



2 of 8 DOCUMENTS

LYNN ALEXANDER, Employee/Claimant,  
v.  
ABBEVILLE COUNTY MEMORIAL HOSPITAL, Employer, and PALMETTO HOS-  
PITAL TRUST SERVICES, Carrier, Defendants

WCC FILE NO: 0525476

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

*2007 SC Wrk. Comp. LEXIS 417*

January 11, 2007, Decided

January 11, 2007, Filed

**CORE TERMS:** claimant, ankle, dancing, dance, medical treatment, ballet, peroneal, danced, pain, conversation, carrier, brace, toes, ballet dancing, videotape, surgery, synovectomy, swelling, symptoms, tendon, emergency room, full time, cross-examination, contributed, recommended, consisting, walker, sheath, nurse, wear

**HISTORY:** Hearing: Held in Greenwood, South Carolina on December 5, 2006.

Purpose of Hearing: To determine issues set forth on Forms 50 and 51, as well as any other issues which may timely come before the Commission.

**COUNSEL:**

Claimant represented by **Robert P. Foster**, Esquire of Greenville, South Carolina.

Defendants represented by Brad B. Easterling, Esquire of Turner Padgett of Greenville, South Carolina.

**JUDGES:** DAVID W. HUFFSTETLER, COMMISSIONER

**OPINIONBY:** DAVID W. HUFFSTETLER

**OPINION:**

[\*1]

**DECISION & ORDER**

**STIPULATIONS**

At the hearing, counsel for the parties stipulated to the following issues:

1. The purpose of the Hearing is to determine the issues set forth on the Hearing Notice, issues plead in Forms 50 and 51, and any other issues, which may timely come before the Commission.
2. Notice of the Hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is \$ 1,124.75 with a corresponding compensation rate of \$ 592.56, the maximum compensation rate for 2005.
4. Venue, set in Greenwood County, is proper.

5. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an originally admitted accidental injury occurring on July 5, 2005. Therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

### **EVIDENTIARY SUBMISSIONS**

Under the Administrative Procedures Act, the following records were submitted into evidence by the parties:

#### **Claimant's Submissions**

1. Records of Abbeville County Memorial Hospital dated July 5, 2005 through August 7, 2006 consisting of 32 pages;
2. Records of Oakwood Orthopaedic Specialists dated June 21, 2006 [\*2] consisting of 2 pages;
3. Records of Caroline Bone and Joint Specialists dated March 14, 2006 through August 7, 2006 consisting of 10 pages;

#### **Exhibits**

Claimant's Exhibits:

- (a) Claimant's left ankle corset brace
- (b) Photograph of Claimant

Pursuant to a supplemental Form 58 and APA submission dated December 1, 2006, Claimant submitted the deposition testimony of Steven T. Carawan, M.D., taken on November 21, 2006

#### **Defendant's Submissions**

1. Claimant's deposition taken September 27, 2006
2. Program from Claimant's May 16, 2006 dance performance at Lander University (videotape of performance also submitted)
3. Certificate in Lieu of Signature Page from Gallagher court Reporting dated November 20, 2006

During cross-examination of the Claimant, the videotape of Claimant's May 16, 2006 ballet performance at Lander University was also admitted into evidence without objection.

### **STATEMENT OF THE CASE**

This claim involves an originally admitted injury to the Claimant's left ankle, which was originally treated as a medical-only claim. The Claimant was initially provided medical treatment at the Abbeville County Memorial Hospital Emergency Room. Subsequent to the [\*3] original injury, the Claimant returned to work with the employer. The claim was closed in December 2005 because Claimant had missed no time from work and had not requested any additional medical treatment. In late December 2005/early January 2006, the Claimant contacted the carrier and requested additional medical treatment as she claimed an increase in her work hours had caused increased swelling and pain in her left ankle. At the Claimant's request, the carrier scheduled Claimant to see Dr. Carawan and the Claimant did, in fact, see Dr. Carawan first on March 14, 2006. Upon suspecting the Claimant was participating in ballet dancing, the carrier contacted Claimant and inquired about her dancing activities. The carrier subsequently denied further benefits under the Act.

On August 3, 2006, Claimant filed her Form 50, Employee's Request for Hearing, seeking additional medical treatment for her left ankle, temporary disability benefits from May 24, 2006 to the present and continuing and, in the alternative, permanent partial disability to her left ankle. Defendants filed their Form 51, Employer's Answer to Request for Hearing, on August 22, 2006 denying Claimant's entitlement to [\*4] additional benefits.

It is the Claimant's position that she sustained an originally admitted injury to her left ankle on July 5, 2005 that became worse and ultimately required additional treatment in early 2006. Claimant contends that the authorized treating physician, Dr. Steven Carawan, knew of her extra-curricular dancing activities and opined that continued dancing on the left ankle did not contribute to Claimant's ultimate need for surgery. Claimant seeks payment of all causally related medical treatment and an award of compensation for temporary total disability benefits from May 24, 2006 to the present and continuing. Claimant also seeks additional medical treatment.

The Defendants contend that Claimant's extra-curricular ballet dancing, particularly her activities after April 4, 2006, served as an intervening cause which contributed to her need for surgery. The Defendants further contend that Claimant was dishonest in June 2006 when the carrier questioned her regarding her dancing activities. Defendants contend that Claimant's lack of credibility is significant in that it also skews Dr. Carawan's opinion, which was largely based on the history provided by the Claimant. Defendants [\*5] contend that the Claimant should be denied any additional benefits under the Act.

## EVIDENCE OF THE CASE

### Live Testimony

The Claimant, **Lynn Alexander**, appeared and testified that she was formerly employed at Abbeville County Memorial Hospital and that on July 5, 2005 she stepped in a pothole and twisted her left ankle while walking across the campus of Abbeville County Memorial Hospital. Claimant testified that she initially treated in the emergency room where her left ankle was x-rayed. Claimant returned to work that same day but was in significant pain. Claimant testified that, initially, she did not miss any time from work. Claimant testified that in November of 2005, she was required to work longer hours, which she contends contributed to increased pain and swelling in her left ankle.

The Claimant testified that she informed Dr. Carawan of her ballet dancing and Pilates activities and that Dr. Carawan gave her a brace to wear while engaging in these activities. Claimant explained that ballet and Pilates has been a passion in her life and that after the July 5, 2005 accident, she modified her dancing. Claimant testified that she wore a brace when dancing and [\*6] that she could not do full releves (a rising movement with the foot to point) on her left ankle. Claimant stated that Dr. Carawan did not curtail any of her activities. Furthermore, Claimant acknowledged dancing in a ballet performance on May 16, 2006 at Lander University. Claimant explained that she did not dance to her full potential in the May 16<th> performance. Claimant testified she had her ankle wrapped and wore a brace during the May 16<th> performance.

On cross-examination, Claimant acknowledged that after the original injury of July 5, 2005 she did not miss any time from work. Claimant admitted her claim was originally closed because from July 2005 until late November 2005, she did not request any further medical treatment. While Claimant contended that the increase in her work duties in November of 2005 contributed to her increased pain and swelling, she admitted that during this time, she was also participating in Pilates and dancing and rehearsing for the May 16, 2006 performance at Lander University.

Claimant acknowledged that the videotape, which was submitted into evidence without objection, and corresponding program did, in fact, show her dancing on three occasions [\*7] in the May 16, 2006 performance at Lander University. Claimant acknowledged that the May 16, 2006 performance at Lander University was the same day Dr. Carawan recommended she undergo surgery on her left ankle. Furthermore, Claimant acknowledged that nowhere in the Dr. Carawan's medical records did he indicate it was acceptable for her to engage in ballet dancing and Pilates. While Claimant initially denied that Dr. Carawan told her to wear a CAM walker full time on April 4, 2006, upon being presented with Dr. Carawan's April 4, 2006 note, she admitted that he did, in fact, instruct her to wear the CAM walker full time to see if her symptoms improved, in hopes of avoiding surgery. Claimant admitted that after April 4, 2006, she continued to dance and do Pilates using another brace.

On cross-examination, the Claimant was also asked about a telephone conversation with Mr. Lynfield Tolar of Palmetto Hospital Trust Services in June of 2006. While Claimant recalled that she did speak with Mr. Tolar in June 2006, she denied that he asked her whether she had dance ballet within the last three months. Finally, Claimant acknowledged that Aleta Moore, a nurse case manager with Intracorp, was [\*8] present for her May 16, 2006 visit with Dr. Carawan.

**Cathy Girvin**, the owner of Studio One School of Ballet in Greenwood, South Carolina, appeared and testified on behalf of the Claimant. Ms. Girvin testified that Claimant has danced with Studio One since 2000. Ms. Girvin testified that after Claimant's July 2005 ankle injury, Claimant could no longer do releves with her left ankle/foot and could not

do fast movements with her left foot/ankle. Ms. Girvin testified that Claimant could not do running and jumping. Ms. Girvin stated that Claimant did perform in the May 16, 2006 performance at Lander University, but danced in a modified role. On cross examination, Ms. Girvin testified that during the May 16, 2006 performance at Lander University, Claimant did primarily floor work, upper body movement and moved around the floor. Ms. Girvin admitted that Claimant was present for every rehearsal, which was every other Saturday from 9:00 a.m. until 1:00 p.m., from January until May 2006. Ms. Girvin verified that Claimant did rehearse at Studio One after April 4, 2006.

**Lynfield Tolar**, of Palmetto Hospital Trust Services, appeared at the hearing and testified on behalf of the Defendants. [\*9] Mr. Tolar testified that he was the adjuster responsible for handling Ms. Alexander's July 5, 2005 workers' compensation claim. Mr. Tolar explained that Ms. Alexander's claim was originally treated as a medical-only claim and that it was originally closed in December 2005 because Claimant did not seek additional treatment. Mr. Tolar testified that he later re-opened Ms. Alexander's claim at the request of the Hospital's claims coordinator and scheduled Claimant to see Dr. Carawan in March 2006.

Mr. Tolar testified regarding his June 8, 2006 conversation with Claimant. Mr. Tolar stated that in this June 8, 2006 conversation he was attempting to determine if Claimant's ballet dancing had any effect on her left ankle. Mr. Tolar testified that in his June 8, 2006 conversation with Claimant, she specifically told him that she had not danced at all within the last three months. Claimant informed Mr. Tolar that she had done some Pilates, had put her leg on the horizontal bar, but had not danced at all. Mr. Tolar further testified that in the June 8, 2006 conversation he informed Claimant that there was an eyewitness who had seen Claimant dancing on her toes. Mr. Tolar testified that in his [\*10] conversation with the Claimant she indicated she could not dance on her toes at all.

Mr. Tolar also testified that he spoke with Claimant again on July 11, 2006 at which time he informed her he was denying her claim. Mr. Tolar testified that on July 11, 2006 he reminded Claimant of their earlier June 8, 2006 conversation in which she denied dancing at all within the last three months. Claimant denied she ever made such a statement. Mr. Tolar testified that at no time during his investigation and handling of the claim did Claimant ever tell him about her May 16, 2006 ballet performance at Lander University.

**Aleta Moore**, nurse case manger with Intracorp, appeared and testified at the hearing. Ms. Moore testified that she attended Claimant's May 16, 2006 appointment with Dr. Carawan and specifically asked Claimant in Dr. Carawan's presence if she was able to dance. Ms. Moore testified that Claimant adamantly denied being able to dance and stated that she had not danced since the July 5, 2005 accident.

**Sharon Martin**, an employee of Abbeville County Memorial Hospital and Claimant's former nurse manager, appeared and testified that she took dance lessons at Studio One in Greenwood, [\*11] South Carolina beginning in late February of 2006. Ms. Martin testified that in March of 2006 she had the opportunity to see Claimant dancing at Studio One. Ms. Martin testified that she observed Claimant dancing on her toes in a typical ballet position with her hands above her head. Ms. Martin testified that she watched Claimant dance for approximately ten minutes.

### Medical Evidence

The medical evidence submitted by the Claimant shows that she was initially treated in the emergency room at the Abbeville County Memorial Hospital on July 5, 2005 as a result of falling in a pothole and twisting her left ankle. X-rays were performed in the emergency room, which indicated no fracture or break. Claimant next received medical treatment from Dr. Steven T. Carawan of Carolina Bone and Joint Clinic on March 14, 2006. At this time, the Claimant complained of pain located on the anterior aspect of the left ankle and some extension of pain into the lateral aspect. Claimant also complained of swelling in this area. On this date, Dr. Carawan recommended an MRI of Claimant's left ankle to check for any ligamentous abnormalities. On the initial visit with Dr. Carawan, the Claimant reported [\*12] that her ankle pains were aggravated by exercises she enjoys doing including ballet and palates. On April 4, 2006, Dr. Carawan reviewed the left ankle MRI and noted fluid around the peroneal tendon sheath, but no intra articular fracture or loose body. On this day, Dr. Carawan indicated Claimant may have a partial tear of one of the peroneus tendons given the fluid in the peroneal tendon sheath. On April 4, 2006, Dr. Carawan specially recommended a trial of a CAM walker full time for four weeks to determine if Claimant's symptoms would improve. Dr. Carawan noted that if Claimant's symptoms persisted, Dr. Carawan stated that a synovectomy and decompression of the peroneal tendon sheath and repair of any partial tears could be considered. On May 16, 2006, Dr. Carawan determined that because Claimant's symptoms had not resolved, Claimant should proceed with the peroneal synovectomy. In August 2006, the claimant did, in fact, undergo the peroneal synovectomy of her left ankle. Prior to proceeding with the peroneal synovectomy procedure, the carrier had claimant evaluated by Dr. Thomas Anderson of Oakwood Orthopaedic Specialists to confirm Claimant's

need for surgery. On June 21, 2006, [\*13] Dr. Anderson confirmed that a peroneal procedure on Claimant's left ankle was appropriate. Dr. Carawan's deposition was also taken on November 21, 2006 and was submitted into the record.

#### FINDINGS OF FACT

1. After viewing the videotape of Claimant's May 16, 2006 ballet performance at Lander University, which was submitted by the Defendants, I observed a person with full range of motion and no sign of a leg brace who was dancing on her toes.
2. While I generally place an enormous amount of weight on the authorized physician's opinion, in this case, it is clear that Claimant was fully recovered by the time she danced on May 16, 2006. Claimant demonstrated no ill effects of her injury.
3. I find that Defendants' witnesses, specifically Lynfield Tolar, Aleta Moore, and Sharon Martin are credible and believable.
4. Mr. Lynfield Tolar of Palmetto Hospital Trust Services and Ms. Aleta Moore of Intracorp testified the Claimant specifically denied having danced or being able to dance since the injury of July 5, 2005.
5. While Claimant contends she was unable to dance on her toes, Ms. Sharon Martin testified that she observed Claimant dancing on her toes at Studio One in March of [\*14] 2006.
6. The videotape evidence submitted by the Defendants supports the testimony of Lynfield Tolar, Aleta Moore and Sharon Martin.
7. The case of *Tiller v. National Health Care Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999) instructs that the Commission can consider evidence beyond the treating physician's opinion.
8. Dr. Carawan's opinion on causation is jaded by the unreliable history given by Claimant.

#### CONCLUSIONS OF LAW

1. S.C. Code Ann. § 42-1-160 is applicable in defining "injury" and "personal injury", and governs compensable work-related accidental injuries.
2. S.C. Code Ann. §42-1-120 governs the payment of temporary total disability compensation benefits.
3. S.C. Code Ann. §42-15-60 governs medical treatment resulting from compensable work related accident.
4. S.C. Code § 42-17-40 is applicable in governing the conduct of hearings and rendering of awards.
5. The case of *Tiller v. National Health Care Center of Sumter*, 334 S.C. 333, 513 S.E.2d 843 (1999) holds that while medical testimony is entitled to great respect in workers' compensation cases, a Commissioner [\*15] may disregard it if there is other competent evidence in the record.

#### ORDER

Based upon the Findings of Fact and Conclusions of Law, the undersigned Commissioner orders as follows:

**IT IS ORDERED** that Claimant failed to satisfy her burden of proving that her current claim for additional benefits under the Act is causally related to her July 5, 2005 injury while working for Abbeville County Memorial Hospital.

**IT IS THEREFORE ORDERED** that Claimant's claim for additional benefits under the South Carolina Workers' Compensation Act is hereby denied.

**IT IS SO ORDERED.**

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI Administrative Proceedings Evidence Witnesses Workers' Compensation & SSDI Benefit Determinations General Overview Workers' Compensation & SSDI Compensability Injuries Accidental Injuries