APPELLATE PANEL OF THE WORKERS' COMPENSATION COMMISSION

STATE OF SOUTH CAROLINA

WCC FILE NO.: 1101678

SEAN DALEY, EMPLOYEE-CLAIMANT,

vs.

CHAPMAN MECHANICAL, LLC, EMPLOYER,

AND

STONEWOOD INSURANCE COMPANY, CARRIER,

DEFENDANTS.

Appellate Panel Review: Held in Columbia, South Carolina on April 15, 2013.

Appearances: Claimant represented by Jeffrey D. Ezell, Esquire, Greenville, South Carolina.

Defendants represented by Steven M. Rudisill, Esquire, of Rudisill, White & Kaplan, P.L.L.C., Charlotte, North Carolina.

Appellate Panel Decision and Order filed: 6/14/13

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr. in St. Matthews on June 14, 2012. On December 5, 2012, he issued the following Order:

> It is therefore ordered that Claimant be awarded a 20% permanent partial disability to the back, which commutes to 59.307 weeks, yielding an award of $24,896.63. Defendants are entitled to credit for all compensation paid to Claimant subsequent to December 21, 2011. The rest of this claim is denied in its' entirety.

In his December 5, 2012 Decision and Order, Commissioner Wilkerson made the following:

FINDINGS OF FACT:

1. Claimant's average weekly wage is $629.71, with a corresponding compensation rate of $419.83.

2. A Consent Order was filed by Commissioner Susan S. Barden on September 20, 2011. The average weekly wage and compensation rate, as well as the start date of temporary total disability compensation, were established pursuant to said Order.

3. A Form 21 was filed on December 21, 2011, with a hearing date in February. The hearing was postponed for psychiatric evaluation to be performed by the physician of Defendants' choosing. This examination was performed by Dr. Thomas Gualtieri.

4. The directives for this Order were sent to the parties on Sunday, July 22, 2012 at 11:36 a.m.

5. The original hearing date for this case was February 7, 2012 in Greenville, South Carolina. The final hearing date was June 14, 2012 in St. Matthews, South Carolina. This case was heard on both the Forms 50/51 and Form 21.

6. Any employment-law related matters are not properly before this Commission.

7. According to Exhibit Six submitted by Claimant's counsel, "Sean fell off an eight-foot ladder while soldering, he fell back on his back landed on a four inch PVC pipe coming out of the floor. (Right hand side)." Exhibit Six also notes that no safety procedures were violated. It further notes that it was hard to maneuver the ladder where the Claimant was working, or put it at its proper height. This document is a supervisory accident report dated February 9, 2011.

8. The Claimant was discharged by Dr. LeBlond and his assistant on April 13, 2012 due to a drug test demonstrating noncompliance.

9. A.P.A. Exhibit 262 reveals that Claimant was discharged for noncompliance with clinical office policy, and was called by Dr. LeBlonds office on April 16, 2012 to inform him of this.

10. Neither Dr. Mullen nor Dr. Gualtieri found the Claimant to be disabled by any psychological injury. Dr. Gualtieri opined the Claimant was only "a bit" depressed, and Dr. Gualtieri did not anticipate any persistent neuropsychiatric difficulties or disabilities related to the events of February 2011. (A.P.A. page 238).

11. The restrictions noted in the Functional Capacities Evaluation were adopted by Dr. LeBlond, as recited above. This places the Claimant in the light duty category. This contradicts Dr. Brabham's conclusions about the Claimant's ability to work.

12. The Claimant had prior back problems for several years before this injury. In fact, he had back problems for which he sought medical care in October, November, and

December of 2010, with approximately the same pain level as post-accident, mainly involving the lower back.

13. This is a single member claim pursuant to Singleton v. Young Lumber Co., 236 S.C. 471, 114 S.E. 2d 845 (1961). Any contended radiculopathy emanates from the back, and there is no independent injury to the hips, buttocks, or lower extremities. The evidence submitted as to psychological overlay is too underwhelming to merit an award for same. Claimant never even mentioned depression or anxiety until his counsel sent him to Dr. Patrick Mullen. This was not until June 30, 2011, well after the injury. Furthermore, there is inadequate evidence to support any physical injury to the brain. At the initial hospital visit after the accident, the head was deemed to be atraumatic. A normal cephalic observation was made. At that time, the Claimant was "Oriented [times] three with a normal affect." (A.P.A. page 23).

14. The hospital report of October 25, 2010 related a history of low back pain of four years with occasional tingling in both thighs. Further, on November 10, 2010, it was reported to Claimant's family physician that "he works as a plumber and he is out of work [times] three months. He needs to find out the reason for his back pain." On February 9, 2011, the date of the accident, he reported to Urgent Care that his current medications were Lortab, Mobic, and Flexeril.

15. On the initial questionnaire completed by Claimant for Dr. McHenry, he denied any problems with mental or emotional health. This also goes to the finding that Claimant had no psychological overlay as a sequla to this injury. The date of this questionnaire is March 16, 2011 (A.P.A., pages 95-99). Additionally, an MRI dated July 12, 2011 indicated disc

degeneration at the L5-S1 level. Dr. McHenry determined that the Claimant was non-surgical. (A.P.A. page 101).

16. Dr. LeBlond released the Claimant with a 6% whole person rating to the spine with restrictions pursuant to the Functional Capacity Evaluation, which places Claimant at the light duty level. The restrictions were no lifting to the waist above 15 pounds; occasional level squatting, kneeling, crawling, overhead activity, and standing truck rotations, walking, and repetitive lumbar flexion. He was deemed to be able to sit and stand at a constant level. (A.P.A. pages 158; 213).

17. Claimant has not looked for work after being released by Dr. LeBlond. In fact, Claimant testified that his attorney requested him not to look for employment at the present time. Although Claimant testified to some problems with driving, he drove to the hearing from Greenville to St. Matthews, a distance of approximately 130 miles one-way.

18. The photographs submitted by Claimant at hearing were properly submitted. Employer did not treat Claimant properly and fairly while he was on light duty.

19. The Claimant worked other jobs for cash while employed with Chapman Mechanical.

20. Based on the preponderance of the evidence presented, the undersigned finds that Claimant reached maximum medical improvement on the date of the filing of the Form 21, which is December 21, 2011. The Defendants provided all proper and adequate medical treatment. Claimant was noncompliant with same.

21. Claimant sustained a 20% permanent partial disability to his back.

Within the statutory period, counsel for the Claimant filed a Form 30, Application for Review, setting forth the Claimant's issues on appeal. The parties have filed their respective Briefs, which have been thoroughly reviewed by the Appellate Panel, and the parties, through counsel, presented oral argument before the Appellate Panel on April 15, 2013. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In an Appellate Panel review, the Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1985), review the Decision and Order entered by the Hearing Commissioner, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law, consistent with or inconsistent with those of the Hearing Commissioner. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 156 S.E. 2d 318 (1967); see also Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E. 2d 87 (Ct. App. 1984). Although an Appellate Panel is empowered to make its own Findings of Fact and to reach its own Conclusions of Law, it is logical for an Appellate Panel, which did not have the benefit of observing the witnesses, to give weight to the Hearing Commissioner's opinion. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E. 2d 162 (1992).

The Appellate Panel has considered all evidence in the record and, by unanimous vote, fully affirms the Hearing Commissioner's Decision and Order. Based upon a review of the foregoing, we enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

1. Claimant's average weekly wage is $629.71, with a corresponding compensation rate of $419.83.

2. A Consent Order was filed by Commissioner Susan S. Barden on September 20, 2011. The average weekly wage and compensation rate, as well as the start date of temporary total disability compensation, were established pursuant to said Order.

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13. This is a single member claim pursuant to Singleton v. Young Lumber Co., 236 S.C. 471, 114 S.E. 2d 845 (1961). Any contended radiculopathy emanates from the back, and there is no independent injury to the hips, buttocks, or lower extremities. The evidence submitted as to psychological overlay is too underwhelming to merit an award for same. Claimant never even mentioned depression or anxiety until his counsel sent him to Dr. Patrick Mullen. This was not until June 30, 2011, well after the injury. Furthermore, there is inadequate

evidence to support any physical injury to the brain. At the initial hospital visit after the accident, the head was deemed to be atraumatic. A normal cephalic observation was made. At that time, the Claimant was "Oriented [times] three with a normal affect." (A.P.A. page 23).

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18. The photographs submitted by Claimant at hearing were properly submitted. Employer did not treat Claimant properly and fairly while he was on light duty.

19. The Claimant worked other jobs for cash while employed with Chapman Mechanical.

20. Based on the preponderance of the evidence presented, the undersigned finds that Claimant reached maximum medical improvement on the date of the filing of the Form 21, which is December 21, 2011. The Defendants provided all proper and adequate medical treatment. Claimant was noncompliant with same.

21. Claimant sustained a 20% permanent partial disability to his back.

CONCLUSIONS OF LAW

1. S.C. Code Ann. § 42-17-50 (1985) gives the Commission the power to affirm, amend or reverse a decision of a Single Commissioner.

2. "Jurisdiction" is governed by S.C. Code § 42-1-130 and 42-1-140.

3. "Average weekly wage" is governed by S.C. Code § 42-1-40.

4. "Medical treatment" is governed by S.C. Code § 42-15-60.

5. Permanent partial disability in this case is governed by S.C. Code § 42-9-30; see also Singleton v. Young Lumber Company, 236 S.C. 471, 114 S.E. 2d 845 (1961).

ORDER

IT IS, THEREFORE, ORDERED that the Hearing Commissioner's Order dated December 5, 2012 is hereby FULLY AFFIRMED.

IT IS, THEREFORE ORDERED that Claimant be awarded a 20% permanent partial disability to the back, which commutes to 59.307 weeks, yielding an award of $24,896.63. Defendants are entitled to credit for all compensation paid to Claimant subsequent to December 21, 2011. The rest of this claim is denied in its' entirety.

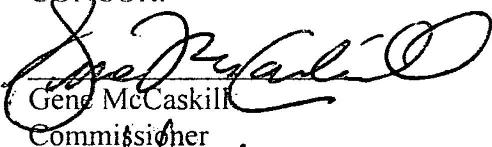
No hearing costs are assessed.

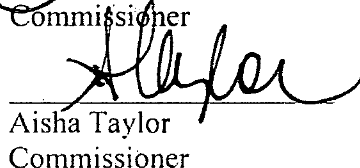
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BY:
Andrea C. Roche
Commissioner

CONCUR:


Gene McCaskill
Commissioner


Aisha Taylor
Commissioner

RECEIVED
JUL 12 2013
SC Court of Appeals

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on June 14, 2013