fact that Scott Watson M.D., specifically advised Claimant to wear her sling during the day and night as set out in the note of October 28, 2020, [APA Page 281]? With said note stating, “Diana Lyn McClellan was seen in my clinic for a shoulder Injury. She was evaluated on 10/28/2020 and was advised to wear a sling at that time. She was advised to wear a sling during the day and at night to help with her pain.”

7. Did the Single Commissioner err in not finding that Claimant's testimony that she was wearing the sling on her shoulder when she attempted to get out of bed on November 21, 2020, was consistent with her doctor's orders?
8. Did the Single Commissioner err in not finding that Defendants provided no explanation as to the mechanism of Claimant's fall from her bed?
9. Did the Single Commissioner err in not finding that Claimant's sling contributed to her not being able to catch herself and therefore prevent the fall from bed, when he found no other reason for the fall?
10. Did the Single Commissioner err in finding, "I find that Claimant was assessed with 'lumbar herniated disc' prior to the work accident and Claimant provided no medical opinion that the fall out of bed aggravated a pre-existing condition. This finding is based on the record as a whole and Defendants' APA #3 p.4?"
11. Did the Single Commissioner err in finding Claimant was required to prove an aggravation of a pre-existing condition in a case with new medical findings that were consistent with her complaints?
12. Did the Single Commissioner err in not mentioning anywhere in his order the note of the Emergency Department of November 21, 2020, [APA Page 223] that stated in part, "Diana Lyn McClellan is a 45 y.o. female presenting with acute low back pain after slipping while getting out of bed 2 days ago. She reports severe pain over the tip of her tailbone that is radiating down the left buttock and up her back. The pain is excruciating making it difficult to walk?"
13. Did the Single Commissioner err in not mentioning anywhere in his order that Claimant had an MRI of her sacrum on December 14, 2020, which showed, *inter alia*, "There is focal marrow edema moderately intense at the lateral margin of the S3 vertebral body on the left which may

account for the left acute left sided pain. Findings could reflect contusion a[s] the pattern is not typical of inflammatory arthropathy?”

14. Did the Single Commissioner err in not finding that the MRI of her sacrum on December 14, 2020, showed new findings that were not found in any other medical evidence in the record?

15. Did the Single Commissioner err in not finding that there was no MRI of the lumbar spine in evidence dated prior to the accident of Claimant falling out of her bed in November 2020?

16. Did the Single Commissioner err in not considering or mentioning in the Order the note of Dr. Holdren of February 24, 2021 [APA 335], that stated, “She did have a previous fall out of bed and has been evaluated by Dr. Watson. This is what started her pain in the sacrum and radiculopathy in the left leg. She fell out of bed onto her tailbone...?”

17. Did the Single Commissioner err in not finding that there was no evidence of the displacement of the traversing left L5 nerve root prior to the Claimant falling from the bed onto her buttocks in November 2020? This was an error of law.

18. Did the Single Commissioner err in not finding that Claimant had no diagnosis of sciatica prior to the fall out of the bed in November of 2020? This was an error of law.

19. Did the Single Commissioner err in not mentioning, discussing, or considering the note of Dr. Boyer at Blue Ridge Orthopedics that states, “I have personally reviewed her radiographs of the sacrum and pelvis from date of service November 24, 2020 and there does appear to be sclerotic changes at the SI joint bilaterally. There also appears to be a subtle abnormality at approximately the junction between the middle and distal third of the sacrum [APA page 271]?”

20. Did the Single Commissioner err in requiring Claimant to prove an aggravation of a pre-existing condition when there was no evidence of any prior: A) marrow edema at the lateral margin of the S3 vertebral body or B) displacement of the traversing left L5 nerve root or C) diagnosis of left-sided sciatica?

21. Did the Single Commissioner err in requiring Claimant to prove an aggravation of a pre-existing condition when there was no evidence of any prior MRI, CT Scan or X-rays of her lumbar spine prior to the alleged injury?
22. Did the Single Commissioner err in requiring Claimant to prove an aggravation of a pre-existing condition where there was no evidence of any treatment for the lumbar spine after November 14, 2014 [APA Page 85], therefore six (6) years before the fall from bed?
23. Did the Single Commissioner err in placing weight and emphasizing Claimant's prior back problems, when no evidence was submitted that those problems were the same or in any way related to the edema in the sacrum or the displaced nerve root?
24. Did the Single Commissioner err in not finding that Claimant was very consistent in her history to the doctors about her pain starting after a fall from bed as shown by evidence in the record, the following excerpts, as well as others:
 - a. "Diana Lyn McClellan is a 45 y.o female who presents with left sided back and hip back after falling out of bed earlier this week [APA Page 24]?"
 - b. "Diana Lyn McClellan is a 45 y.o. female presenting with acute low back pain after slipping while getting out of bed 2 days ago. She reports severe pain over the tip of her tailbone that is radiating down the left buttock and up her back [APA Page 223]?"
 - c. "Patient states that approximately 5 days ago she was getting out of bed when she slipped and fell. She states she landed on her buttocks... She states that since then she has had severe left-sided lower back pain [APA Page 243]."
 - d. "Diana Lyn McClellan 45 y.o. female presents for evaluation of low back pain. She fell out of her bed about 2 weeks ago. She fell onto hardwood [APA Page 270]."

e. "She did have previous fall out of bed and has been evaluated by Dr. Watson. This is what started her pain in the sacrum and radiculopathy in the left leg. She fell out of bed onto her tailbone also injured her right shoulder on 11/20/2020?"

25. Did the Single Commissioner err in not referencing or considering that Claimant did in fact tell providers that she had a history of back pain?

26. Did the Single Commissioner err in not mentioning, considering, or finding that she evidence showed that Claimant had not treated for any back pain for six (6) years prior to the fall out of the bed in November 2020?

27. Did the Commissioner err in finding that Claimant did not tell Dr. Grady of prior back problems due to the phrase in his medical record that stated, "Have You Received Any Prior Treatment Related To This Same Problem For Which We Are Evaluating You For Today? No?"

28. Did the Single Commissioner err in finding that he could not rely on Dr. Grady's opinion?

29. Did the Single Commissioner err in finding that Claimant failed to meet her burden of proof that she sustained an injury to her back, arising out of and in the course of her employment? This was an error of law.

30. Did the Single Commissioner err in not properly reflecting the APA submissions, summary of the evidence and statement of this case? This was an error of law.

31. Did the Single Commissioner err in not affording full weight to the testimony of Claimant?

32. Did the Single Commissioner err in not finding Claimant's back claim compensable? This was an error of law.

FINDINGS OF FACT

Based upon the documentary 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:

IT IS FOUND AS A FACT:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Diana L. McClellan as Employee-Claimant and WE Communities as Employer and Farmington Casualty Company as Carrier, Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to October 22, 2020, on which date she did sustain an injury to the right collarbone arising out of and in the course of her employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits.

3. That the average weekly wage of Employee at the time of the above-described accident was \$655.75 with a corresponding compensation rate of \$437.19 applicable in this matter.

4. Claimant alleges – in addition to the right collarbone – she sustained a causally related accident to her back when she fell out of her bed.

5. Claimant underwent various evaluations and treatments for her admitted and alleged work-related injuries.

6. On January 27, 2021, in his medical note, authorized treating physician Dr. Scott T. Watson of Blue Ridge Orthopaedics opined, “Fracture is healed, she can advance activities as tolerated, work without restrictions and follow up as needed.” (Defendants' APA #1, p. 31)

7. On February 17, 2021, Dr. Watson completed a Form 14B, indicating that Claimant had reached MMI on January 20, 2021. Dr. Watson assigned Claimant a 0% impairment to the right shoulder as a result of the right clavicle fracture. Dr. Watson assigned no permanent physical limitations and recommended no additional medical treatment. (Defendants' APA #1, p. 33)

8. On April 12, 2021, in an independent medical evaluation for Claimant, Dr. Walter Grady opined, “All of my professional medical opinions are rendered to within a reasonable degree

of medical certainty, more certain than not, felt to be causally-related to the patient's on-the-job injury and his/her current medical condition. Using the AMA Guide to Permanent Impairment, Fifth Edition, I would rate the patient as having an 11% lumbar impairment and an 8% total whole person impairment." (Claimant's APA #20, p. 370) Dr. Grady made this medical opinion without any knowledge of Claimant's prior back condition.

9. Claimant testified that her collarbone injury has completely resolved, and she is not requesting any further treatment. This finding is based on the following:

Q: Okay. Now is it – is it true that the pain in your collarbone has completely resolved?

A: Yes. (Hr. Tr. p. 29, ln. 5-7)

Q: And you have – you're not requesting any additional treatment for that collarbone, correct?

A: No. (Hr. Tr. p. 29, ln. 8-11)

10. Therefore, we find that there is no evidence of medical impairment or permanent partial disability to Claimant's right collarbone/clavicle. This finding is based on the record as a whole.

11. Given the inconsistencies between Claimant's hearing testimony, deposition testimony, and the medical records, we cannot afford her testimony full weight. This finding is based on the record as a whole and the following:

a. Claimant's prior back pain:

i. Claimant presented to Dr. David Michael Boyer for an evaluation of her back on December 14, 2020. Dr. Boyer stated, "She denies prior injury to the back." (Defendants' APA #6, p. 144)

ii. In the medical note from Dr. Grady, Claimant was asked, "Have you received any prior treatment related to this same problem for which we are evaluating you for today?" Claimant responded, "No." (Claimant's APA #20, p. 367). At the hearing, Claimant admitted that she failed to disclose her history of

back pain to Dr. Grady. (Hr. Tr. pp. 68-69)

- iii. On March 7, 2012, Claimant requested “referral to pain management for chronic lumbar pain due to herniated disc.” (Defendants’ APA #3 p. 43)
- iv. On June 21, 2012, Sharon Headrick, P.A. stated Claimant “wants to try something else other than Vicodin says its [sic] no longer working to control her lumbar pain. Developed a lower lumbar herniated disc 6yrs [sic] ago from a fall.” (Defendants’ APA #3, p. 45)
- v. At the hearing, Claimant initially testified that she had some back pain prior to the date of injury but “nothing long term.” (Hr. Tr. p. 41, ln. 7-9)
- vi. Once confronted with the prior medical records, Claimant agreed that she treated for low back pain for more than a year while in California:

Q: Do you admit that while you lived in California, you treated for years for chronic low back pain?

A: I don’t know if it was years, but yes.

Q: More than one year?

A: On and off, I would assume, yes. (Hr. Tr. p. 46, ln. 16-21)

b. Claimant’s prior motor vehicle accident:

- i. At the hearing, Claimant testified that she had been in a prior motor vehicle accident. (Hr. Tr. p. 42)

ii. Claimant testified at her deposition:

Q: Have you ever been injured in a car wreck?

A: No. (Claimant Depo. Tr. p. 17, ln. 12-13)

iii. On cross-examination at the hearing, Claimant testified:

Q: Have you ever been injured in a car accident? In your deposition, you said no. Is that true?

A: Yes. I mean, that’s true. I’ve never – I mean, I’ve been in a car accident, and I’ve gone to the doctors, but I’ve never been injured where I had to keep going back to the doctors, or I mean, anything like that.” (Hr. Tr. p. 42, ln. 13-17)

iv. A medical note from Orangecrest Medical Clinic in Riverside, California dated September 7, 2011 states that Claimant was in a motor vehicle accident in July, was rear ended by two different vehicles, and since then her back has been causing her more pain than usual. (Defendant's APA p. 40)

v. Once being confronted with the medical record, Claimant testified:

Q: You injured your back in a car accident; is that correct?

A: That's – I wouldn't – I wouldn't say that, no.

Q: You would say you did not injure your back in the car accident?

A: I believe it says that I was in a car accident, and then it was bothering me. So I don't know if it was because of the car accident I went to the doctors to see about. I don't know.

Q: Your back pain was worse following the car accident, but you're not sure if it was because of the car accident.

A: I'm assuming it was. I don't – I don't believe I had any x-rays or anything like that, so I don't know. (Hr. Tr. p. 43, ln. 6-21)

c. Claimant's previous incidents falling out of her bed:

i. Claimant testified in her deposition that she does not remember falling out of bed prior to the work accident. She testified, "Not that I remember." (Claimant Depo. Tr. p. 28)

ii. However, at the hearing, Claimant testified that she now remembers the previous incidents of her falling out of bed because she has reviewed "some medical records." (Hr. Tr. p. 38)

d. Claimant's description of falling out of bed on November 19, 2020 or November 20, 2020:

i. Claimant testified at the hearing, "I believe I had slipped, you know, butt first down onto the floor." (Hr. Tr. p. 17)

ii. Claimant testified at her deposition, "And when **my feet hit the floor**, I had scooted up but lost my balance, I guess, and fell on my butt." (emphasis added) (Claimant Depo. Tr. p. 12)

iii. Claimant also testified in her deposition, “**I don’t recall my feet hitting the floor, just my butt hitting the floor.**” (emphasis added) (Claimant Depo. Tr. p. 54)

iv. At the hearing, Claimant ultimately testified that she does not recall her feet hitting the floor before her buttocks. (Hr. Tr. p. 37)

12. Based on Claimant’s testimony that she had prior falls from her bed, we cannot find that Claimant’s sling she was wearing for her admitted collarbone injury caused or contributed to her fall from bed that allegedly injured her back. To do so would be speculative at best. We based this finding on the record as a whole, including but not limited to:

c) A note from Corona Doctor’s Medical Clinics from February 20, 2015, states, “On 2/6/15, she fell from the bed and hyperextended her left knee.” (Defendants’ APA #5, p. 90)

i. Claimant testified this incident occurred when her left knee buckled while stepping off her bed after cleaning a ceiling fan. (Hr. Tr. pp. 19-20)

d) On May 8, 2020, Claimant presented to AnMed Health Clemson with complaints of right hip pain after slipping off the bed and falling on her right hip earlier that day while she was putting her socks on. (Defendants’ APA #18, p. 370)

i. Claimant testified this incident was in November of 2019 when she was putting on a sock and slipped off the edge of the bed and fell on her right hip. (Hr. Tr. p. 19)

13. We find that Claimant was assessed with “lumbar herniated disc” prior to the work accident and Claimant provided no medical opinion that the fall out of bed aggravated a pre-existing condition. This finding is based on the record as a whole and Defendants’ APA #3 p. 43.

14. Given that Dr. Walter Grady was unaware of Claimant’s prior back issues at the time

of his evaluation and pursuant to Rummage v. BGF Industries, Op. No. 5822 (S.C. Ct. App. Filed May 19, 2021), we simply cannot rely on Dr. Grady's opinion regarding medical causation of Claimant's back condition. This finding is based on the record as a whole.

15. We find that Claimant failed to meet her burden of proof that she sustained an injury to her back, arising out of and in the course of employment. Therefore, Claimant's request for benefits under the Act for her back is hereby denied. This finding is based on the record as a whole including, but not limited to, Findings of Fact 11, 12, 14 and the following discrepancies regarding the date of injury to the back:

a. Claimant's Form 50, dated March 23, 2021, states, "Claimant fell out of bed on **11/21/2020.**" (emphasis added)

i. During direct examination, Claimant testified:

Q: Okay. Now can you explain to Commissioner Campbell what happened on November 19th of 2020? (emphasis added)

A: Yes. I was getting out of bed to get ready for work, and I had – I don't believe my feet were all the way to the floor as I was getting up. And I had fallen straight onto my tailbone I believe I put my left arm to try to catch myself. I don't believe my arm got to the floor before my bottom did. (Hr. Tr. p. 15, ln. 14-23)

ii. On cross-examination, Claimant testified, "I don't remember, but I don't – I might be a day off of when I fell out of bed." (Hr. Tr. p. 61, ln. 22-23)

b. On November 19, 2020, Claimant presented to Golden Corner Family Practice with complaints of pain in both hands. There is no mention of Claimant falling off her bed.

(Defendants' APA #7, p.189)

c. On November 21, 2020, Claimant presented to OMH Emergency Room with acute low back pain after slipping while getting out of bed "2 days ago," which would be November 19, 2020. (Defendants' APA #9, p. 201)

d. Claimant presented to the OMH Emergency Room on November 24, 2020 with

complaints of back pain and stated she slipped and fell “5 days ago,” which would be November 19, 2020. (Defendants’ APA #9, p. 209)

16. Claimant is at MMI as of January 26, 2021 for her admitted collarbone injury. This finding is based on the record as a whole.

17. Claimant has sustained 2% permanent partial disability to her right shoulder as a result of her right collarbone injury. This finding is based on Claimant’s testimony and the medical records of Dr. Watson.

18. Claimant is entitled to a lump sum award.

19. Claimant is not entitled to additional medical treatment, as none has been recommended by the authorized treating physician, Dr. Watson.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

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

2. Under § 42-1-160, Claimant did sustain an injury to her right collarbone by accident arising out of and in the course and scope of her employment on October 22, 2020.

3. Under § 42-15-60, Claimant was entitled to medical, hospital and other authorized treatment until January 26, 2021, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of her disability.

4. Under §42-9-30(14), Claimant is awarded 2% permanent partial disability to the right shoulder.

5. Under Reg. 67-1101, Claimant has suffered no permanent partial disability to the

collarbone.

6. Under §42-9-35, Claimant failed to carry her burden of proving that she suffered an aggravation of her pre-existing lumbar spine condition.

7. Under §42-1-160, Claimant has failed to carry her burden of proving she sustained an injury to her back arising out of and in the course of employment.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED Claimant reached maximum medical improvement on January 26, 2021.

IT IS FURTHER ORDERED that Claimant has sustained 2% permanent partial disability to the right shoulder as a result of her right collarbone injury and is entitled to six weeks of compensation at the compensation rate of \$437.19.

IT IS FURTHER ORDERED that Claimant has failed to meet her burden of proof that she sustained an injury to her back arising out of and in the course of her employment.

IT IS FURTHER ORDERED that Claimant has no permanent partial disability to her right collarbone.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

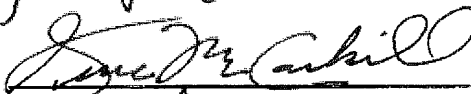
FULL AFFIRMATION

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

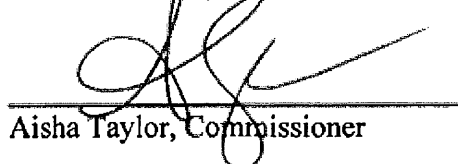


Susan S. Barden, Commissioner

CONCUR:



Gene McCaskill, Commissioner



Aisha Taylor, 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 Valerie Deller on April 21, 2022