

# Colonna Decision Heightens Second Body Part Impairment Requirement

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## Media Contact

Erica Gianetti

Marketing & Communications Supervisor

[erica.gianetti@mgclaw.com](mailto:erica.gianetti@mgclaw.com)

When an employee sustains an injury arising out of employment, the injured worker can proceed under a variety of different statutes for recovery depending on the number of injured body parts and extent of the injury. A claimant who suffers a compensable injury to a single listed body part is limited to disability payments as set forth in the scheduled member provisions of S.C. Code Ann. § 42-9-30: "Where the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation." *Singleton v. Young Lumber Company*, 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960).

However, if the claimant can demonstrate an impairment to more than one body part, then the claimant can proceed to attempt to show that he or she is totally disabled under S.C. Code Ann. § 42-9-10: "To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is affected." *Singleton v. Young Lumber Company*.

In *Colonna v. Marlboro Park Hosp.*, the Court of Appeals addressed what it means for a body part to be "affected."

In April 2013, the South Carolina Court of Appeals held that the claimant's back was not "affected" with the implantation of a spinal cord stimulator into the claimant's back. In *Colonna*, a hospital employee sought workers' compensation benefits for a compensable injury to her ankle/foot. To address the pain in the claimant's right foot and ankle, a spinal cord stimulator was implanted in the claimant's back. Claimant then argued that she could recover under the two-body part provision of S.C. Code Ann. § 42-9-10 because her back was an "affected" body part. The court ruled against her in holding that she was barred from recovering under S.C. Code Ann. § 42-9-10 because the claimant failed to prove that a body part was affected in addition to the ankle/foot. In *Colonna*, the court stated that "a claimant must prove not only that another body part was affected by the insertion of the treatment device, but that another body part was impaired or injured for section 42-9-10 to apply."

"The principle espoused in *Singleton* recognizes 'the common-sense fact that, when two or more scheduled injuries . . . occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together.' The implication of the policy stated in *Singleton* (and further clarified in *Colonna*) is that two separate injuries and impairments are required to obtain compensation based on the idea that two injuries combine to have a greater impact than simply adding the two separate impairments.

Although the precise holding in *Colonna* states that a spinal cord stimulator does not meet the second body part affected requirement, the implications of this case are rather significant. The question is no longer simply whether the body part was affected, but whether the second body part suffered an impairment or injury. There has been some indication from the Commission that symptoms are not enough to meet the second body part requirement. For example, it is unlikely that radiculopathy to a second body part is sufficient to meet the second body part. It appears that claimants will now need a diagnosable injury to a second body part, including an impairment rating.

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#### ABOUT THE AUTHOR

Wesley Henderson is an attorney with [McAngus Goudelock & Courie](#). MGC is a metrics-driven law firm built specifically to meet the needs of insurance companies and their customers. From seven regional offices, we serve clients across the Southeast. Mr. Henderson may be reached at 864.239.4009 or by [email](#).

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