

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1015200

HENTON T. CLEMMONS, JR.,

EMPLOYEE,
CLAIMANT/APPELLANT,

V.

LOWES HOME CENTERS, INC.- HARBISON,

EMPLOYER,

AND

SEDGWICK CLAIMS MANAGEMENT
SERVICES INC.,

CARRIER,
DEFENDANTS/RESPONDENT.

Appellate Panel Review held in
Columbia, South Carolina on April 16, 2013.

Appellate Panel Decision and Order
filed 7-2, 2013.

APPEARANCES:

Claimant/Appellant represented by
Preston F. McDaniel, Esquire of The McDaniel Law Firm
of Columbia, South Carolina.

Defendants/Respondents represented by
Kelly F. Morrow, Esquire of McAngus Goudelock & Courie, L.L.C.
of Columbia, South Carolina.

At the hearing before the Single Commissioner, the following Stipulations and APA Submissions were presented:

STIPULATIONS

It was stipulated at the Single Commissioner Hearing among the parties that:

1. Claimant was injured while working in the course and scope of his employment on September 12, 2010.

2. Claimant was an employee of Lowe's on the date of the injury.
3. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
4. Notice of the hearing was timely and properly served upon the parties of interest.
5. Venue is proper in Columbia, South Carolina.
6. Claimant's average weekly wage is Three Hundred Ninety-One and 19/100 (\$391.19) dollars with a corresponding compensation rate of Two Hundred Sixty and 81/100 (\$260.81).
7. The South Carolina Workers' Compensation Commission file is made a part of the record with the exception of unstipulated medical records and self-serving declarations.

APA SUBMISSIONS

Pursuant to the South Carolina Administrative Procedures Act and Regulation of the South Carolina Workers' Compensation Commission, the following records were submitted into evidence at the Single Commissioner Hearing:

Defendants submitted the following APA Submissions:

1. Doctor's Care dated 10/07/2010 to 10/19/10 consisting of 8 pages. (APA #1).

2. Thomas Armsey, M.D., Midlands Orthopaedics dated 11/01/10 consisting of 3 pages. (APA #2).
 3. Lexington Medical Center dated 11/09/10 consisting of 9 pages. (APA #3).
 4. Randall G. Drye, M.D., dated 11/08/10 to 06/18/12 consisting of 12 pages. (APA #4).
 5. W. Daniel Westerkam, M.D., dated 11/17/10 consisting of 5 pages. (APA #5).
 6. Palmetto Imaging dated 10/21/10 consisting of 1 page. (APA #6).
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7. Lexington Medical Center – Radiology Department dated 11/04/10 consisting of 5 pages. (APA #7).
 8. Interactive Process Form by Lowe’s dated 09/16/11 consisting of 1 page. (Ex. #1).

Claimant submitted the following APA Submissions:

1. Howard Mandell, M.D., FRCPC, Board Certified Neurologist dated 09/05/12 consisting of 6 pages. (APA #8).
2. Columbia Rehabilitation Clinic - Functional Capacity Evaluation dated 09/11/12 consisting of 25 pages. (APA #9).
3. Gal G. Margalit, M.D., dated 09/11/12 consisting of 6 pages. (APA #10).
4. Leonard E. Forrest, M.D., dated 09/06/12 consisting of 2 pages. (APA #11).
5. Harriet Fowler, CRC, M.Ed., Vocational Rehabilitation Manager, dated 09/13/12 consisting of 23 pages. (APA #12).
6. Lexington Medical Center dated 11/04/10 to 06/07/12 consisting of 10 pages. (APA #13).
7. SCDHHC Patient Care Form dated 11/13/10 consisting of 2 pages. (APA #14).

STATEMENT OF THE CASE

Claimant was employed with Lowe’s on September 12, 2010 when he suffered a work related injury. In particular, Claimant was standing in the back of the pine straw truck and

slipped on wet pine straw causing him to fall on his back. The parties agreed pursuant to a Consent Order that Claimant suffered from an accepted injury to his back, neck and right knee. In addition, Defendants agreed to pay Claimant temporary total disability benefits from the date of the accident until properly terminated. Thereafter, Claimant continued to receive medical treatment for his condition and he remained out of work until September 10, 2011. Claimant signed a Form 17 on September 22, 2011 indicating he could return to work. In addition, Claimant was released by the authorized treating physician at maximum medical improvement and assigned an impairment rating of 25% whole person to his back on June 7, 2011. Claimant continued to make complaints and Defendants agreed to send him for an additional evaluation with the authorized treating physician. The authorized treating physician again released Claimant at maximum medical improvement on June 18, 2012 without making an adjustment to the earlier 25% whole person impairment rating.

Defendants filed a Form 21, Request to Pay Permanency, pursuant to the impairment rating assigned by the authorized treating physician. Claimant alleged that he is entitled to an additional second opinion regarding his injuries and further indicated that he has not reached maximum medical improvement, and, therefore a hearing on this issue was premature. In the alternative, Claimant argued that if the Commission found he reached maximum medical improvement, then he is permanently and totally disabled due to a greater than fifty percent loss of use to the back. Claimant sought lifetime causally related medical treatment and an award under lump sum. In return, Defendants argued that Claimant returned to work and thus isn't entitled to an award for permanent and total disability.

A hearing in this case was held on September 25, 2012 before Commissioner Derrick L. Williams. Commissioner Williams issued a Decision and Order on December 6, 2012. In that

Decision and Order, Commissioner Williams made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission.
2. Claimant's average weekly wage is \$391.19 with corresponding compensation rate of \$260.81. I base this finding upon stipulation of the parties.
3. Claimant sustained admitted injuries to his back and right knee. I base this finding upon stipulation of the parties.
4. Claimant is forty years old and is currently employed with the employer as a cashier. I base this finding upon Claimant's testimony.
5. Claimant is a pleasant and believable witness. I do not doubt his testimony concerning some of his limitations; however I do view the entire record and the evidence as a whole.
6. Claimant has returned to work full duty with the employer for almost two years, and he is a valued employee who is being accommodated. I base this finding upon Claimant's testimony as well as the testimony of Lynn Council from the employer.
7. Ms. Lynn Council, Claimant's manager, testified credibly at the hearing. She verified that Claimant is a good employee, and that the employer has accommodated him if needed. Claimant has not made any complaints to the employer nor asked for additional medical treatment. I base this finding upon the testimony of Ms. Council.
8. The greater weight of the evidence shows, based upon review of the medical records, including Independent Medical Evaluations, that Dr. Drye's reports and conclusions are the most persuasive. I base this finding upon the medical records submitted into evidence.
9. Claimant reached maximum medical improvement as of June 7, 2011. I base this finding on the medical evidence.
10. Claimant sustained a 48% permanent partial disability to his back. I base this finding on the medical evidence as a whole.

11. Claimant's permanent partial disability includes any radicular symptoms to his right leg. I base this finding on the medical evidence.
 12. Claimant is not permanently and totally disabled. I base this finding on the greater weight of the evidence, including his ability to work for nearly two years while being accommodated by sitting down, his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
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13. Claimant is not entitled to reimbursement for his Independent Medical Evaluation costs. I base this finding upon the medical evidence which shows that Defendants provided Claimant with follow-up visits with the authorized treating providers and there is no finding of a lapse in treatment.
 14. Claimant is entitled to a lump sum award.
 15. Claimant is entitled to causally related medical treatment pursuant to Dodge pursuant to Section 42-15-60 as amended. I base this finding on the medical evidence.
 16. Claimant is entitled to lifetime repair, replacement, removal and maintenance of any retained hardware, if any.
 17. Claimant is entitled to Utica-Mohawk language pursuant to James v. Anne's.

Commissioner Williams also made the following conclusions of law:

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Section 42-1-130 and Section 42-1-140, Claimant was an employee of the employer
3. Pursuant to S.C. Code Ann. Section 42-1-40 and Section 42-1-50, Claimant's average weekly wage is \$391.19 with a corresponding compensation rate of \$260.81.
4. Pursuant to S.C. Code Ann. Section 42-1-160, Claimant suffered from a compensable injury to his back and right knee on September 12, 2010.

5. Pursuant to S.C. Code Ann. Section 42-15-20 notice of the accident as given to the employer.
6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided Claimant with necessary medical treatment and Dr. Drye's reports and conclusions are controlling as the authorized treating physician.
7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant reached maximum medical improvement on June 7, 2011.

8. Pursuant to S.C. Code Ann. Section 42-9-30, Claimant suffers from a 48% permanent partial disability to his back as a result of his work related accident.
9. Pursuant to S.C. Code Ann. Section 42-9-10 Claimant is not permanently and totally disabled as Claimant has returned back to work with the employer for almost two years.
10. Pursuant to S.C. Code Ann. Section 42-15-60, as amended and Dodge, Claimant is entitled to ongoing causally related medical treatment for his back.
11. Claimant is entitled to a lump sum award and Utica-Mohawk language pursuant to James v. Anne's.

Following this Decision and Order, Claimant filed a Form 30, Notice of Appeal, asserting six exceptions to the Decision and Order. These exceptions are as follows:

- I. Did the Hearing Commissioner err by not ordering an authorized second opinion and/or reimbursing Claimant for the unauthorized second opinion he pursued?
- II. Did the Hearing Commissioner err by setting this matter for a hearing under S.C. Code §42-9-260 which provides for a stop payment application and forcing Claimant to a premature determination of his property rights to an award in violation of his due process rights to such award?
- III. Did the Hearing Commissioner err as a matter of law by failing to find Claimant is permanently and totally disabled, by failing to award benefits to Claimant for a great than 50% loss of use to the back and by failing to award Claimant lifetime medical treatment for losing more than 50% of the functional use of his back?

- IV. Did the Hearing Commissioner err as a matter of law by failing to make an award for Claimant's neurological disorder and/or myelopathy?
- V. Did the Hearing Commissioner err as a matter of law by failing to make an award for Claimant's low back injury?
- VI. Did the Hearing Commissioner err as a matter of law by placing greater weight on the authorized treating physician's reports where there is an absolute unbelievable inconsistency in that doctor's reports wherein there is absolutely no evidence in the record to substantiate that Claimant was having any neurological problems prior to the accident and where that doctor himself in fact states that fact in his subsequent reports up to and including his final report in 2011?

As discussed below, we AFFIRM the Single Commissioner Decision and Order in its entirety.

EVIDENCE OF THE CASE

TESTIMONY OF LYNN COUNCIL

Ms. Lynn Council testified on behalf of the employer, Lowe's. She testified that she has worked for Lowe's for the past four and a half years. (Hearing Transcript p. 9 ln. 17). She is employed as the Customer Service Manager and she oversees the cashiers and some of the sales people on the sales floor. (Hearing Transcript p. 9 ln. 20-25). Ms. Council currently serves as Claimant's direct supervisor. She testified that Claimant is working as a cashier and has been in that position since he returned to work with restrictions. (Hearing Transcript p. 10 ln. 6-14). She further indicated that the employer made accommodations for Claimant to include allowing him to sit down if needed. (Hearing Transcript p. 10 ln. 20-22).

Ms. Council said that Claimant is a good employee, he's on time every day, he's dependable, and he'll stay over if they ask him to. He's one of the best employees that she has up front. (Hearing Transcript p. 11 ln. 3-5). Ms. Council testified that Claimant has never made any complaints to her about limitations or problems that he's having doing his job. (Hearing

Transcript p. 11 ln. 12-15). Further, he has never asked her for additional medical treatment since he's returned to work. (Hearing Transcript p. 11 ln. 16-18). Ms. Council said that in her opinion based on her observations of claimant performing his job, that he is capable of doing it. (Hearing Transcript p. 11 ln. 19-24).

On cross-examination, Ms. Council testified that she didn't decide what kind of job Claimant would perform under his work restrictions, that this was handled by Human Resources.

(Hearing Transcript p. 12 ln. 13 – 16). She testified that if Claimant requests a stool or a chair, she will get him one. (Hearing Transcript p. 13 ln. 5-12). She said that they kept a chair at the front of the store for Claimant for several weeks and he never asked for it, so they put it back where it belonged and told him to let them know if he needed it. (Hearing Transcript p. 13 ln. 19-23). Further, Ms. Council testified that if Claimant needs help lifting then he can ask for it. (Hearing Transcript p. 14-15 ln. 25-2 and p. 16 ln. 1-3). Claimant's counsel asked Ms. Council whether she had knowledge of other work restrictions to which she denied. However, Defense counsel pointed out that these restrictions were issued by non-authorized treating doctors. Therefore in response, Ms. Council testified that to her knowledge that she nor anyone else has asked Claimant to perform work outside of his restrictions. (Hearing Transcript p. 18 ln. 4-7).

TESTIMONY OF CLAIMANT

Claimant testified on his behalf. He states that he is forty years old and graduated from Irmo High School. He went to Midland's Tech and then Winthrop. (Hearing Transcript p. 20 ln 13-25). His work history consists of working at the B.P. Service Station on Gervais Street, where he worked for ten years. (Hearing Transcript p. 25 ln. 7-20). He then testified that he went to work for Steinmart. Here in worked in receiving; took packages in, and separated merchandise. (Hearing Transcript p. 27 ln. 13-17). After that, he went to work for American Koyo. (Hearing

Transcript p. 28 ln. 20-25). After his employment with Koyo, Claimant said that he started his job at Lowe's. (Hearing Transcript p. 30 ln. 14-15). Claimant said that he first started out as a night stocker which required him to unload the truck and freight and place it on shelves in departments. (Hearing Transcript p. 30 ln. 18-25). He then started working as a cashier. (Hearing Transcript p. 32 ln. 5-7). Claimant said that he has been a cashier since he returned back to work. (Hearing Transcript p. 33 ln 5-6) and was a cashier at the time of the injury. (Hearing Transcript p. 33 ln. 16-18). As the cashier, he testified he's responsible for scanning items and receiving payment, and also to call someone if a customer needs help. (Hearing Transcript p. 34 ln. 16-18).

Claimant was asked to testify regarding the work incident and he explained that he was waiting on a customer at the straw trailer. (Hearing Transcript p. 22 ln. 7). As he walked to the nose of the trailer, he slipped and lost his footing. He fell flat on his back and hit his head. (Hearing Transcript p. 22 ln. 10-17). Claimant went on to testify regarding his medical treatment, and said that he went to see Dr. Armsey. Thereafter, he was sent to Dr. Drye and then had surgery. (Hearing Transcript p. 24 ln. 12-15) . After his surgery, Claimant testified that he had to go back to the hospital. (Hearing Transcript p. 24 ln. 19-24).

Claimant testified that prior to the accident, he used to bike ride and he cannot do that anymore. (Hearing Transcript p. 35 ln. 17-18). He also testified that he likes to play golf, but doesn't play any longer. (Hearing Transcript p. 36 ln. 20-22). Claimant said that he used to walk the dam, but he no longer does that. (Hearing Transcript p. 45 ln. 13-15). When asked about his daily activities since the date of the injury, Claimant testified that he gets out of bed and stands there for a minute to get control. He said that he has stiffness that is in his back all day long. He said that he has muscle spasms throughout his lower body. (Hearing Transcript p. 37 ln. 9-25). He went on to state that he has a lot of pain and stiffness. In particular, to his neck, Claimant said

he can only turn to a certain point before it becomes painful. As for his lower back, he has to bend in increments. (Hearing Transcript p. 38 ln. 14-21). Claimant said he has a hard time controlling his hands. (Hearing Transcript p. 39 ln. 5-8). At the end of the day, he showers, and sits down for an hour or two. He also stretches and then goes back to the chair before he goes to bed. (Hearing Transcript p. 39. ln. 17-24).

Since the date of the injury, Claimant testified that he has returned back to work.

Claimant's understanding regarding his work restrictions by Dr. Dryc is that he was not to lift over twenty pounds and he was to have a stool available when he needs it. (Hearing Transcript p. 40 ln. 19-20). Claimant said that he asked a head cashier for a stool and he indicates the head cashier told him Lowe's wouldn't allow that. (Hearing Transcript p. 41 ln. 14-19). He further testified that he has problems throughout the day. (Hearing Transcript p. 42 ln. 1-3). He indicates that he accommodates himself since there is not a stool available by leaning against a metal post or adjusting the counter. (Hearing transcript p. 42 ln. 17-19). Claimant said that his fellow employees help him out a lot. (Hearing Transcript p. 43 ln. 1-3). If he lost his job at Lowe's, Claimant said that he would look for a job that would not require him to be on his feet all day. (Hearing Transcript p. 44 ln. 20-21).

Claimant testified that he thought he's loss 80% loss of use to his back (Hearing Transcript p. 47 ln. 11) and that he would like further physical therapy for his condition as well as pain medication (Hearing Transcript p. 48 ln. 1-11).

On cross-examination, Claimant testified that he returned back to work in September 2011 and that he's been working as a cashier. He works forty hour weeks, eight hours per day and stands during the entire eight hour period. He also testified that he has access to a pricing gun so that he doesn't have to lift items. (Hearing Transcript p. 49 ln. 4-21). He also dumps

trash, and put sodas in the coolers that are located outside of his cashier station. (Hearing Transcript p. 49 In. 22-25). Claimant said that he has not attempted to do any other types of work other than his cashier job, so he doesn't know whether he could do it. (Hearing Transcript p. 50 In 12-17). He hasn't applied for jobs anywhere else to know if they would accommodate his restrictions. (Hearing Transcript p. 51 In. 1-4). Claimant went on to testify that any employee at any time can call a Code 50 which requests lifting assistance. (Hearing Transcript p. 51 In. 19-24). There's no limitation for him either before the accident or after the accident for him to ask for assistance in lifting. And Claimant agreed that every time he's asked for assistance he's received it. (Hearing Transcript p. 52 In. 5-9). Claimant testified that as a cashier, he has access to team members who can perform lifts for heavier items. (Hearing Transcript p. 53 In. 1-3). Claimant said that as a cashier he isn't required to lift pine straw for eight hours a day, and in fact he's never been asked to perform that job for eight hours. (Hearing Transcript p. 53 In. 12-19).

Upon further cross-examination, Claimant testified that he didn't tell Defense counsel about his personal activities like riding a bike and walking at his deposition because he didn't think about it at the time. (Hearing Transcript p. 54 In. 8-15). He further indicates that when he told Defense counsel in his deposition that while working for his parents B.P. Station that he didn't do auto-repair, he meant that he wasn't doing any major repairs. (Hearing Transcript p. 54 In. 16-23).

When Claimant was asked specifically about his earlier testimony regarding the need for a stool, Claimant said that he spoke with a co-employee about his request for a stool. He did not ask a supervisor for the stool. (Hearing Transcript p. 55 In. 8-15). Claimant testified that no co-workers have ever asked him to perform work outside of his restrictions. (Hearing Transcript p.

55 In. 16-20). Since he returned back to work in September 2011, he has received good performance evaluations and considers himself to be a good employee. He's always on time and he's reliable. (Hearing Transcript p. 56 In. 8-22).

Claimant testified that he returned to see Dr. Drye approximately one year after he was released to return to work and told Dr. Drye that he was not having any pain or problems radiating into either one of his arms. (Hearing Transcript p. 57 In. 7-10). He was released from Dr. Drye at that appointment and he has not been back to see him since. (Hearing Transcript p. 57 In. 18-22). Claimant testified that upon his release he was not prescribed pain medication. (Hearing Transcript p. 57-58 In. 23-1). Claimant testified that he went to see Dr. Mandell upon the direction of his attorney and he reported to Dr. Mandell that his symptoms were stable. (Hearing Transcript p. 58 In. 2-19). He also went to see Dr. Gail Margalet who did not provide him with any medical treatment. (Hearing Transcript p. 59 In. 1-6). He was also seen by Dr. Forrest in Charleston and Harriet Fowler. (Hearing Transcript p. 59 In 7-19). During all of the evaluations, Claimant testified that he continued to work at Lowe's under his work restrictions. (Hearing Transcript p. 60 In. 3-6). Claimant said that the surgery Dr. Drye gave him brought back the feeling in his legs, but has not eliminated the pain. However, he testified in his deposition testimony that he wasn't have any pain. Claimant testified that his work restrictions are as Defense counsel read, that he should not be climbing heights repetitively, climbing steps, he should avoid repetitive overhead reaching, and lift or carry less than 30 pounds occasionally.

MEDICAL EVIDENCE

Claimant treated with various medical providers due to the compensable work related accident. Claimant initially treated at Doctor's Care on October 7, 2010 when he complained of pain in his low back after falling inside the trailer. (Defendants' APA p. 1). Claimant later

complained of tenderness in his right knee. (Defendants' APA p. 4). He was ultimately referred out for an MRI and to follow up with an orthopaedist as he did not respond to conservative treatment. (Defendants' APA p. 7).

On November 1, 2010, Claimant was evaluated by Dr. Thomas Armsey with Midlands Orthopaedics. At that time, Dr. Armsey recommended that he see a neurosurgeon. (Defendants' APA p. 11). On November 8, 2010, Claimant went to see Dr. Randall Drye at Columbia Neurosurgical Associates. Dr. Drye indicates that Claimant presents with cord compression and myelopathy which is advancing from a disc herniation at C6-7 and a significant bulge at C5-6. Dr. Drye recommended surgery, a two level ACDF and possible corpectomy. (Defendants' APA p. 21). Thereafter, on November 9, 2010 Claimant underwent surgery to include a radical anterior discectomy, osteophyctectomy and foraminotomy at C5-6 and C6-7, followed by a two level interbody arthrodesis and anterior fixation with Trinica plate C5 to C7. (Defendants' APA p. 12). Claimant was discharged home on November 10th with instructions to follow up in two weeks. (Defendants' APA p. 15). Claimant returned to the hospital on November 13th due to the inability to care for himself at home. Claimant remained in the hospital for approximately four days where he underwent rehab and made improvements. He was transferred to a rehabilitation facility on November 17th. (Defendants' APA p. 18).

On November 24, 2010, Claimant returned to see Dr. Drye for a follow up appointment. At this time, he reports that his overall condition is markedly improved. Dr. Drye notes that Claimant is making good progress and recommends that he complete the inpatient and outpatient physical therapy. (Defendants' APA p. 24). Claimant returned on December 29th with reports of near normal sensation and strength in the upper extremities and very minimal neck discomfort. Dr. Drye opined that at this point Claimant could resume driving. In addition, Dr. Drye indicates

that he needs to begin to normalize his activities within reason. They discussed that Claimant could possibly return to work on light duty for half days. (Defendants' APA p. 26).

Claimant followed up with Dr. Drye again on February 16, 2011. At this visit, he reports that he has regained the strength in his upper extremities and is ambulating more effectively. He is still actively involved in physical therapy as well as aqua therapy. Claimant reports that he was unable to return to work after his most recent visit, but Dr. Drye again indicated he could return to work with the restrictions as set forth previously. (Defendants' APA p. 27). On April 12, 2011, Claimant reports that he has been going to the gym five or six days per week. He mentions that he has problems with leg difficulties and the feeling that he is having a difficult time controlling them. He has little to no complaints regarding pain. Dr. Drye released him to return to work with the same restrictions and asked him to resume physical therapy. They also discussed the need for possible vocational rehabilitation. (Defendants' APA p. 28).

On June 7th, Claimant was evaluated by Dr. Drye. He reports completing the physical therapy program, that he continues to do his exercises at home and is walking three times per week. He has regained normal function in the upper extremities with no major complaints. His gait is still slightly unsteady and has some difficulty with balance. Dr. Drye notes that Claimant appears quite comfortable today. Dr. Drye opines that Claimant has reached maximum medical improvement. He assigns permanent work restrictions which include no standing or walking more than an hour without the inability to sit for a brief period of time. He also restricts him from climbing heights, repetitively climbing steps, repetitive overhead reaching and should lift or carry less than 30 pounds occasionally. Dr. Drye assigns a 25% whole person impairment rating based on the injury to the cervical spine including a subsequent fusion and mild myelopathic residual symptoms. (Defendants' APA p. 30).

Thereafter, on June 18, 2012, Claimant returned to see Dr. Drye which is a year after he was originally released at maximum medical improvement. Dr. Drye notes that when he was released, Claimant had recovered nicely from surgery though he still had some symptoms referable to his preoperative cord injury and myelopathy. At this time, he has returned to work with some physical restrictions and is back at work as a cashier. Claimant reports that he has some persistent stiffness and pain in the base of the neck which does not radiate into the upper extremities. He denies any recurrent symptoms in the arms and hands. The neck pain is worse in the morning and seems to improve as he moves about. He denies any radicular symptoms down the leg and continues to have some altered gait from his previous myelopathy as well as long-standing, pre-injury inversion of the right foot and ankle. He has recently undergone cervical and lumbar MRIs for a check for a possible change in condition.

Dr. Drye reports that the cervical MRI as well as lumbar study show that Claimant has healed beautifully from his surgery with what appears to be stable operative construct with instrumentation. There is no residual high degree of canal stenosis and no obvious impingement of the cord. At C3-5 and C4-5 there are spondylitic change and broad based disc bulge which has not progressed significantly from his previous study. The lumbar study demonstrates a disc protrusion at L1-2 and at L5-S1 there is very advanced degenerative disc disease. There is no evidence of any direct nerve root impingement or large disc herniation.

Dr. Drye opines that Claimant's current symptoms are most consistent with axial and myofascial pain and it is strongly suggestive of arthritic type symptoms. Dr. Drye encouraged Claimant to continue stretching and movement and advised him to lose weight. Dr. Drye said there was no reason for any change in terms of his permanent work restrictions, rating or additional intervention or treatment. Dr. Drye released him again. (Defendants' APA p. 31).

After Dr. Drye re-released Claimant at maximum medical improvement on June 18, 2012, Claimant's attorney scheduled him for an evaluation with Dr. Howard Mandell, a neurologist. On September 5, 2012, Dr. Mandell reports that Claimant states his symptoms are stable, not improving and not worsening for the last several months. Dr. Mandell opines that Claimant's surgery has resolved very nicely and that he has made remarkable recovery though not recovered to pre-injury level of functioning. Further, Dr. Mandell reports that Claimant did seem to sustain a closed head injury in terms of a concussion but there doesn't appear to be any brain involvement from this injury. The only area affected has been the spinal cord at the cervical level. Dr. Mandell indicates that Claimant does not require additional treatment other than ongoing physical therapy. He does not think he requires additional surgery, but possibly ongoing low back pain management. Dr. Mandell finds that he should limit his work and recommends an FCE. (Claimant's APA 8).

On September 5, 2012, Claimant was evaluated by Harriet Fowler upon recommendation of his attorney. Ms. Fowler indicates that Claimant can work at a sedentary level in order to sustain employment. (Claimant's APA 12).

On September 6, 2012, Claimant was seen by Dr. Leonard Forrest at Southeastern Spine Institute. Dr. Forrest indicates that Claimant has reached maximum medical improvement for his injuries and that he will need further intermittent treatment ongoing into the future. Dr. Forrest assigned him with at least a 30% impairment rating to the neck-related symptoms and problems. He also assigned him a 10% impairment rating for the low back symptoms. He assigned a 25 pound lifting restriction and to avoid climbing or going on a straw trailer. Dr. Forrest goes on to state that this would be over a 50% loss of his functional capabilities. (Claimant's APA 11).

Claimant's attorney also sent Claimant for an FCE with Tracy Hill at Columbia Rehabilitation Clinic, Inc. This took place on September 11, 2012 in which Ms. Hill found that he qualified for limited light work. (Claimant's APA 9).

On September 11th, Claimant was also evaluated by Dr. Gal Margalit at Sunset Family Practice. Dr. Margalit opined that the patient has lost more than 50% of his functional capacity of his back to work based on the on the job injury of 9/12/10 and she concurs with the opinions of his neurosurgeon regarding weight loss and continuing restrictions. Dr. Margalit further indicates that he may benefit from some neurological testing for mild brain dysfunction, but suspects that this is of a minor nature in relationship to the rest of his injuries. (Claimant's APA 10).

FULL COMMISSION FINDINGS OF FACT

Based upon the testimony and evidence submitted by both parties, the Full Commission adopts the Findings of Fact of the Single Commissioner as their own as follows:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission.
2. Claimant's average weekly wage is \$391.19 with corresponding compensation rate of \$260.81. We base this finding upon stipulation of the parties.
3. Claimant sustained admitted injuries to his back and right knee. We base this finding upon stipulation of the parties.
4. Claimant is forty years old and is currently employed with the employer as a cashier. We base this finding upon Claimant's testimony.
5. Claimant is a pleasant and believable witness. We do not doubt his testimony concerning some of his limitations, however We do view the entire record and the evidence as a whole.

6. Claimant has returned to work full duty with the employer for almost two years, and he is a valued employee who is being accommodated. We base this finding upon Claimant's testimony as well as the testimony of Lynn Council from the employer.
7. Ms. Lynn Council, Claimant's manager, testified credibly at the hearing. She verified that Claimant is a good employee, and that the employer has accommodated him if needed. ~~Claimant has not made any complaints to the employer nor asked for additional medical~~
treatment. We base this finding upon the testimony of Ms. Council.
8. The greater weight of the evidence shows, based upon review of the medical records, including Independent Medical Evaluations, that Dr. Drye's reports and conclusions are the most persuasive. We base this finding upon the medical records submitted into evidence.
9. Claimant reached maximum medical improvement as of June 7, 2011. We base this finding on the medical evidence.
10. Claimant sustained a 48% permanent partial disability to his back. We base this finding on the medical evidence as a whole.
11. Claimant's permanent partial disability includes any radicular symptoms to his right leg. We base this finding on the medical evidence.
12. Claimant is not permanently and totally disabled. We base this finding on the greater weight of the evidence, including his ability to work for nearly two years while being accommodated by sitting down, his lack of prescription medication, and the medical reports and conclusions of Dr. Drye.
13. Claimant is not entitled to reimbursement for his Independent Medical Evaluation costs. We base this finding upon the medical evidence which shows that Defendants provided

Claimant with follow-up visits with the authorized treating providers and there is no finding of a lapse in treatment.

14. Claimant is entitled to a lump sum award.

15. Claimant is entitled to causally-related medical treatment pursuant to Dodge per Dr. Drye pursuant to Section 42-15-60 as amended. We base this finding on the medical evidence.

~~16. Claimant is entitled to lifetime repair, replacement, removal and maintenance of any retained hardware, if any.~~

17. Claimant is entitled to Utica-Mohawk language pursuant to James v. Anne's.

FULL COMMISSION CONCLUSIONS OF LAW

Based upon the testimony and evidence submitted by both parties, the Full Commission adopts the Conclusions of Law of the Single Commissioner as their own as follows:

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. Section 42-1-130 and Section 42-1-140, Claimant was an employee of the employer
3. Pursuant to S.C. Code Ann. Section 42-1-40 and Section 42-1-50, Claimant's average weekly wage is \$391.19 with a corresponding compensation rate of \$260.81.
4. Pursuant to S.C. Code Ann. Section 42-1-160, Claimant suffered from a compensable injury to his back and right knee on September 12, 2010.
5. Pursuant to S.C. Code Ann. Section 42-15-20 notice of the accident as given to the employer.

6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided Claimant with necessary medical treatment and Dr. Drye's reports and conclusions are controlling as the authorized treating physician.
7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant reached maximum medical improvement on June 7, 2011
8. Pursuant to S.C. Code Ann. Section 42-9-30, Claimant suffers from a 48% permanent partial disability to his back as a result of his work related accident
9. Pursuant to S.C. Code Ann. Section 42-9-10 Claimant is not permanently and totally disabled as Claimant has returned back to work with the employer for almost two years
10. Pursuant to S.C. Code Ann. Section 42-15-60, as amended and Dodge, Claimant is entitled to ongoing causally related medical treatment for his back per Dr. Drye.
11. Claimant is entitled to a lump sum award and Utica-Mohawk language pursuant to James v. Anne's.

CONCLUSION

For all the foregoing reasons, the Single Commissioner's Decision and Order is AFFIRMED in its entirety.

FULL AFFIRMATION.



Melody L. James, Commissioner (Chair)



Susan S. Barden, Commissioner



Scott T. Beck, 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 July 2, 2013

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