

Appendix 3

(Chapter 3-Medical Treatment & Change of Condition)

1. Motion to Quash Doctor's Appointment.
2. Order Quashing Doctor's Appointment.
3. Circuit Court Order Affirming Quashing of Doctor's Appointment.
4. Full Commission Order--Lifetime Medical In PPD Case.

Before the

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 9417507

PAMELA DUNBAR,
 EMPLOYEE/CLAIMANT,
 VS.
 PIRELLI CABLE CORPORATION,
 EMPLOYER,
 AND
 THE TRAVELER'S INSURANCE COMPANY
 CARRIER,
 DEFENDANTS.

NOTICE OF MOTION AND
MOTION TO QUASH
NOTICE OF APPOINTMENT

TO: John R. Tally, Esquire
 ROGERS, TOWNSEND & THOMAS, PC
 P. O. Box 100200
 1441 Main Street, 10th Floor
 Columbia, SC 29202-3200

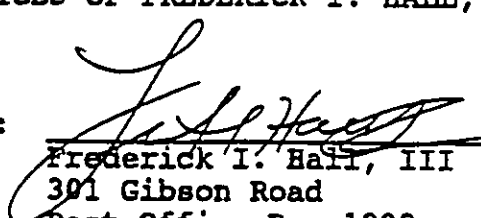
YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Claimant hereby moves the Commission for an Order quashing the Notice of Appointment scheduled for November 27, 1995 at 11:00 a.m. (sic) and by attached letter for claimant to be seen by Dr. George Khoury at his office located at 9275-B Medical Plaza Drive, North Charleston, South Carolina, for the purposes of an independent medical evaluation. The attached letter indicates that the appointment is in fact for March 27th, but no time is indicated.

The grounds for this Motion are that The Honorable Roland S. Corning, Commissioner, South Carolina Workers Compensation Commission has entered an Order which provides that the claimant is

to be treated by her current attending physician, Dr. Gero S. Kragh, who is to coordinate her medical treatment and/or such other physicians as the parties may agree upon.

LAW OFFICES OF FREDERICK I. HALL, III, P.A.

By:


Frederick I. Hall, III
301 Gibson Road
Post Office Box 1898
Lexington, SC 29072
(803) 957-5333
Telecopier (803) 957-7717
ATTORNEY FOR CLAIMANT

Date: March 20, 1996

Lexington, South Carolina

CERTIFICATE OF SERVICE

I, Teresa Edwards, assistant to Frederick I. Hall, III, of 301 Gibson Road, Lexington, South Carolina, hereby certify that I have served the individual named below with a copy of the document described herein, by hand delivering a copy of the same to him at the street address listed below:

PERSON SERVED:

John R. Tally, Esquire
ROGERS, TOWNSEND & THOMAS, PC
1441 Main Street, 10th Floor
Columbia, SC 29202-3200

CASE:

Pamela Dunbar vs. Pirelli Cable Corporation and The Travelers
Insurance Company
WCC File No.: 9417507

DOCUMENT:

Notice of Motion and Motion to Quash Notice of
Appointment



TERESA EDWARDS

Date: March 20, 1996

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 9417507

PAMELA DUNBAR,
EMPLOYEE/CLAIMANT,
VS.
PIRELLI CABLE CORPORATION,
EMPLOYER,
AND
THE TRAVELER'S INSURANCE COMPANY
CARRIER,
DEFENDANTS.

COPY

ORDER QUASHING NOTICE
OF APPOINTMENT

This matter is before the Commission pursuant to a Notice of Motion and Motion to Quash the Notice of Appointment filed by the Employer in the above-referenced matter. The employer served a Notice of Appointment for the Claimant, Pamela J. Dunbar, to be seen by Dr. George Khoury at his office located at 9275 B. Medical Plaza, North Charleston, SC, for the purposes of an independent medical evaluation on November 27, 1996 (sic) at 11:00 a.m. Pursuant to the attached letter directed to the claimant, the appointment was in fact scheduled for March 27, 1996, presumably at 11:00 a.m. The Court will infer from the Notice of Appointment and letter directed to this Commissioner on March 19, 1996, that the Appointment was in fact set for March 27, 1996, at 11:00 a.m.

The Claimant has moved before this Commissioner to quash the appointment filed March 20, 1996, on the grounds that the Commission has entered an Order which provides that the Claimant is

being treated by her current attending physician, Dr. Gero S. Kragh, who is to coordinate her medical treatment and/or such other physicians as the parties may agree upon. This Commissioner has reviewed the Order entered on March 1, 1996, wherein it was provided that Dr. Gero S. Kragh was authorized as the claimant's treating physician for the purpose of coordinating her medical treatment and referral to such other physicians and/or medical advisors as he may deem appropriate.

Dr. Kragh has, because of the urgency of Claimant's condition made referral to Fred Scialabba, MD, and Adam Broom, MD or Daniel Miller, MD for possible neurosurgery. (See letter to Attorney Frederick I. Hall, dated March 21, 1996, attached to letter requesting expedited ruling on Motion to Quash.)

The employer has objected and filed its Return on March 20, 1996, on the grounds that it has not agreed to any other treating physician and asserts that it has the right under S.C. Code Ann. §42-15-80 (1976) as amended, request that the claimant undergo an evaluation by a qualified physician of their choice.

This Commissioner has carefully reviewed the Order entered on March 1, 1996, wherein it stated:

That Dr. Gero S. Kragh is hereby authorized as the Claimant's treating physician for the purpose of coordinating her medical treatment and referral to such other physicians and/or medical advisors as he may deem appropriate.

The intent of the Order of this Commissioner was to authorize Dr. Gero S. Kragh to make appropriate referrals to physicians and/or medical advisors as he may deem appropriate.

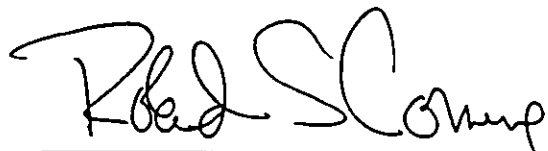
Pursuant to Regulation 67-215(2), the Motions recognized by the provisions in this Chapter may filed and ruled upon by the

Commissioner assigned to the claim. They include, inter alia, under 67-215(2)(d), "a Motion relating to a claim pending Commission review."

After carefully considering the claimant's Motion to Quash and the Defendant's Response thereto, this Commissioner finds that the Motion to Quash should be granted. The physicians that previously treated the Claimant found that the Claimant had reached maximum medical improvement and this Commissioner's Order is contrary to those findings. Given all of the circumstances herein, including but not limited to the fact that this Commissioner has approved Dr. Gero S. Kragh as the authorized physician for the purpose of coordinating the claimant's medical treatment and referrals of such other physicians and/or medical advisors as he may deem appropriate, this Commissioner finds that the Claimant would be justified in refusing to return for treatment to Dr. George S. Khoury, and therefore, this Commissioner grants the Claimant's Motion to Quash.

IT IS THEREFORE ORDERED that the Claimant's Motion to Quash is granted.

AND IT IS SO ORDERED.



ROLAND S. CORNING
Commissioner for the
South Carolina Worker's Compensation

3/27, 1996
Columbia, South Carolina

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this case by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 27 day of March, 1996.

BY 
Administrative Assistant to the Commissioner

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Case No.: 96-CP-40-~~2995~~ 3955
WCC File No.: 9417507

PAMELA DUNBAR,
EMPLOYEE/CLAIMANT/RESPONDENT,
VS.
PIRELLI CABLE CORPORATION,
EMPLOYER,
AND
THE TRAVELER'S INSURANCE COMPANY
CARRIER,
DEFENDANTS/APPELLANTS.

ORDER

FILED
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BARBARA A. SCOTT
C.C.C. & G.S.

This matter came before the Court pursuant to a timely filed appeal by the Employer/Carrier from an Order of the Full Worker's Compensation Commission dated October 22, 1996. This appeal came on to be heard before the Court on January 7, 1997. Appearing on behalf of the Appellants was John R. Tally, Esquire of the Law Firm of Rogers, Townsend & Thomas, PC. Present and appearing on behalf of the claimant/respondent was Frederick I. Hall, III, Esquire of the Law Offices of Frederick I. Hall, III, P.A. The Court heard the arguments of counsel and has fully reviewed the briefs submitted to the Full Commission and has made a thorough review of the record before the South Carolina Worker's Compensation Commission. After hearing the arguments of counsel and reviewing the record and submissions by the parties herein, the Court is

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persuaded that the appeal should be denied.

The appellants' position is that the Full Commission erred in numerous factual findings pertaining to whether or not the claimant had reached maximum medical improvement; whether or not the claimant's spinal cyst/syrinx was caused by her work related accident of June 8, 1994; whether or not claimant's current psychological problems are related to her June 8, 1994, accident; whether or not her right leg problem is related to her work injury on June 8, 1994; whether or not permanent impairment and/or disability is premature at this time; whether the employer should be held responsible for certain medical expenses incurred by the claimant; and whether or not the Commission erred by quashing a Notice of Appointment for the claimant to return to the treating physician that had released her and reached the conclusion that she had reached maximum medical improvement.

As previously stated, the Court has thoroughly reviewed the record in this case and takes note of the fact that the medical evidence is conflicting.

The standard for judicial review of the decisions of administrative agencies is contained in the Administrative Procedures Act. South Carolina Code Ann. §1-23-380. This Court may not substitute its judgment for that of the agency concerning the weight of the evidence or questions of fact. Id.

In a Worker's Compensation Case, the Commission alone is the ultimate fact finder. Where the medical evidence conflicts, the findings of the Commission are conclusive. (SEE Mullinax vs. Winn

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Dixie Stores, Inc., 458 S.E. 76 (S.C. 1995), citing Hoxit vs. Michelin Tire Corp., 405 S.E. 2d 407 (1991). The test is whether the decision of the Commission is supported by substantial evidence. *Id.* Substantial evidence is not a mere scintilla of evidence, nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole would allow reasonable minds to reach the conclusion that the Administrative Agency reached in order to justify its action. *Id.* at 78, 79. Citing Miller vs. State Roofing Co., 441 S.E.2d 323 (1994); Stokes vs. First National Bank, 410 S.E. 2d 248, (1991).

After reviewing the whole record, the Court finds that there is substantial, reliable and probative evidence on the whole record to support the findings of the Full Commission.

Accordingly, the Appellants' appeal as to all factual findings and legal conclusions is denied.

In addition, the Court finds that the Commission did not err in quashing the employer/carrier's Notice of Appointment or in appointing Dr. Gero S. Kragh as the claimant's treating physician and in ordering the Defendants to pay for continuing treatment with him.

Under S.C. Code §42-15-60, in the case of the controversy arising between the employer and the employee, the Commission may order such further medical, surgical, hospital or other treatment, as may in the discretion of the Commission be necessary. Moreover, the Defendants do not have an absolute right under S.C. Code §42-15-60 to require the claimant to submit to a medical examination

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and evaluation by a qualified physician of their choice. It was within the discretion of the Commission to quash the appointment. SEE Singleton vs. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960). SEE ALSO Ward vs. Dixie Shirt Co., 223 S.C. 448, 76 S.E.2d 605 (1953).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Appeal is DENIED and the Decision and Order of the South Carolina Workers' Compensation Commission dated October 22, 1996 is AFFIRMED.



AND IT IS SO ORDERED.



ALEXANDER S. MACAULAY, Judge

Walhalla, South Carolina
January 17, 1997

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 Appellate Panel
of the
South Carolina Workers' Compensation Commission 

ORDER

WCC # 9255428

M G , Claimant,
v.
The Kroger Co., Employer, & Continental Casualty Company, Carrier, Defendants

**REVERSAL
No Remand**

Appellate Panel Review held in Columbia, South Carolina, on August 24, 1999, per notices timely and properly served.

Claimant/appellant represented by Ilene Stacey King
Defendants/respondent represented by James P. Newman Jr.

Order filed. November 1, 1999

Statement of Case

The parties were heard by Commissioner Holly Salceby Atkins on March 16, 1999, in Columbia. On June 2, 1999, the commissioner issued an order:

The claimant reached MMI as of October 13, 1998; no medical treatment is to be provided after that date; the claimant is entitled to 20% to the brain.

Within the statutory period, counsel for the claimant filed an application for review, setting forth grounds for appeal, copies of which were furnished to all interested parties prior to oral argument.

Pursuant to S.C. Code Ann. 42-17-50 (1985), we, the appellate panel, have reviewed the award, weighed the evidence and considered all issues raised on appeal. The panel may make its own Findings of Fact and reach its own Conclusions of Law.

After careful review in the instant case, the appellate panel of the South Carolina Workers' Compensation Commission has determined that

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Defendants have not complied with the previous orders of the Commissioner (the Consent Order dated April 17, 1997, and Order of the Commission dated January 13, 1998). Providing items of an incorrect size does not represent compliance.

Defendants shall provide all items, services, treatments, testing or devices as directed by prior orders and as specifically delineated in prior orders. "Shall provide" is not the same as make some effort toward providing. Defendants must provide those things ordered previously by the commission or shall show good cause for not doing so. Defendants are given a maximum of 60 (sixty) days in which to comply or, in the case of on-going care and therapy, to begin compliance.

Findings of Fact and Conclusions of Law contained in prior orders and from which no appeal was taken are the law of the case and were not before the hearing commissioner. At the forefront is the finding regarding the relationship between the claimant's ongoing problems and neurotoxic exposure. The relationship was established by prior order, thereby denying other possible causes, including somatoform psychological disorder.

The claimant had prior episodes of mild anxiety and mild depression in the distant past. The current difficulties are clearly related to toxic exposure and are neuropathological rather than psychopathological.

There is no functional psychological disorder; the toxic chemical exposure and resulting toxic encephalopathy affect the claimant's attention, cognitive flexibility, verbal skills, mental processing skills and concentration.

Among other things, the claimant suffers from nasal irritation, blurred vision, injury to his nervous system and has neurocognitive dysfunction. These were established by prior order of the commissioner from which no appeal was taken. He suffers from continuing headaches as a result of the toxic exposure. Most significant is his damage to the nervous system.

All Findings of Fact and/or Conclusions of Law not consistent with those of prior orders from which no appeal was taken are deleted.

Very little weight is given to the opinions of Dr. Barth since Barth never saw the claimant, never examined him and never interviewed him.

The claimant has reached maximum medical improvement to the extent that he has reached a plateau at which he will remain IF — and only if — he is provided medical maintenance. Without the various therapies and regimens, his condition will deteriorate into permanent and total disability as he will not be able to function in a regular or normal environment. MMI is established at 10-13-98.

The claimant is highly intelligent and extremely creative. His superior intelligence, creativity, motivation and history of intense and in-depth research do not negate his need for medical care as a result of his work-related exposure.

The claimant is entitled to all medical treatment as recommended by authorized treating providers. Said treatment and supplies are necessary to maintain his level of medical and neuropsychological stability. A portable car air filtration system shall be provided by Defendants based on the recommendations of providers. Bioremediation each year, chromosome studies, therapies, follow-ups and other recommendations by Dr. Lieberman and/or Dr. Franks shall be provided by the defendants.

The claimant's chemical sensitivities resulting from toxic exposure do not affect his ability to do a particular type of work but instead limits him severely as to the kind of environment in which he can work and in the substances to which he can be exposed in his work and in his daily life.

Disability or loss of use awards shall be as follows: 30 weeks to the brain, 10 weeks to the nasal passage, 2 weeks for visual blurring (42-9-30 [18]), and 78.2 weeks or 239% to the nervous system.

The claimant's injuries are medically complex and by their very nature are not observable except by experts and even then only through detailed evaluation and testing.

The panel specifically cites Dodge v. Bruccoli and Pearson v. JPS Automotive regarding additional medical treatment following the attainment of MMI.

The claimant is no longer disabled from working although he remains disabled from working in certain environments without protective measures.

The possibility exists to a reasonable degree of medical certainty that the claimant's neurotoxic injuries will result in early onset of dementia due to the residual effects on abiostrophy.

ORDER

The order of the single commissioner is hereby REVERSED. All Findings of Fact and Conclusions of Law are incorporated herein to become the final Decision and Order of the South Carolina Workers' Compensation Commission.

Defendants are ordered to pay to the claimant 30 weeks to the brain, 10 weeks to the nasal passage, 2 weeks for visual blurring and 78.2 weeks for the nervous system.

Defendants are ordered to provide all medical devices, therapies, evaluations, treatments and programs as

recommended by Drs. Liebermand and Franks and provide such as previously ordered by the commission. These are necessary to maintain the plateau of maximum medical improvement, to maintain a reasonable quality of life and without which the claimant's condition will deteriorate into permanent and total disability.

IT IS SO ORDERED:

S.C. WORKERS' COMPENSATION COMMISSION

Sherry Shealy Martschink
Sherry Shealy Martschink, Commissioner
For the Panel

Concur: W. Lee Catoe, Commissioner

Dissent: Roland S. Corning, Commissioner

Affirm in part, Reverse in part: Defendants to provide proper face masks, mobile air filtration unit and water filtration system in compliance with prior orders.

Defendants to provide treatment recommended by Dr. Lieberman as tending to lesser his period of disability within 42-15-60.

¹ All unchanged Findings of Fact and Conclusions of Law as contained in the single commissioner's order are specifically referenced and included in toto in the "order" portion of this decision so as to comply with the requirements of *Baldwin v. James River Corporation*, 304 SC 485, 405 SE2d4, as well as the Administrative Procedures Act of the State of South Carolina and Sections 42-17-40 and 1-23-350 of the South Carolina Code of Laws, as per *D. Shibley, South Carolina Administrative Law* at 5-109 (1983).

CERTIFICATE OF SERVICE

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

This 15th day of November 1999.
BY: Pennie K. Henry
Administrative Assistant to the Commissioner

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