DECISION & ORDER
BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1009294

EDWARD G. FLORA, SR.,
Claimant/Appellant,

vs.

DYNCORP,
Employer,

INSURANCE COMPANY OF THE STATE OF PA,
Carrier

Respondents.

Appellate Panel Review
Columbia, South Carolina
May 21, 2013

Appellate Panel Decision & Order filed
on 7-1, 2013

AFFIRMED

Samuel S. Svalina, Esquire, on behalf of Appellant

E. Courtney Gruber, Esquire, on behalf of Respondents

This matter was heard before the Appellate Panel of the South Carolina Workers' Compensation Commission on May 21, 2013, pursuant to a Form 30 timely filed by the Appellant on January 4, 2013. This matter was originally heard before the Single Commissioner in Yemassee, South Carolina, on October 9, 2012, and this was an appeal from that Order filed December 19, 2012.

The Hearing Commissioner made the following Findings of Fact, Conclusions of Law, and Order following an evidentiary hearing:

> Based upon the testimony of the witnesses and the APA submissions, the following Findings of Fact are made:
>
> **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.
> 2. That the average weekly wage is $1,075.06, with a compensation rate of $689.71.
> 3. That the Claimant sustained an admitted injury to his left arm on July 18, 2010.
> 4. That the authorized treating doctor was Dr. Edward R. Blocker, a Board-certified orthopaedic surgeon.
> 5. That Dr. Blocker's deposition was taken on August 6, 2012.
> 6. That Dr. Blocker first saw the Claimant for left elbow and proximal forearm pain on May 5, 2009. (Blocker Depo., p. 5, l. 20-22).
> 7. That prior to the accident - on May 5, 2009 - Dr. Blocker diagnosed the Claimant with lateral epicondylitis. (Blocker Depo., p. 6 & pp. 20-22).
> 8. That on July 19, 2009, the Claimant had the same complaints with regard to his left elbow as he had in the initial visit with Dr. Blocker on May 5, 2009. (Blocker Depo., p. 7, l. 14-16).
> 9. The Claimant continued to treat conservatively with Dr. Blocker until March 7, 2010, when he underwent tenotomy elbow, debridement soft tissue with tendon reattachment.

10. That no mention was made in any of Dr. Blocker's notes as to the Claimant having problems with his left shoulder until June 7, 2011.

11. That the Claimant reached MMI on September 22, 2011. (Def. APA, p. 19).

12. That the preponderance of the evidence does not support the Claimant's contention that his left shoulder was injured as a result of the work-related accident. (Blocker Depo., pp. 20, 21, 30)

13. That the Defendants are entitled to a credit for overpayment of temporary total compensation since August 6, 2012, the date on which Dr. Blocker's deposition was taken and he reiterated that the Claimant was at MMI.

14. That the Claimant has sustained a permanent partial disability of thirty (30%) percent to the left arm.

15. That additional medical treatment as recommended by Dr. Blocker on September 22, 2011, of anti-inflammatories and continued home exercise is treatment that would lessen the Claimant's disability.

16. That the Defendants are to provide any anti-inflammatories pursuant to Dr. Blocker's recommendation. (Def. APA, p. 19).

17. That no medical treatment other than anti-inflammatories has been recommended as likely to reduce the Claimant's disability, and Defendants are, therefore, not responsible for any additional medical treatment beyond anti-inflammatories as recommended by Dr. Blocker. (Def. APA., p. 19).

18. That continued prescribed use of anti-inflammatories would include visits to Dr. Blocker's office as necessary.

19. That the Defendants shall pay the permanency award in a lump sum, reduced by the overpayment of temporary total compensation paid since August 6, 2012.

20. That the Claimant failed to meet his burden of proof that any other body part was injured, impaired, or affected except the left arm as a result of this accident.

21. That the involvement of only one scheduled member, to wit: the left arm, limits the recovery to the arm only as provided in the Act

22. That the Claimant failed to prove involvement of any other body part besides the left arm, and therefore, recovery under the general disability statutes or in excess of the recovery provided for loss of the arm as a scheduled member in 42-9-30 is barred in accordance with that statute and the holdings in the Singleton and Wigfall line of cases detailed in the Conclusions of Law below.

Based upon the above Statement of the Case and the Findings of Fact above, the following Conclusions of Law are made:

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident.

2. S.C. Code Ann. § 42-9-30 defines scheduled period of disability and compensation and states:

> In cases included in the following schedule, the disability in each case is considered to continue for the period specified and the compensation paid for the injury is as specified.
>
> (13) For the loss of an arm, 66-2/3 of the average weekly wage during 220 weeks.

3. Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (Sup. Ct. 1960), held:

> Where injury to employee is confined to scheduled member and there is no impairment to any other part of the body because of such injury, employee is limited to scheduled compensation, even though other considerations effect a total or partial industrial capacity, and to obtain compensation in addition to that scheduled member, employee must show that some other part of the body is affected.

4. Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (Sup. Ct. 2003), held:

> A workers' compensation claim of only one scheduled injury was limited to recovery under the scheduled disability statutes only, and a scheduled disability coupled with lost earning capacity did not result in claimant becoming totally disabled as alleged by claimant; scheduled disability statute clearly provided for compensation for a limited period of time based on a specified injury and the statutory meaning was not ambiguous
>
> Wigfall further held:
>
> The term 'impairment' as used in the Singleton case which held that a workers' compensation claimant with a scheduled injury was limited to recovery under the scheduled disability statutes did not encompass medical and wage loss consideration, as alleged by the workers' compensation claimant; the Singleton court intended for an impairment to a part of the body by injury.

5. S.C. Code Ann. § 42-1-40 defines average weekly wage.

6. S.C. Code Ann. § 42-9-260 defines suspension or termination of payment.

7. S.C. Code Ann. § 42-9-210 defines deduction from compensation of payments made by employer when not due and payable.

Based upon the above Statement of Case, Findings of Fact, and Conclusions of Law, the following Order is made:

ORDER

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Defendants' request to stop payment of temporary total compensation is granted; it is further

ORDERED, ADJUDGED, AND DECREED that the Defendants are entitled to a credit for overpayment of temporary total compensation since August 6, 2012; it is further

ORDERED, ADJUDGED, AND DECREED that the Defendants shall pay the Claimant a disability award in a lump sum representing thirty (30%) percent of the left arm (66 x $689.71), less a deduction for all temporary total compensation paid since August 6, 2012; it is further

ORDERED, ADJUDGED, AND DECREED that the permanent partial disability award, less the deduction for overpayment of temporary total compensation, shall be paid in a lump sum; it is further

ORDERED, ADJUDGED, AND DECREED that the Defendants shall provide medical treatment as recommended by Dr. Blocker as likely to reduce the Claimant's disability, to wit: any anti-inflammatories and office visits for that modality; it is further

ORDERED, ADJUDGED, AND DECREED that recovery is limited to that available under Section 42-9-30, the single-member statute, as the Claimant injured only his left arm in this matter and no other body parts were affected as a result of this accident.

No hearing costs or penalties are assessed in this matter.

A Form 30 was timely filed on January 4, 2013, noting the following grounds for appeal:

1. Whether the Hearing Commissioner erred in failing to include in Finding of Fact 3 that Claimant also sustained injuries to his left shoulder and left hand when such finding is against the greater weight and preponderance of the evidence in the record?

2. Whether the Hearing Commissioner erred in finding as a part of Finding of Fact 11 and in the body of the Order that Claimant has reached

maximum medical improvement when such finding is against the greater weight and preponderance of the evidence in the record?

3. Whether the Hearing Commissioner erred in finding as a part of Finding of Fact 12 that Claimant did not injure his left shoulder as a result of the work related accident when such finding is against the greater weight and preponderance of the evidence in the record?

4. Whether the Hearing Commissioner erred in finding as a part of Finding of Fact 14 and in the body of the Order that Claimant sustained a permanent partial disability of thirty (30%) percent to the arm when such finding is against the greater weight and preponderance of the evidence in the record?

5. Whether the Hearing Commissioner erred in holding that Claimant is not entitled to an award of continued medical treatment and benefits for his left shoulder when such finding is against the greater weight and preponderance of the evidence in the record?

6. Whether the Hearing Commissioner erred in finding as a part of Finding of Fact 20 that Claimant failed to meet his burden of proof that any other body part such as the left shoulder and left hand was injured, impaired or affected except the left arm as a result of this accident when such finding is against the greater weight and preponderance of the evidence in the record?

7. Whether the Hearing Commissioner erred in finding as a part of Finding of Fact 21 that only one scheduled member, the left arm, was involved, limiting recovery to the arm only as provided in the Act when such finding is against the greater weight and preponderance of the evidence in the record?

8. Whether the Hearing Commissioner erred in the Findings of Fact and in the body of the Order in failing to apply permanent partial disability under Section 42-9-20 when application of such section is in accordance with the greater weight and preponderance of the evidence in the record?

9. Whether the Hearing Commissioner erred in finding as a part of Finding of Fact 22 that Claimant failed to prove involvement of any other body part besides the left arm and therefore is limited to the recovery provided for loss of the arm as a scheduled member in Section 42-9-30 when such finding is against the greater weight and preponderance of the evidence in the record?

10. Whether the Hearing Commissioner erred in applying the rule of Singleton v Young Lumber Co., 236 S.C. 454 (1960), in Conclusion of Law 3 based

on the assumption that no other part of the body was affected by the injury to the scheduled member when such conclusion is against the greater weight and preponderance of the evidence and is based upon erroneous legal conclusions?

11. Whether the Hearing Commissioner erred in the Conclusions of Law in failing to apply permanent partial disability under Section 42-9-20 when application of such section is in accordance with the greater weight and preponderance of the evidence in the record?

12. Whether the Hearing Commissioner erred in holding that recovery is limited to that available under Section 42-9-30, the single-member statute, because Claimant injured only his left arm and no other body parts were affected as a result of this accident when such conclusion is against the greater weight and preponderance of the evidence in the record?

13. Whether the Hearing Commissioner erred in awarding a thirty (30%) percent disability to the left arm when the greater weight and preponderance of the evidence in the record, including but not limited to the Vocational Report by Dr. Brabham shows at least a fifty (50%) percent loss of earning capacity over his work-life (Claimant's APA Submission 8)?

14. Whether the Hearing Commissioner erred in failing to address Claimant's contention that it is a violation of Equal Protection Clauses of United States and South Carolina Constitutions to deny an award to the Claimant under Section 42-9-20 because he only has an impairment to one body part (this issue was raised in Claimant's Memoranda as referenced in Commissioner's Order on page 3)?

STATEMENT OF THE CASE

This matter originally arose on July 18, 2010, when the Appellant alleged that he had sustained an injury to his left elbow. He was diagnosed and treated for lateral epicondylitis on the left elbow. The Appellant was initially treated conservatively with work-conditioning injections and ultimately underwent debridement of the lateral epicondyle for epicondylitis at the left elbow, which was performed March 7, 2001. The Appellant was released at maximum

medical improvement on September 22, 2011, with a 10% permanent impairment to his upper extremity.

During oral argument, the Appellant contended that recovery in this case should not be limited to 42-9-30, the single-member statute, but instead should be allowed under one of the general disability statutes, 42-9-10 or 42-9-20. The Appellant further contended that the injury to the elbow had "affected" the left shoulder and the left hand, as well as caused depression. The Appellant contended that the fact that these other body parts and systems were affected was sufficient to allow recovery under the general disability statutes. The Appellant further contended that the Single Commissioner had erred in applying the wrong standard for involvement of a second body part, which would allow for recovery under one of the general disability statutes. Specifically, the Appellant contended that he was only required to show that another body part was "affected" by the injury to award benefits under 42-9-20, not that he was required to prove that another body part was injured, impaired, or affected. Appellant contended that the Single Commissioner misinterpreted the holding in Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100 (2003).

Respondents maintained that the Single Commissioner's findings were supported by the preponderance of the evidence and further argued that the Court of Appeals had recently clarified the issue of the showing of proof required to obtain compensation beyond that scheduled for the single-injured member in a decision filed April 17, 2013, Colonna v. Marlboro Park Hospital and Gallagher Bassett Services, Inc. (Appellate Case No. 2011-196407). Colonna interpreted the case of Singleton v. Young Lumbar Co., 236 S.C. 454, 114 S.E.2d 837 (1960), and subsequent cases as requiring that a claimant must prove not only that another body part was

"affected" (emphasis added) but that it was also either "impaired" or "injured" for the general disability statutes to apply.

ORDER

Based on the foregoing, it is hereby ORDERED that the Single Commissioner's Order of December 19, 2012, is **AFFIRMED** in its entirety.

No hearing costs or penalties are assessed in this matter.

S.C. WORKERS' COMPENSATION COMMISSION

By:_____
Commissioner Aisha Taylor, Chair

CONCURRING:

By:_____
Commissioner Susan S. Barden

By:_____
Commissioner Andrea C. Roche

Columbia, South Carolina

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 1, 2013