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**SC Court of Appeals**

**DECISION AND ORDER  
OF THE  
APPELLATE PANEL  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**COMMISSION PANEL: The Honorable T. Scott Beck, Chair; The Honorable Melody L. James, The Honorable Avery B. Wilkerson, Jr.**

**SCWCC FILE NO.: 1517030**

Leonard Hart,

Claimant,

v.

ConAgra Foods d/b/a American Italian Pasta Co.,

Employer,  
and

Old Republic Insurance Co.,

Carrier,

Defendants.

Hearing held in Richland County, South Carolina,  
on February 22, 2022

Per notice timely and properly served upon all Parties of Interest.

**Appearances:** Brent P. Stewart Esquire, of Stewart Law Offices, appeared  
on behalf of Claimant/Appellant.

Roy A. Howell, Esquire, of Trask and Howell, appeared on  
behalf of Defendants/Respondents.

Filed:

*July 29, 2022*

## STATEMENT OF THE CASE

This appeal arises out of Claimant's alleged change in condition of his right hip injury. On August 27, 2015, Claimant sustained an admitted trip injury to his right hip while working for American Pasta Company. Claimant was provided medical treatment and reached maximum medical improvement by July 25, 2016. By Form 16A approved on May 3, 2017, the parties agreed that Claimant sustained 6% loss of use of the right hip and was entitled to 16.8 weeks of compensation. According to Dr. Armsey's opinion as set forth on the accompanying Form 14B, Claimant most probably would not require any future medical care.

On November 6, 2017, Claimant filed a Form 50 alleging a change of condition for the worse and seeking additional compensation and medical benefits for his right hip, right lower extremity, lower back, and buttocks. The Defendants initially denied that Claimant was entitled to the additional benefits claimed, but thereafter admitted Claimant sustained a change in condition of his right hip injury and authorized additional and causally related treatment with Dr. Armsey. Claimant continued treatment for his injury, including right hip surgery, until his release at maximum medical improvement by Dr. Dumont on January 2, 2020. Dr. Dumont opined that Claimant sustained 6% permanent impairment to the right hip, indicated that his right hip flexion would be permanently limited, and opined that the only future medical treatment Claimant required was to "work on stretching and flexibility of the right hip." Defendants subsequently filed a Form 21 on October 21, 2020 seeking a permanency determination. Thereafter, Claimant filed a Form 50 alleging Claimant sustained a new change in condition and had not reached maximum medical improvement. Claimant also sought a permanency determination for his initial change in condition claim and additional medical treatment as well as lifetime medical treatment.

The parties' filings were consolidated, and a Hearing was held before the Single Commissioner on February 25, 2021. By Decision and Order, dated August 16, 2021, the Single Commissioner denied Claimant's request for additional medical treatment and compensation benefits. In support of this conclusion, the Single Commissioner reasoned that because there was no change in the impairment rating issued prior to the first award and the impairment rating after the second award and because Claimant testified that his pain decreased and he was able to work without restrictions, Claimant did not sustain any additional permanent disability.

Claimant timely appealed this determination to the Appellate Panel alleging multiple points of error. During oral argument, Claimant alleged that he sustained additional disability as

evidenced by a subsequent increase in his impairment rating and subsequent employment at a lighter-duty job. Claimant also alleged, based upon Dr. Lehman's and Dr. Dumont's medical opinions, that he was entitled to the future medical treatment as recommended by those providers. Defendants disagreed alleging that both Dr. Dumont and Dr. Lehman's opinions were speculative as to whether or when Claimant would require the recommended treatment modalities and neither physician could state, to a reasonable degree of medical certainty, that the recommended treatments would tend to lessen his period of disability.

Oral arguments were held on February 22, 2022, before the Appellate Panel in Columbia. Brent P. Stewart appeared on behalf of the Claimant and Roy A. Howell, III, appeared on behalf of the Defendants.

#### FINDINGS OF FACT

On August 16, 2021, the Single Commissioner issued his Decision & Order containing the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. *On August 27, 2015, the Claimant sustained a compensable injury to his right hip arising out of and in the course of his employment with the Defendants.*
2. *The Claimant received all causally related medical treatment that would tend to lessen the period of disability causally related to the August 27, 2015 accident, which was conservative in nature, and initially reached maximum medical improvement on July 25, 2016.*
3. *Thereafter, the parties resolved all issues by settlement via Form 16A, awarding the Claimant benefits for a 6% loss of use of the right hip. The ratings at the of settlement were 0% from the treating physician, Dr. Thomas Armsey, and 6% from Tracy Hill, PT, and 6% from Dr. Hutcheson, the Claimant's IME physician. The Form 16A was approved on May 3, 2017.*
4. *Following the Form 16A settlement, the Claimant requested additional treatment and, ultimately, came under the care of Dr. Guillaume Dumont of USC Orthopedics, with the authorization of the Defendants, for complaints of pain and instability in his hip. Dr.*

*Dumont performed surgery on June 19, 2019 and placed the Claimant at maximum medical improvement on January 2, 2020.*

- 5. Following [sic] the Claimant's release at maximum medical improvement by Dr. Dumont, the Claimant returned to Tracy Hill, PT for an updated impairment rating. Ms. Hill rated the Claimant's impairment as 6% of the right hip, which is unchanged from the previous rating she assigned in 2016. Dr. Dumont adopted Ms. Hill's 6% impairment rating.*
- 6. The Claimant is currently working regular, full duty for the Defendant Employer, without restrictions and in a position which the Claimant admits is more physically demanding than before his Form 16A award. Therefore, having no work restrictions and having shown his ability to earn the wages he earned prior to the work accident, the Claimant has no loss of wage-earning capacity.*
- 7. When the evidence is viewed as a whole, I find that the greater weight of the evidence shows that the Claimant has not sustained any additional permanent disability or loss of use of the right hip since his Form 16A award. In fact, the greater weight of the medical evidence shows that he is now better and his right hip is less impaired than it was at the time the Form 16A was approved in May 2017. Both Ms. Hill and the Claimant's IME physician, Dr. Hutcheson, issued a 6% impairment rating, prior to the first award and this is the same impairment rating both Ms. Hill and the Claimant's authorized treating physician, Dr. Dumont felt was applicable after the Claimant reached maximum medical improvement again on January 2, 2020. In addition, the Claimant testified that his pain is not as bad as it was prior to his prior award, and he is working, and he is now performing his regular job without any restrictions. While the Claimant's IME, Dr. Lehman, assigned a 10% impairment rating for the right lower extremity, greater weight is accorded to the opinions of Dr. Dumont, who actually treated the Claimant and performed surgery, than the physician who evaluated him on one occasion for the purpose of litigation.*
- 8. The greater weight of the evidence shows that the Claimant reached maximum medical improvement on January 2, 2020, based the reports and opinions of the authorized treating physician, Dr. Dumont. It is undisputed that at the time the Claimant was placed at maximum medical improvement on January 2, 2020, Dr. Dumont did not recommend any ongoing medical treatment to maintain the Claimant's current level of functioning or to lessen the Claimant's disability. It is also undisputed that the Claimant has not required*

*any medical treatment since January 2, 2020, with the exception of occasional over the counter medication.*

9. *Dr. Dumont has since issued a written questionnaire and subsequently testified at a deposition where he qualified his recommendation for future medical treatment with the statement, "[f]uture needs will depend on any recurrence of symptoms." Therefore, after carefully weighing the opinions and testimony of Dr. Dumont, I find that they do not support a finding that the Claimant currently requires any additional or ongoing medical care or treatment to lessen the period of disability causally related to the work accident or to maintain his current level of functioning.*
10. *At the request of his attorney, the Claimant saw Dr. William Lehman for an Independent Medical Evaluation on November 25, 2020. Dr. Lehman also completed a questionnaire and has been deposed. Dr. Lehman's report specifically states that the Claimant is not currently in need of any specific treatment to lessen his disability, though he made vague recommendations for unspecified treatment in the future. In addition, his testimony is vague as to when the modalities might be required, whether the speculative need for such treatment in the future would be causally related to the work accident, and whether and whether any future treatment would tend to lessen the period of disability. Therefore, after carefully weighing the opinions and testimony Dr. Lehman, I find that his opinions do not support a finding that the Claimant currently requires any additional or ongoing medical care or treatment to lessen the period of disability causally related to the work accident or to maintain his current level of functioning.*

#### **CONCLUSIONS OF LAW**

1. *Pursuant [to] S.C. Code Ann. § 42-1-160, the Claimant sustained a compensable injury to his right hip on August 27, 2015.*
2. *Pursuant to S.C. Code Ann. § 42-9-10, § 42-9-20, and § 42-9-260, the Claimant is not entitled to any additional benefits for temporary or permanent disability, as the greater weight of the evidence in the record shows him to have no loss of wage-earning capacity and the August 27, 2015 accident affected only a single, scheduled body member (the right hip).*

3. Pursuant to S.C. Code Ann. § 42-15-60, the Defendants provided all causally related and necessary medical care and treatment that would tend to lessen the period of disability causally related to the August 27, 2015 accident and the Claimant reached maximum medical improvement on January 2, 2020, at which time any period of temporary disability ended.
4. Pursuant to S.C. Code Ann. § 42-15-60 and *Dodge v. Brucoli*, the Claimant is not entitled to an award of future medical treatment because the greater weight of the evidence indicates that the Claimant does not currently require any ongoing medical care or treatment to maintain his current level of functioning or to lessen any period of disability caused by the work accident. The Act and applicable case law are clear that the Claimant is only entitled to future medical care or treatment that is reasonable, currently necessary, and has been specifically recommended to lessen the period of disability causally related to the work accident. Awards of future medical treatment cannot be based upon speculation, including speculation as to when or why the Claimant may or may not need such treatment in the future. See *Hartzell v. Palmetto Collision*, 419 S.C. 87, 796 S.E.2d 145 (Ct. App. 2016).
5. Pursuant to S.C. Code Ann § 42-9-30, the Claimant is not entitled to any additional disability compensation for a scheduled loss of use of the right hip, as the greater weight of the evidence indicates that his current loss of use of the right hip does not exceed the 6% previously awarded by Form 16A. This finding is based upon the greater weight of the evidence in the record, including the impairment ratings of Dr. Dumont and the physical therapist, Tracy Hill, which are unchanged from the time of the prior award under the Form 16A.

**ORDER**

*IT IS, THEREFORE, HEREBY ORDERED that the Claimant's claim for additional medical and compensation benefits is DENIED;*

*IT IS FURTHER ORDERED that no hearing costs are assessed in this matter; and  
IT IS SO ORDERED!*

### **ISSUES ON APPEAL**

**Did the Single Commissioner err in finding that a preponderance of the evidence indicates that the Claimant is working a more physically demanding job than before his Form 16A award?**

**Did the Single Commissioner err as a matter of fact and of law in finding that a preponderance of the evidence indicates that the Claimant has not sustained additional permanent disability or loss of use of the right hip since the Form 16A award?**

**Did the Single Commissioner err in finding that Dr. Dumont did not recommend ongoing medical treatment to lessen the Claimant's period of disability?**

**Did the Single Commissioner err in finding that a preponderance of the evidence indicates that the Claimant does not require additional medical care or treatments to lessen the period of disability causally related to the work injury?**

**Did the Single Commissioner err in finding that Dr. Lehman's questionnaire indicates that future medical care or treatments are not required to lessen Claimant's period of disability as causally related to the work injury?**

**Did the Single Commissioner err in concluding as a matter of law that the Defendants have provided all causally related and necessary medical care or treatments that would tend to lessen the period of disability as required by the Act and supporting case law?**

**Did the Single Commissioner err as a matter of law in concluding that the Claimant was not entitled to an award of future medical treatment?**

**Did the Single Commissioner err as a matter of fact in failing to consider that the Claimant was moved from full duty to light/medium duty by Tracy Hill on February 24, 2020?**

Did the Single Commissioner err as a matter of fact in failing to consider that the Claimant was required to have surgery in order to continue working?

Did the Single Commissioner err as a matter of fact in failing to consider that the Claimant's surgery caused a decrease in the range of motion of his right hip?

Did the Single Commissioner err as a matter of fact in failing to consider that the Claimant is working a less physically demanding job now than he was at the time of his Form 16A award?

Did the Single Commissioner err as a matter of fact in failing to consider that the medical evidence establishes that the Claimant will suffer periods of disability in the future and medical care or treatments will be required to lessen those periods?

The Form 30 is contained within the Commission's file.

#### **DECISION OF THE APPELLATE PANEL**

The matter was considered by the South Carolina Workers' Compensation Commission Appellate Panel on February 22, 2022. The Commission considered the matter, and a Panel Majority FULLY AFFIRMS the Decision and Order of the Single Commissioner adopting the related findings of fact and conclusions of law as its own. A Panel Minority writes separately in dissent affirming the Single Commissioner's denial of future surgical treatment and reversing the Single Commissioner's denial of additional disability and additional medical treatment. In addition to the Single Commissioner's findings of fact and conclusions of law, the Appellate Panel Majority sets forth the following additional findings of fact and conclusions of law:

#### **APPELLATE PANEL FINDINGS OF FACT**

1. Claimant presented to Dr. Dumont on March 26, 2019 for an independent medical evaluation complaining of "catching and stiffness" in his hip. (Defendants' APA 11, p. 80; Claimant's APA 26, p. 34). Dr. Dumont diagnosed him with right hip borderline dysplasia, labral tear, and femoroacetabular impingement and recommended right hip arthroscopic surgery. (Defendants, APA 11, p. 80-81; Claimant's APA 26, p. 35).

2. Claimant underwent right hip arthroscopic surgery on June 19, 2019. (Defendants' APA 13, p. 114-116).
3. At his first post-operative visit, Claimant noted that he was "doing great" and "feeling better already." (Defendants' APA 11, p. 97).
4. Treatment notes from July 25, 2019, indicate that Claimant was "doing well" and denied any hip pain. (Defendants' APA 11, p. 101).
5. During the Hearing before the Single Commissioner, Claimant testified that the surgery helped alleviate some of his pain. (Hr. Tr. p. 12, ln. 15-16). His pain isn't as bad as it was prior to the settlement. (Hr. Tr. p. 12, ln. 13-15). However, when he experiences a flare up, the pain "can get as bad as it was before the first surgery." (Hr. Tr. p. 13, ln. 13-18). But, the surgery put him in a better position than he was in prior to the settlement. (Hr. Tr. p. 13, ln. 25; Hr. Tr. p. 14, ln. 1-3).
6. Claimant returned to Dr. Dumont on January 2, 2020 at which time he was released from care. Dr. Dumont completed a Form 14 B and opined that Claimant sustained a 6% permanent impairment rating to the right hip, required permanent physical restrictions regarding his right hip flexion, and recommended stretching as future treatment. (Defendants' APA 11, p. 103-106). Dr. Dumont confirmed during his August 28, 2020 deposition that Claimant reached maximum medical improvement on January 2, 2020 and that he did not recommend any additional treatment at that time. (Claimant's Exhibit 36, p. 192, 205-206).
7. Claimant submitted to a functional capacity evaluation (FCE) on February 24, 2020 at Columbia Rehabilitation Clinic with Tracy Hill, PT. (Defendants' APA 14; Claimant's APA 26). Ms. Hill's report considered Claimant's reported difficulty with prolonged sitting, standing, walking, and squatting. (Claimant's APA 26, p. 95). Ms. Hill also considered Claimant's decreased active range of motion in the right hip and assigned a 5% impairment rating for the deficiency. (Claimant's APA 26, p. 95). She also provided an impairment rating of 6% to the right lower extremity for right thigh atrophy. (Claimant's APA 26, p. 95). Because, according to the AMA Guides 5<sup>th</sup> Edition, the two ratings cannot be combined, she assigned the higher rating, 6% to the right lower extremity for right thigh atrophy and converted it to 6% to the right hip. (Claimant's APA 26, p. 95).

8. The FCE results indicate that Claimant was able to return to work full duty at his previous position and that he is functionally employable on a full-time basis. (Defendants' APA 14, p. 117; Claimant's APA 27, p. 97). Claimant's testimony before the Single Commissioner confirmed that he only missed two weeks of work after his surgery. (Hr. Tr. p. 11, ln. 5-9).
9. Claimant testified at the Hearing that he now works as a continuous improvement manager. (Hr. Tr. p. 9, ln. 2-13). This is a different position than what he held prior to the accident. (Hr. Tr. p. 9, ln. 2-5). He testified that his work was physically heavier prior to the accident. However, his current position requires more walking and standing. (Hr. Tr. p. 9, ln. 14-18).
10. Dr. Dumont completed a questionnaire, dated April 16, 2020, opining that Claimant required medication management, over the counter medication, medical follow-ups, steroid injections, and additional x-rays *should his condition flare up* to lessen his periods of disability in the future. (Claimant's APA 30, p. 116). He further explained: "Future meds will depend on any recurrence of symptoms." (Claimant's APA 30, p. 116). During his August 2020 deposition, he clarified and confirmed that these modalities would only be necessary if Claimant experienced a flare up of symptoms at some unknown time in the future. (Claimant's Exhibit 36, p. 197-198, 204). He agreed that it was speculative whether Claimant would or would not require future medical treatment other than over-the-counter medications. (Claimant's Exhibit 36, p. 206).

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11. Dr. Lehman evaluated Claimant and provided an independent medical opinion on November 25, 2020. (Claimant's APA 31). He agreed that Claimant had reached maximum medical improvement but opined that his ability to climb, stoop, or squat should be permanently restricted. (Claimant's APA 31, p. 123). He opined that Claimant would require clinical monitoring, MRIs, anti-inflammatory medications, possible injections, and potential stem cell therapy at some point in the future. He rated his permanent impairment to the hip at 10%. (Claimant's APA 31, p. 123).
12. Dr. Lehman also completed two questionnaires, one dated November 25, 2020 and the other dated December 8, 2020, opining that Claimant would require medication management, over-the-counter medication, medical follow-ups, additional MRIs, aquatic therapy, surgery, additional CT scans, Additional X-rays, and a total hip replacement. (Claimant's APA 31, p. 126; Claimant's APA 32, p. 127-128). According to his medical

opinion, to a reasonable degree of medical certainty, Claimant would require....those modalities "in the future." (Claimant's Exhibit 37, p. 241).

13. Dr. Lehman clarified during this deposition that Claimant's need for the additional medical treatment listed in the questionnaires depended on Claimant experiencing a change in condition for the worse. (Claimant's Exhibit 37, p. 232). He testified to a reasonable degree of medical certainty that the modalities would be needed in the future but could not testify to a specific time period as to when Claimant would need the additional treatment. (Claimant's Exhibit 37, p. 240, 243). He confirmed, to a reasonable degree of medical certainty: "[t]here is no specific intervention, diagnostic or therapeutic, which reliably will lessen the current level of disability." (Claimant's Exhibit 37, p. 225). He deferred to Dr. Dumont's assessment of Claimant's future treatment needs. (Claimant's Exhibit 37, p. 242-243).
14. Claimant returned to Dr. Dumont on January 14, 2021, complaining of instability and weakness in the hip. (Defendants' APA 11, p. 109). According to the treatment notes, Claimant exhibited flexion of 100 degrees, external rotation of 20 degrees, and internal rotation of 50 degrees. (Defendants' APA 11, p. 110). In comparison, his range of motion increased for internal rotation and flexion and approached pre-operative levels for external rotation. *See* (Defendants' APA 11, p. 95). His external rotation decreased by 30%. (Defendants' APA 11, p. 95, 110).
15. Dr. Dumont again dismissed Claimant from care opining that his condition was non-surgical, "[n]o further follow-up. . .[was] necessary at [that] time. We will see him on an as needed basis." (Defendants' APA 11, p. 111). Regarding the need for future treatment Dr. Dumont stated: "In the future, *if he decides* to proceed with an intra-articular hip injection, we can schedule him for this with Emilie Brown, PA-C." (Defendants' APA 11, p. 111). Dr. Dumont's notes do not state that additional injections are either necessary or would tend to lessen the period of disability. In fact, Claimant testified that he had been working full duty prior to and after the January 14, 2021 appointment without requiring any additional treatment. (Hr. Tr. p. 21, ln. 23-25; Hr. Tr. p. 22, ln. 1-2).
16. January 14, 2021 was not the first time Claimant presented to a physician complaining of instability in his hip. Dr. DaSilva noted Claimant's complaints of "weakness;

popping/clicking” during his independent medical evaluation on March 21, 2016. (Defendants’ APA 4, p. 21).

17. Dr. Dumont again opined as to Claimant’s need for additional medical treatment by completing a Questionnaire on February 5, 2021. He stated: “It is likely he will have occasional flare up of pain or disability. I cannot predict the severity or frequency of the flare ups or continued symptoms.” (Claimant’s APA 34 p. 148). However, he presents contradictory statements indicating on the one hand that though he “cannot predict the likelihood of needing particular interventions, it is more likely than not that the patient will require some dualities to treat pain or flare ups.” (Claimant’s APA 34 p. 148) However, he “cannot predict how likely the medical modalities will be needed or which ones will be needed.” (Claimant’s APA 34 p. 149).
18. He has not required any prescription medication since he returned to work in July 2019. (Hr. Tr. p. 18, ln. 21-15; Hr. Tr. p. 19, ln. 10-16). He has also not required any treatment in the last year and a half to keep working. (Hr. Tr. p. 20, ln. 6-11).
19. According to Claimant’s testimony at the Hearing, numbness and pain in the leg are new symptoms affecting his ability to work that presented after he settled his original claim in 2017. (Hr. Tr. p. 25, ln. 17-24).
20. However, Dr. DaSilva’s records dated June 30, 2016, approximately one year prior to the settlement, indicate that Claimant complained of numbness. (Defendants’ APA 4, p.24).  
Dr. Armsey’s records from July 25, 2016 also record Claimant’s numbness complaints prior to the 2017 Form 16A settlement. (Defendants’ APA 6, p.33).
21. Dr. Ulrich was unable to relate Claimant’s numbness and tingling complaints to his hip injury. According to his October 29, 2018 treatment note: “I still do not have a good explanation for his numbness and tingling in his lower leg. I still feel it is related to his congenital short pedicle syndrome and moderate spinal stenosis. Flexion and extension views were negative today for any signs of instability.” (Defendants’ APA 8, p. 71). During his deposition, he further opined: “[N]umbness and tingling should not, that should not connect to a labrum tear. . .but I cannot put a correlation to the numbness and tingling he is describing in that regard.” (Claimant’s Exhibit 33, p. 160).
22. Claimant submitted to an EMG study. The results of the EMG were normal. (Defendants’ APA 10, p. 77).

23. Physical therapy records from Lexington Physical Therapy, dated January 19, 2016, indicate that Claimant experienced difficulty traversing stairs, standing, walking, and performing activities of daily living. Claimant also complained of pain. (Defendants' APA 3, p. 15-16).

#### APPELLATE PANEL CONCLUSIONS OF LAW

1. Claimant is not entitled to an award of future medical treatment or an additional award of permanent disability benefits. He has failed to meet his burden to prove a change in physical condition for the worse. In order to prevail on a claim for a change in condition, Claimant bears the burden to prove, by a preponderance of the evidence, "that there has been a change of condition caused by the original injury, after the last payment of compensation." S.C. Code Ann. § 42-17-90 (2007, as amended). "A change in condition in a workers' compensation claim is 'a change in the claimant's physical condition as a result of the original injury, occurring after the first award.'" Carter v. Verizon Wireless, 407 S.C. 641, 648 (Ct. App. 2014)(citing Causby v. Rock Hill Printing & Finishing Co., 249 S.C. 225, 227 (1967)).
2. After Claimant's accident on August 27, 2015, he presented to Dr. Hurley at Palmetto Healthworks complaining of constant, variable pain, decreased range of motion, and "clicking" in the hip. Approximately a year after the accident, Claimant complained of numbness while treating with Dr. DaSilva and Dr. Armsey. He also expressed difficulty traversing stairs, standing, walking, and performing activities of daily living while attending physical therapy. During this period, he continued working and taking over-the-counter medication. Claimant settled his claim on May 3, 2017 and received compensation for 6% to the right hip. At that time, no future treatment or permanent restrictions were recommended.
3. Thereafter, like his reported condition prior to the surgery, his pain, numbness and tingling symptoms, and difficulties traversing stairs continued. Despite these complaints, Claimant testified at the Hearing that he experiences less pain after the surgery, but during a flare-up his pain levels are equivalent to pre-surgical levels. His post-operative medical notes

confirm his reports that he was “doing better” and “feeling great.” He has continued working and taking over-the-counter medication. Upon his release from treatment, his authorized treating physician likewise assigned a 6% permanent impairment rating. Claimant’s FCE results indicate that he is functionally able to return to work at full duty at his previous position on a full-time basis. Since the accident, Claimant was promoted to a position that requires more walking and standing than his previous job and he continues to work full-time without reliance on prescription medication or formal medical treatment. Based upon the foregoing, Claimant’s current condition is either improved or unchanged. Therefore, he did not sustain a change in physical condition entitling him to an additional award.

4. Even if he did sustain a physical change in condition for the worse, Claimant is not entitled to an award of additional medical treatment or an award of additional compensation. The Commission may award additional medical treatment if it will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. S.C. Code Ann. § 42-15-60(A)(2007, as amended); *See also Dodge v. Brucoli, Clark, Layman, Inc.*, 334 S.C. 574, 580 (S.C. Ct. App. 1999). Furthermore, under § 42-15-60, the medical care must be reasonable and necessary and causally related to the compensable injury. *Munn v. Nucor Steel, Div. of Nucor Corp.*, 336, S.C. 28, 31 (1999). Where future medical treatment could extend far into the future, the Commission should make as definitive of an award as possible given the facts. *See Rice v. Froehling & Robertson, Inc.*, 267 S.C. 155, 163 (1976). However, “such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it.” *Burnette v. City of Greenville*, 401 S.C. 417, 428 (Ct. App. 2012). Both Dr. Dumont and Dr. Lehman mention the possibility that Claimant will require additional medical treatment and cite various options, but neither can conclusively state whether and which modalities will be necessary in the future. Dr. Dumont’s sworn deposition testimony, and his April 16, 2020 questionnaire, confirmed that any modalities mentioned would only be necessary in the event of a flare-up, and even then, he couldn’t definitively state which modalities, if any, would be required. He testified that it is speculative whether Claimant would or would not require future medical treatment other than over-the-counter medications. No additional medical treatment was

ordered upon Claimant's release at maximum medical improvement on January 2, 2020 and no further follow-up was specifically ordered after Claimant's January 14, 2021 examination. Rather than order additional injections, Dr. Dumont left that determination up to Claimant. During the January 2021 appointment, Dr. Dumont's notes fail to state, to a reasonable degree of medical certainty, that injections are necessary and will tend to lessen Claimant's period of disability. Discussing an optional injection fails to meet this legal standard.

5. Dr. Lehman's opinion on Claimant's future medical treatment differs from Dr. Dumont. However, Dr. Lehman, Claimant's IME physician, deferred to Dr. Dumont as the authorized treating doctor. If Dr. Dumont is unable to predict, to a reasonable degree of medical certainty, when Claimant will require future medical treatment and what treatments will be necessary, it is impermissible speculation for the Commission to make such a determination.
6. The dissent relies upon Dr. Dumont's February 5, 2021 questionnaire as support for the proposition that Claimant would likely experience occasional flare-ups of pain or disability and that it is more likely than not he would require additional treatment to manage these flare-ups. This proposition overstates the evidence. Dr. Dumont opines that it is likely Claimant will have occasional flare-ups but he hedges when attempting to determine what modalities would be necessary and when. Claimant confirmed during the single commissioner hearing that he experiences flare-ups. He presented to Dr. Dumont on January 14, 2021 experiencing such a phenomena and Dr. Dumont failed to order any additional treatment. Ordering additional medical treatment based upon a hearsay questionnaire and a few contradictory medical opinions in the record would be an abuse of discretion.
7. Furthermore, additional medical treatment must be causally related to the work injury. Dr. Ulrich was unable to conclusively relate Claimant's numbness and tingling complaints to his hip injury. In addition, Claimant's EMG results were normal. Any additional treatment suggested for these symptoms would be unrelated and not compensable. Therefore, Claimant is not entitled to any additional treatment.
8. Claimant is also not entitled to any additional disability compensation as he has no additional discernable physical disability causing increased loss of use of the hip. Our Act

provides a maximum of 280 weeks for the loss of use of a hip. *See* S.C. Code Ann. 42-9-30(17)(2007, as amended). As previously stated, Claimant settled his 2015 claim for 6% loss of use of the hip. This rating is unchanged.<sup>1</sup> Though Dr. Lehman opined that Claimant suffered a 10% disability, he ultimately defers to Claimant's treating physician's assessment during sworn testimony and, as the IME physician, did not participate in the course of treatment for Claimant's injury.

9. According to the evidence in the record, after Claimant settled his 2015 claim he returned to work without any restrictions and without the use of any prescription medication. Claimant continues to work, even receiving a promotion after the accident, without the use of prescription medication and performs his job duties while avoiding the minor work restrictions assigned by Dr. Dumont regarding right hip flexion. This is consistent with the FCE results.
10. Furthermore, Claimant's hip flexion overall has improved since surgery. At his January 14, 2021 appointment with Dr. Dumont, Claimant exhibited 100 degrees of flexion, external rotation of 20 degrees, and internal rotation of 50 degrees. By comparison, his range of motion increased for internal rotation and flexion and approached pre-operative levels for external rotation. Any current range of motion deficiencies were noted by Tracy Hill forming the basis for her report and opinion that Claimant continues to sustain the same 6% impairment.
11. The dissent relies upon Claimant's subjective statements during a single appointment on January 14, 2021 with Dr. Dumont to find a physical change in Claimant's condition. However, Claimant testified at the hearing that numbness and pain in the leg were the two new symptoms that presented after he settled his original claim in 2017. If instability was severe and constant enough effect a physical change, presumably Claimant would have mentioned that additional symptom during the Hearing. Furthermore, there is evidence in the medical records that weakness and instability were present prior to the 2017 settlement. On March 21, 2016, Dr. DaSilva noted Claimant's complaints of "weakness; popping/clicking" during his independent medical evaluation.

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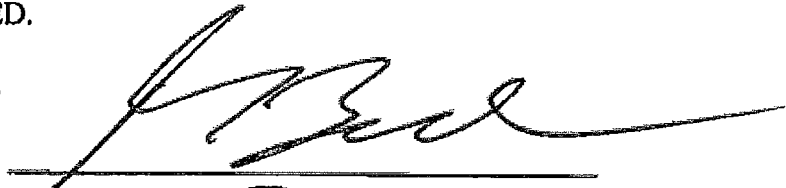
<sup>1</sup> Dr. McBride, Claimant's IME physician, assessed only a 5% right lower extremity impairment (Clmt. APA p.38), which translates to a 5% hip impairment (Clmt. APA p.96). Dr. Ulrich concurred. (Def. APA p.71).

12. The Commission enjoys broad discretion on appeal. *See* S.C. Code Ann. § 42-17-50 (1989, as amended) (“[t]he Commission shall review the award, and if good grounds be shown therefore, reconsider the evidence. . .and, if proper, amend the award.”). That discretion does not include a duty to assert the will of the Appellate Panel over that of the Single Commissioner. The Single Commissioner heard the case and denied an award based upon the preponderance of the evidence in the record, not a few contradictory statements. The majority of this Panel therefore affirms his conclusions.

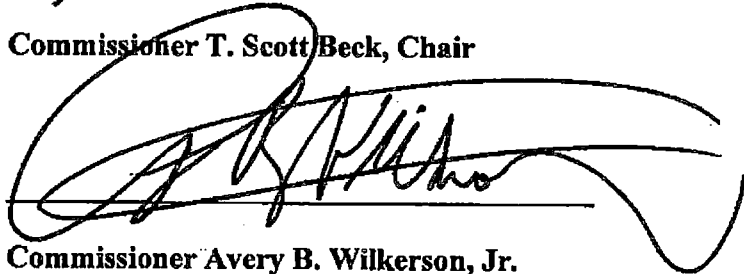
**ORDER**

**IT IS THEREFORE ORDERED** that the Decision and Order of the Single Commissioner is, hereby, **AFFIRMED**.

**AND SO IT IS ORDERED.**



Commissioner T. Scott Beck, Chair



Commissioner Avery B. Wilkerson, Jr.

This 29 day of July, 2022  
Columbia, South Carolina

[Minority Concurring and Dissenting opinion following page]

**Hart, Leonard - W.C.C. FILE NO. 1517030**

Commissioner James – Concurring in part; Dissenting in part.

I concur with the majority in affirming the Single Commissioner's decision to deny the Claimant surgery as a modality of future medical treatment. Dr. Dumont indicated, to a reasonable degree of medical certainty, that the Claimant will suffer periods of disability in the future. (Cl. APA 148). He went on to quote a study, which reported the chances of revision surgery being needed after a hip arthroscopy. Id. I find, to a reasonable degree of medical certainty, that the Claimant will need future treatment to lessen his period of disability. However, Dr. Dumont stated, to a reasonable degree of medical certainty, that the general probability of revision surgery being required was 3.0 to 17.9 percent in five years and 2.4 to 32.5 percent in ten years. Id. The stated percentages of the possibility of future surgery being necessary are not more likely than not, so surgery as a modality of future medical treatment must be denied.

However, I respectfully dissent with the portion of the majority's opinion that affirms the Single Commissioner's decision to deny the Claimant other future medical care and increased disability. First, future medical treatment (except surgery), should be granted to the Claimant, as opined by Dr. Dumont in his April 16, 2020 questionnaire. (Cl. APA 147). In his February 5, 2021 questionnaire, Dr. Dumont indicated, to a reasonable degree of medical certainty, that the Claimant would likely suffer future flare ups. (Cl. APA 148-149). He also stated it is more likely than not that the Claimant will require future treatment for said flare ups. Id. At the February 25, 2021 hearing, the Claimant testified that he still has flare ups that can increase up to a ten in pain level. (Hr'g Tr. 17:7-10). Additionally, during the Claimant's last visit with Dr. Dumont's office on January 14, 2021, injections were recommended to treat his symptoms. (Cl. APA 109-111).

Second, the Claimant is entitled to benefits for additional disability. Dr. Dumont indicates that the Claimant reports instability/weakness in the hip that was not previously present. (Cl. APA 109). Additionally, he indicates that the Claimant has decreased range of motion in the hip following his surgery. (Cl. APA 195).

Accordingly, I would find that the Claimant is not entitled to surgery as a future medical benefit, but that he is entitled to other forms of future medical treatment and benefits for additional disability.

  
Commissioner James

#### CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Valerie Deller on July 29, 2022***