

## Workers' Comp LAW BLOG

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## Court of Appeals Rules on Issues of MMI and Permanency for Disfigurement



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### Practice Areas:

- Workers' Compensation
- Professional Liability

In February 2012, the South Carolina Court of Appeals ruled on *Cranford v. Hutchinson Construction*, which discussed the issues of MMI and permanency for disfigurement.

Here is the history on the case. On June 26, 2007, Claimant sustained injuries to both hands, both arms and back after jumping out of a tilting forklift basket while working for Defendant Hutchison. Claimant remained out of work for three weeks and then returned to work at light duty. Several weeks later, Hutchison terminated him for "being unsafe on the job site." Because Claimant worked at least 15 days prior to his termination, the employer filed a Form 15 stopping benefits within 150 days. See S.C. Code Ann. § 42-9-260(B)(1), which states "if the employee does not remain at work for a minimum of 15 days, temporary disability benefits must be resumed immediately."

Claimant subsequently found alternate employment at a greenhouse, and his back complaints resurfaced. Hutchison authorized additional treatment, and on June 23, 2008, the treating physician released Claimant at MMI, assigning no permanent impairment and noting Claimant could return to work with "the use of good body mechanics and careful lifting techniques." Thereafter, Claimant's attorney referred him for an IME with Dr. Zgleszewski, who diagnosed sacroilitis and opined Claimant was not at MMI and should not return to work without further treatment. Hutchison denied Claimant's request for the additional treatment recommended by Claimant's IME physician, and Claimant filed a Form 50.

Prior to the hearing, Claimant returned to Dr. Zgleszewski and obtained impairment ratings of 10% to the back and 9% whole person due to the scarring on his arms. At the hearing, the commissioner awarded 12 weeks disfigurement for scarring to the arms but did not address permanency. The commissioner concluded Claimant sustained no permanent partial disability to the back and denied Claimant's entitlement to temporary benefits or additional medical treatment. Claimant appealed, and the Appellate Panel issued a full affirmation. Claimant appealed to the Court of Appeals, and the Court addressed the following issues:

1) TTD: The Court of Appeals found because Claimant returned to work for more than 15 days after the accident and because Hutchison provided suitable employment within his restrictions during that time, Section 42-9-260(B)(1) did not require Hutchison to resume TTD after Claimant's termination.

2) MMI and PPD: The Court held an award of disfigurement for scarring "is generally not proper prior to a finding of MMI." Because an employee may be entitled to an award for both disability and disfigurement due to scarring, the Court held an explicit finding as to MMI is necessary and remanded the case for specific findings on this issue. The court also remanded the case for a determination of permanency to the skin and arms.

3) Additional Treatment: The Court noted the relevant inquiry is not whether Claimant attained MMI, "but whether additional medical treatment and medication will tend to lessen his period of disability." The Court deferred to the Appellate Panel's finding in regard to this issue because of the conflicting expert testimony, noting the discretion of the Commission to determine the appropriate weight and credit given to expert testimony.

Practice Point: (1) In this opinion, the Court of Appeals looked closely to the statutory sections regarding TTD. Remember to review Section 42-9-260 when stopping or starting benefits. (See also S.C. Reg. § 67-503 to -506). (2) Keep in mind a claimant may be entitled to both disfigurement and permanency from serious burn scars or keloid scars. See S.C. Code § 42-9-30(23). In some scarring cases, it may be necessary to obtain an impairment rating.

### **About Anne Marie Hempy**

Anne Marie Hempy is an associate practicing in the areas of Workers' Compensation and Defense Litigation. While in law school, Anne Marie worked as a law clerk for Collins & Lacy and served as an Articles Editor for the South Carolina Law Review. Prior to joining Collins & Lacy as an associate, Anne Marie served as a law clerk to the Honorable G. Ross Anderson, Jr., United States District Court, District of South Carolina and worked for a defense firm, where she practiced in the area of Professional Liability Defense.

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