

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1103604**

MICHAEL PHILIP WORTHEN, EMPLOYEE,

CLAIMANT-RESPONDENT.

-vs-

LAURENS COUNTY, EMPLOYER,
AND SC ASSOCIATION OF COUNTIES SIF, CARRIER,

DEFENDANTS-APPELLANTS.

Appellate Panel Review held in
Columbia, South Carolina on April 16,
2013, per notices timely and properly
served upon all parties of interest.

Appellate Panel Decision & Order, filed
6/14, 2013.

APPEARANCES:

Claimant-Respondent represented by
Monty Desai, Esquire of Greenville,
South Carolina.

Defendants-Appellants represented by
Richard B. Kale, Esquire of Willson
Jones Carter & Baxley, P.A., of
Greenville, South Carolina.

The parties were heard by Commissioner Gene McCaskill on August 14, 2012, in Anderson, South Carolina. On November 7, 2012, Commissioner McCaskill issued his Decision and Order, which contained the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

IT IS FOUND AS FACT:

1. That the parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act, as amended, with Laurens County as the employer, South Carolina Association of Counties as the carrier, and the Claimant as the employee.
2. The South Carolina Workers' Compensation Commission has jurisdiction to hear the Claimant's claim for benefits.
3. Venue is proper in Anderson County.
4. Notice of the hearing was timely and properly served upon all parties of interest.
5. Claimant was employed by Laurens County as an EMT.
6. Claimant's stipulated average weekly wage is \$520.19 with a corresponding compensation rate of \$346.81.
7. Claimant and his partner answered a call on February 26, 2011 that required the two of them to lift and transport a very large man. (The exact size of the patient is in dispute. He weighed somewhere between 262 – 500 pounds. Based upon the testimony it is reasonable to conclude his exact weight was closer to the lower end of the foregoing range.)
8. After lifting and transporting the subject patient, Claimant presented with symptoms, including, but not limited to, cardiac chest pain, pressure, tightness, and respiratory dysthymia, that led him and other EMTs to conclude he was having a cardiac episode and he was therefore taken to the hospital. (Claimant's Exh. 1) (APA #1, pp. 4-6).
9. Upon examination and treatment, it was determined Claimant had suffered a cardiac infarction / heart attack.
10. The event also led to the discovery Claimant suffered from pre-existing coronary artery disease.
11. Defendant Employer received timely notice under the Act of Claimant's claim.
12. Defendant Employer denied the claim and therefore Claimant has not received any workers' compensation benefits from Defendants.

13. The deposition testimony of Dr. W. Travis Ellison and Dr. John M. Bittrick are essential in determining whether or not this event triggered Claimant's heart attack.
14. While both doctors spend a great deal of time speaking in the abstract regarding events, such as the one Claimant experienced, they both reach the same conclusion – the event was a trigger in Claimant's infarction.
15. When asked to speak to a reasonable degree of medical certainty, Dr. Bittrick states, “. . . it is assumption at the time is that – at this current time, is that that [i.e., the overexertion in lifting and transporting a very large patient] was the precipitating factor.” (The undersigned Commissioner notes defense counsel objected to the question eliciting this response on the ground the question referenced the patient's weight to be approximately 400 to 500 pounds. When Dr. Bittrick's deposition testimony is read in its entirety, however, the exact weight of the patient is always in flux, but it is clear Dr. Bittrick understands the subject patient is a very large man.
16. Dr. Ellison's testimony is even more direct. Dr. Ellison testified as follows:
 - Q. But as it pertains to this particular triggering event, do you still hold your initial opinion that you gave me that this strenuous event of transferring the patient triggered his heart attack?
 - A. Yes, I think that's correct. It was a triggering event.
 - Q. And you maintain that?
 - A. Yes.
 - Q. So regardless of what he had, hyperlipidemia, diabetes, the triggering event was this particular strenuous event; wouldn't you say?
 - A. Yes.(The undersigned Commissioner notes Dr. Ellison's sworn deposition testimony contradicts the conclusions – that Claimant's cardiac event could have occurred at any time – which he conveyed in a letter to defense counsel dated August 8, 2011. Dr. Ellison's sworn testimony was taken by deposition, however, on August 22, 2012, and that deposition testimony is given greater weight.)
17. The greater weight of the evidence supports the conclusion Claimant suffered a heart attack within the course and scope of his employment and that his duties were the triggering factor in the heart attack.
18. The right to compensation in a case such as this one is not affected by the fact that a pre-existing pathology may have been a contributing factor, or by the fact that the unusual or excessive strain

that precipitated the heart attack occurred while the employee was performing work of the same general type as that in which he was regularly involved. See Walker v. City of Columbia, 247 S.C. 241, 246, 146 S.E.2d 856 (1966).

19. Claimant's cardiac infarction/heart attack is a compensable injury under the Act because it was induced by an unexpected strain or overexertion in the performance of his duties or employment, or by unusual ordinary conditions of the employment.
20. Claimant is entitled to TTD for the time he was out of work from February 26, 2011 to July 2, 2011.
21. Claimant is also entitled to have all his medical expenses that are causally related covered under the Act.
22. Claimant is also entitled to reimbursement for any causally related out of pocket expenses and mileage.
23. Claimant is at MMI.
24. Claimant will continue to treat with Dr. Jon M. Bittrick.
25. All other issues are held in abeyance.

CONCLUSIONS OF LAW

Under Section 42-1-160, Defendants are subject to the provision of the South Carolina Workers Compensation Act.

1. Under Section 42-1-130, the Claimant was a covered employee.
2. Under Section 42-1-140, the employer was a covered employer.
3. Under Section 42-3-15, there was an employee/employer relationship.
4. Under Section 42-3-180, this Commission has jurisdiction over the parties to hear the issues herein.
5. Under Section 42-17-20, venue in Anderson, S.C. was proper and stipulated.
6. Under Regulation 67-607, notice of the hearing was properly served.
7. Under Section 42-1-160, Claimant suffered a compensable heart attack injury on February 26, 2011.
8. Under Section 42-1-40, Claimant's compensation rate is \$346.84 per week.
9. Under Section 42-1-60, Defendants are responsible for all causally related medical expenses allowable under the Act.
10. Under Section 42-15-60, Risinger v. Knight Textiles, 353 SC 69, 577 S.E.2d 222 (2002) and Clark v. Aiken County Gov't, 366 SC 102, 620 S.E.2d 99 (Ct. App. 2005), the Commission may order a change in the medical service.

11. Pursuant to Walker v. City of Columbia, it is a compensable accident if it is induced by an unexpected strain or overexertion in the performance of his duties or employment, or by unusual ordinary conditions of the employment. See Walker v. City of Columbia, 247 S.C. 241, 246, 146 S.E.2d 856 (1966) (“[T]he right to compensation in [a heart attack] case is not affected by the fact that a pre-existing pathology may have been a contributing factor, or by the fact that the unusual or excessive strain that precipitated the heart attack occurred while the employee was performing work of the same general type as that in which he was regularly involved.”).

ORDER

NOW, THEREFORE, IT IS ORDERED that Claimant is entitled to, and Defendants are liable for, TTD for the time he was out of work from February 26, 2011 to July 2, 2011.

IT IS FURTHER ORDERED that Claimant is entitled to, and Defendants are liable for, have all his medical expenses that are causally related covered under the Act.

IT IS FURTHER ORDERED Claimant is entitled to, and Defendants are liable for, reimbursement for any causally related out of pocket expenses and mileage.

IT IS FURTHER ORDERED that Claimant is at MMI and will continue to treat with Dr. Jon M. Bittrick.

IT IS FURTHER ORDERED all other issues are held in abeyance.

IT IS SO ORDERED.

Within the statutory period, Counsel for Defendants filed an application for review in the case setting forth Defendants’ grounds for review, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on April 16, 2013. By appeal, Defendants submitted the following grounds for review:

1. That the Hearing Commissioner erred in finding and concluding that Claimant suffered a myocardial infarction/heart attack within the course and scope of his employment, that error being that such finding was not supported by the greater weight of the evidence.
2. That the Hearing Commissioner erred in finding and concluding that Claimant’s myocardial infarction/heart attack was induced by an “unexpected strain or overexertion” in the performance of his duties of employment, that error being that such finding and conclusion was not supported by the greater weight of the evidence.
3. That the Hearing Commissioner erred in finding and concluding that Claimant’s myocardial infarction/heart attack was induced by an

unusual or extraordinary condition of employment, that error being that such finding and conclusion was not supported by the greater weight of the evidence.

4. That the Hearing Commissioner erred in failing to find that the patient's weight was 262 pounds, that error being that such finding was supported by the greater weight of the evidence.
5. That the Hearing Commissioner erred in failing to make a specific finding as to the patient's weight, that error being that such finding was necessary in determining whether Claimant's heart attack was due to an unexpected strain or overexertion.
6. That the Hearing Commissioner erred in finding and concluding that lifting a patient weighing 262 pounds was an unexpected strain or overexertion, that error being that such finding was not supported by the greater weight of the evidence.
7. That the Hearing Commissioner erred in finding that lifting a patient that weighed 262 pounds was an unusual or extraordinary condition of employment, that error being that such finding was not supported by the greater weight of the evidence.
8. That the Hearing Commissioner erred in finding that Claimant was entitled to have all of his medical expenses paid under the Workers' Compensation Act, that error being that Claimant's coronary artery bypass surgery performed on March 2, 2011 was the result of the Claimant's preexisting severe coronary artery disease and not the result of his myocardial infarction/heart attack on February 27, 2011.
9. That the Hearing Commissioner erred in failing to find that the Claimant's coronary artery bypass surgery was the result of his preexisting severe coronary artery disease and not his myocardial infarction/heart attack, that error being that such finding was supported by the greater weight of the evidence.
10. That the Hearing Commissioner erred in failing to find that Claimant's bypass surgery was not a result of his myocardial infarction/heart attack, that error being that such finding was supported by the greater weight of the evidence.
11. That the Hearing Commissioner erred in failing to find that the Claimant's need for bypass surgery was the result of his preexisting coronary artery disease, that error being that such finding was supported by the greater weight of the evidence.
12. That the Hearing Commissioner erred in not finding that Claimant's coronary artery bypass surgery would have been required even if Claimant had not had his myocardial infarction/heart attack, that error being that such finding was supported by the greater weight of the evidence.

13. That the Hearing Commissioner erred in failing to find that Claimant's need for an implantable cardiac defibrillator was the result of his having undergone coronary artery bypass surgery, that error being that such finding was supported by the greater weight of the evidence.
14. That the Hearing Commissioner erred in finding that Claimant was entitled to temporary total disability compensation from February 26, 2011 to July 2, 2011, that error being that Claimant's absence from work from March 2, 2011 to July 2, 2011 was the result of having undergone a coronary artery bypass surgery, not his myocardial infarction/heart attack.
15. That the Hearing Commissioner erred in finding that Claimant was entitled to reimbursement for any causally related out-of-pocket expenses and mileage, that error being that the greater weight of the evidence established that Claimant's out-of-pocket medical expenses and mileage were the result of his coronary artery bypass surgery and not an injury by accident as a result of any work related injury.
16. That the Hearing Commissioner erred in concluding as a matter of law that Claimant's heart attack was compensable under Section 42-1-160, S.C. Code Ann. (1976), that error being that the greater weight of the evidence did not establish that Claimant's heart attack was the result of an unusual strain or overexertion or an unusual or extraordinary condition of employment.
17. That the Hearing Commissioner erred in concluding as a matter of law that Defendants were responsible for all causally related medical expenses under Section 42-1-160, S.C. Code Ann. (1976), that error being that Claimant's medical expenses were not the result of a myocardial infarction but the result of preexisting severe coronary artery disease.
18. That the Hearing Commissioner erred in ordering Defendants to pay Claimant temporary total disability compensation from February 26, 2011 to July 2, 2011, that error being that Claimant's missed time from work was not the result of an injury by accident arising out of and in the course of his employment.
19. That the Hearing Commissioner erred in ordering Defendants to pay Claimant's causally related medical expenses, that error being that Claimant's medical expenses were not the result of an injury by accident arising out of and in the course of employment.
20. That the Hearing Commissioner erred in ordering Defendants to reimburse the Claimant for causally related out-of-pocket expenses and mileage, that error being that Claimant's out-of-pocket expenses and mileage were not the result of an injury by accident arising out of and in the course of employment.

All proffered testimony has been taken. Such, together with all documentary evidence, was delivered by oral argument to the individual members of the Appellate Panel on April 16, 2013 and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, 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. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that the Decision and Order of the Hearing Commissioner was based on error, and thus, shall be REVERSED in its entirety. Accordingly, the Appellate Panel makes the following Findings of Fact, Conclusions of Law, and Order, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, with Laurens County as the employer and S.C. Association of Counties SIF, as the carrier.
2. That Claimant's average weekly wage was \$520.19, making the compensation rate of \$346.81 applicable in this case.
3. That Claimant was hired by Laurens County as an Emergency Medical Technician ("EMT") in September of 2007, and was working as an EMT for Laurens County at the time of his alleged accident on February 26, 2011.
4. That Claimant specifically alleges that he sustained a heart attack arising out of and in the course of his employment on February 26, 2011 as a result of an unusual or excessive strain and/or an unusual and extraordinary condition in his employment.

5. That prior to February 26, 2011, Claimant suffered from Type II diabetes mellitus, hyperlipidemia, hypothyroidism, hypertension, and obesity. Claimant also had a history of tobacco abuse, smoking approximately a pack and a half per day for twelve years before quitting in the 1970s. This finding is supported by the medical records of Internal Medicine Associates of Greenville.

6. That Claimant's father suffered from coronary artery disease, had a myocardial infarction in his 40s, and died at age 54 as a result of a myocardial infarction. This finding is based on the medical records from Greenville Memorial Hospital.

7. That at the time of his alleged accident on February 26, 2011, Claimant was 54 years old, weighed 275 pounds, and was 6'2" tall. This finding is supported by the medical records from Greenville Memorial Hospital.

8. That Claimant was required as a part of his job as an EMT for Laurens County to respond to medical calls, to provide patients with treatment, and to transport patients to the hospital for further treatment. Claimant's job duties also required him to lift patients when transferring them onto a stretcher and to lift patients that are secured on stretchers when putting them in and taking them out of an ambulance. This finding is supported by Claimant's testimony.

9. That at approximately 10:00 p.m. on February 26, 2011, Claimant and his partner, Mike Lundis, responded to a call from National Health Care of Clinton ("NHC") to attend to a patient in respiratory distress, and upon arrival, Claimant and his partner determined that the patient needed to be transported to the hospital for further treatment. This finding is based on the Claimant's testimony.

10. That in order to transfer the patient to the stretcher, Claimant reached under the patient's arms, grabbed the patient's wrists, and lifted, while his partner simultaneously grabbed the patient's lower extremities and lifted. After placing the patient on the stretcher, Claimant and

his partner wheeled the patient to the ambulance, placed the stretcher in the ambulance, and transported him to the hospital. When they arrived at the hospital, Claimant and his partner removed the stretcher from the ambulance, wheeled the patient into the hospital, and transferred the patient onto a hospital bed. This finding is based on Claimant's testimony and Mr. Lundis's testimony.

11. That Claimant testified he felt a sharp pain behind his shoulder blade and "heaviness" in his chest when he initially lifted the patient and that he continued experiencing these symptoms when he arrived at the hospital and transferred the patient onto a hospital bed. This finding is based on Claimant's testimony.

12. That it was Claimant's "guesstimation" that the patient he and his partner were tending to on February 26, 2011 weighed between 400 and 500 pounds. This finding is based on Claimant's testimony.

13. That Mr. Lundis "guessed" that the patient in question weighed 350 pounds or more. This finding is based on Mr. Lundis's testimony.

14. That the patient that Claimant and his partner were tending was 6'2" tall and weighed approximately 262 pounds. While there were several guesses and estimates in the record as to the patient's weight (ranging from 350 pounds to 500 pounds), the patient was never actually weighed on February 26, 2011. Thus, we find that the most reliable and probative evidence of the patient's weight on February 26, 2011, was the patient's chart from NHC, dated February 2, 2011, which specifically indicated that the patient was 74 inches tall and weighed 262 pounds based "on [the] most recent measure in last 30 days." (See Defendants' APA #12, p. 315). The patient's chart from NHC, dated February 2, 2011, *less than one month before Claimant's alleged accident*, was the only objective measurement of the patient's weight in the record, and we give great weight to this evidence. This finding is based on the evidence in the record as a whole.

15. That after transporting the patient to the hospital, Claimant complained of pain, pressure, and tightness in his chest, and he was subsequently taken to Greenville Memorial Hospital. This finding is based on Claimant's testimony, Mr. Lundis's testimony, and the medical records of Greenville Memorial Hospital.

16. That upon arrival at Greenville Memorial Hospital, Claimant underwent several tests, including an EKG, which revealed "severe global hypokinesis of the left ventricle" with an estimated injection fraction of 30-35%, and it was subsequently determined that Claimant had suffered an acute myocardial infarction/heart attack. This finding is supported by the medical records from Greenville Memorial Hospital.

17. That on February 27, 2011, Dr. Charles Ross performed a cardiac catheterization on Claimant, opined that Claimant "had extreme coronary disease" with three vessel total occlusion, and recommended a surgical consultation. (See Defendants' APA #8, pp. 246-247).

18. That Claimant was seen by Dr. Barry R. Davis for a surgical consultation on February 28, 2011, and following his examination, Dr. Davis diagnosed Claimant with "significant multi-vessel coronary artery disease with decreased left ventricular function" and recommended and scheduled Claimant for "coronary artery bypass grafting with possible left ventricular aneurysmorrhaphy." (See Claimant's APA #2, pp.32-34).

19. That on March 2, 2011, Claimant underwent quadruple bypass surgery. (See Claimant's APA #2, pp.37-39).

20. That Claimant had several risk factors for developing coronary artery disease, including diabetes mellitus, hyperlipidemia/high cholesterol, history of smoking, and a family history of coronary artery disease. This finding is supported by the deposition testimony of Dr. Jon M. Bittrick, Claimant's treating cardiologist.

21. That Claimant suffered from severe coronary artery disease prior to his heart attack on February 26, 2011. This finding is based on the evidence in the record as a whole, including but not limited to, the deposition testimony of Dr. Bittrick, the deposition testimony of Dr. Travis W. Ellison, and the medical records from Greenville Memorial Hospital.

22. That Claimant's need for quadruple bypass surgery on March 2, 2011 was due to his severe, preexisting coronary artery disease, and not due to his heart attack on February 26, 2011. Dr. Bittrick testified that the reason for Claimant's quadruple bypass surgery was to treat Claimant's preexisting coronary artery disease. Dr. Bittrick specifically testified that the purpose of the quadruple bypass surgery was to correct the blood flow problem that Claimant had from the coronary artery disease and that Claimant would have needed the quadruple bypass surgery even if he had not had the myocardial infarction/heart attack on February 26, 2011. Additionally, Dr. Ellison also testified that Claimant's quadruple bypass surgery was to treat his preexisting coronary artery disease and that Claimant would have needed the surgery even if he had not had a heart attack on February 26, 2011. This finding is based on the evidence in the record as a whole.

23. That as a result of his quadruple bypass surgery, Claimant was out of work from February 27, 2011 through July 1, 2011. Claimant returned to work without restrictions as an EMT for Laurens County on July 2, 2011. That Claimant's lost time was a direct result of his quadruple bypass surgery, and not due to his heart attack. This finding is based on the evidence in the record as a whole.

24. That Claimant has responded to thousands of calls as an EMT for Laurens County, and he would "frequently" treat and transport patients that weighed 250-260 pounds. This finding is based on Claimant's testimony.

25. That the act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was not an unexpected strain or overexertion in the performance of the

duties of Claimant's employment as an EMT for Laurens County. This finding is based on the evidence in the record as a whole.

26. That the act of lifting and transporting a patient weighing approximately 262 pounds, with his partner, was not an unusual or extraordinary condition of Claimant's employment as an EMT for Laurens County. This finding is based on the evidence in the record as a whole.

27. That Claimant has failed to prove by a preponderance of the credible, reliable, and probative evidence that his heart attack on February 26, 2011 was either (1) the result of an unusual strain or overexertion in the performance of his duties as an EMT for Laurens County or (2) the result of an unusual or extraordinary condition of his employment as an EMT for Laurens County. This finding is based on the evidence in the record as a whole.

CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under Section 42-1-130, S.C. Code Ann. (1976), Michael Phillip Worthen was a covered employee at the time in question, and under Section 42-1-140, S.C. Code Ann. (1976), Laurens County was a covered employer.

2. Under Section 42-1-160, S.C. Code Ann. (1976), Claimant did not sustain an injury by accident arising out of and in the course of his employment with Laurens County.

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on November 7, 2012, is hereby REVERSED by the Appellate Panel.

IT IS FURTHER ORDERED that Claimant's claim for benefits under the South Carolina Workers' Compensation Act be, and hereby is, denied.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

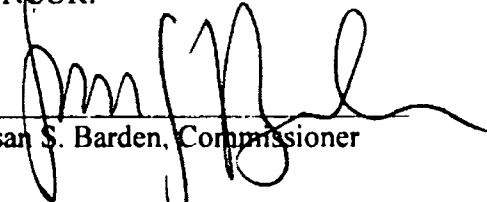
**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

BY: 

T. Scott Beck, Commissioner

REVERSED

CONCUR:


Susan S. Barden, Commissioner


Melody L. James, Commissioner

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