

SC Workers' Compensation Update (4)

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Supreme Court Issues Revised Opinion in Clemmons v. Lowe's

In March, the SC Supreme Court ruled in this case (involving a slip and fall resulting in injury and subsequent fusion surgery to the Claimant's neck), that there was no evidence to support the Commission's finding that the Claimant had lost only 48% of the use of his back. To reach this conclusion, the Court converted the treating physician's 25% whole person rating to a regional cervical spine rating of 71% (even though there was no evidence of such conversion in the record), and held that all of the medical evidence indicated the Claimant had lost more than 50% of the use of his back, which entitled him to a presumption that he was permanently and totally disabled.

The Court also determined that the Employer had failed to rebut the presumption of P&T because they relied on the fact that the Claimant had returned to his pre-injury position as a cashier and had worked 40-hour weeks with minimal accommodation for two years. The Court held that, since this award was under the scheduled member part of the Act, i.e., the "medical" part of the Act, only medical evidence was relevant to determining whether an employer had rebutted the presumption.

The Employer sought rehearing on all issues. In a rehearing Opinion issued on June 28, 2017, the Supreme Court maintained its position that all of the evidence showed that the Claimant had lost more than 50% of the use of his back. However, it remanded to the Commission for a new hearing to determine whether the Employer has rebutted the presumption of P&T. Claimant has sought rehearing of this rehearing Opinion, basically asking the Court to reinstate its prior finding that the Employer failed to rebut the presumption.

For questions or more information, please contact one of [MGC's attorneys](#).

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