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Apr 15 2024

SC Court of Appeals

**State of South Carolina
Workers' Compensation Commission**

APPELLATE PANEL DECISION AND ORDER

PANEL: T. SCOTT BECK, R. MICHAEL CAMPBELL, II, & AISHA G. TAYLOR

SCWCC File No.: 2106012

Nathaniel Coakley,

Claimant,

v.

Pilgrim's Pride Corp.,

Employer,

and

American Zurich Ins. Co.,

Carrier,

Defendants.

MAJORITY AFFIRMATION

Hearing held in Richland County, South Carolina,
on September 18, 2023,

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

Appearances: Benjamin T. Cruse, of Shelly Leeke Law Firm, LLC,
appeared on behalf of Claimant.

Timothy B. Killen, of Holder Pagett Littlejohn + Prickett,
LLC, appeared on behalf of Defendants.

Court Reporter: Amber Scarborough, 803-252-3445.

Filed:

March 15, 2024

I. STATEMENT OF THE CASE

This matter arises from the Defendants'/Respondents' (Defendants') Form 21, dated February 9, 2023. The case was heard by the Single Commissioner in Sumter, South Carolina, on April 18, 2023. The issues for the hearing were to determine whether the Defendants could stop payment of temporary total disability benefits, and if so, to determine if Claimant is entitled to any further benefits. Defendants also requested credit for temporary total benefits (TTD) paid in excess of the award.

At that hearing, it was Claimant's position that he has not yet reached maximum medical improvement (MMI) for his compensable injuries, that he requires additional medical evaluations and treatment for same, and that he is entitled to ongoing TTD. Claimant also requested that Dr. Ivan Lamotta be named the Claimant's authorized treating physician. Hrg. Tr. p. 26, ll. 6 – 13.

In large part, the issue in this case was Claimant's allegation that Defendants have not complied with the 1/3/2023 Order of this Commission. Defendants asserted that they complied with the prior Order.

Claimant asserted that the prior Order required Defendants to send the Claimant for further treatment. Defendants asserted that the prior Order required treatment until such time as Claimant has reached MMI, and that he at MMI per the authorized treating physicians, which is what was required by the prior Order.

II. SINGLE COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT (SINGLE COMMISSIONER)

1. The undersigned forwarded directives regarding this Order to the parties on May 8, 2023, *via* e-mail.

2. The parties had the opportunity to and did put their respective positions (outlined *supra*) on the record.

3. All parties agreed to move forward with the hearing despite the absence of the Claimant; the parties agreed that the Claimant's testimony was not necessary to the proceeding.

4. On May 11, 2020, Claimant went to Prisma Health Tuomey complaining of left leg pain. Defendants' APA p. 19. It is noted that Claimant complained of left leg pain for "about 6 months." Defendants' APA p. 20. He is quoted as telling Emergency Department personnel that the pain was "in the hip area, I think I pulled it out." *Id.* Claimant denied any trauma, falls, or injuries. *Id.* Claimant indicated that his pain was at a level of ten (10) on a scale from zero (0) to ten (10), and that there was a gradual, six (6) month onset. Defendants' APA p. 21. Claimant underwent x-rays of his left hip, which showed mild degenerative changes with no acute bony abnormality. Defendants APA p. 24, 31. Claimant was instructed to follow up with his primary care physician within three (3) days. Defendants' APA p. 24. The doctors noted that Claimant's pain was relieved by nothing. Defendants' APA p. 25. Claimant was diagnosed with sciatica, left side. Defendants' APA p. 29.

5. On August 3, 2021, approximately seven (7) months after the accident, Claimant saw Dr. Nallu for back pain, which was "a chronic problem. The current episode started more than 1 year ago." Defendants' APA p. 145 (emphasis added). Claimant's lumbar MRI was reviewed, showing lumbar degenerative disc disease and lumbar spine stenosis. Defendants' APA p. 146 – 147.

6. On August 19, 2021, Dr. Noojin opined as follows: "Our plan at this time is to refer him to Dr. Nallu for evaluation and treatment. I do not need to see him back as it does [not] appear

that he has a hip problem, but more predominantly a lumbar spine radicular complication.” Defendants’ APA p. 129.

7. On December 8, 2021, Claimant underwent a Functional Capacity Evaluation (FCE). Defendants’ APA pp. 239 – 262. The result of the FCE was a finding that Claimant can return to limited medium work. Defendants’ APA p. 239.

8. On October 17, 2022, after the prior hearing, Defendants sent a Form 14B to Dr. Nallu. Defendants’ APA pp. 263 – 264. Claimant’s attorney was copied on that correspondence. Defendants’ APA p. 263.

9. On November 9, 2022, after Commissioner Dooley’s Order was entered, Dr. Nallu opined that Claimant was at MMI as of October 14, 2021, and had suffered an eight percent (8%) medical impairment to the back. Defendants’ APA p. 264. Dr. Nallu opined that Claimant will need future medicals to include lumbar steroid injections, physical therapy, and medications to maintain his current level of function. *Id.* Dr. Nallu assigned permanent physical restrictions of “[l]ight duty.” *Id.*

10. On December 13, 2022, Defendants sent a questionnaire to Dr. Noojin. Defendants’ APA pp. 267 – 268. In his response of January 17, 2023, Dr. Noojin opined that: (1) Claimant’s bilateral hip pain is predominantly the result of injury to his back; (2) Claimant is at MMI relative to his bilateral hip pain; (3) Claimant suffered no permanent impairment as a result of this claim; and (4) Claimant has no permanent restrictions as a result of his bilateral hip pain. Defendants’ APA p. 267.

11. At this hearing, Claimant submitted Dr. Nallu’s Form 14B from November 4, 2021 (which was excluded from the hearing before Commissioner Dooley, at Claimant’s behest), finding the same rating and future medical needs as the Form 14B of November 9, 2022. However,

rather than saying Claimant is limited to light duty, Dr. Nallu, at that time, wrote, “will need a FCE to determine this.” Claimant’s APA p. 291.

12. Claimant underwent an independent medical examination (IME) arranged by his attorney with Dr. Ivan LaMotta on September 22, 2022. Claimant’s APA pp. 292 – 295. Dr. LaMotta noted: “The patient states he never had any back pain or hip pain, never was seen or evaluated for back pain or leg pain . . . prior to the work-related injury of 1/19/2021.” Claimant’s APA p. 293.

13. Dr. LaMotta’s report was considered at the prior hearing before Commissioner Dooley.

14. Commissioner Dooley’s Order on the hearing of October 12, 2022, was entered and served upon the parties on January 3, 2023.

15. Commissioner Dooley did not name Dr. LaMotta to be the authorized treating physician. Commissioner Dooley gave the Defendants the choice of treating physicians.

16. Commissioner Dooley’s Order specifically made any further treatment contingent upon the authorized treating physicians’ recommendations regarding further treatment. See Conclusion of Law Five (5) and Order, ¶ three (3).

Pursuant to § 42-15-60, the Claimant is entitled to, and the Defendants are responsible for, additional medical treatment to the bilateral hips and low back *as recommended by the authorized treating physicians necessary for Claimant to reach maximum medical improvement*. Order, p. 14, Conclusion of Law Five (5) (emphasis added); and

IT IS FURTHER ORDERED that the Claimant has not reached MMI and needs further treatment for his bilateral hips and lumbar spine injuries *by orthopedic doctors chosen by Defendants*, and Claimant’s attorney must be copied on all correspondence in compliance with Section 42-15-95. Order, ¶ three (3).

17. I find that the Defendants’ liability for continuing care, as set forth in the prior Order, was to see that Claimant reaches MMI.

18. After the prior hearing, Defendants sent a Form 14B to Dr. Nallu to determine whether Claimant was at MMI for his back or whether Claimant needs further treatment. Defendants' APA pp. 263 – 264.

19. Dr. Nallu opined that Claimant was at MMI for his back with an eight percent (8%) impairment, needing only *Dodge* medicals. Defendants' APA p. 264.

20. On January 17, 2023, Dr. Noojin opined that Claimant is at MMI relative to his bilateral hip pain with no permanent impairment. Defendants' APA p. 267.

21. I find that Claimant reached MMI for all affected body parts on January 17, 2023, with the issuance of Dr. Noojin's opinion.

22. Accordingly, I find that Defendants fulfilled their obligations under Commissioner Dooley's Order.

23. I give greater weight to the opinions of Dr. Nallu and Dr. Noojin versus that of Dr. LaMotta, as these are the authorized treating physicians and these opinions follow the entry of Commissioner Dooley's Order. Further, Dr. LaMotta's opinion was based on a false or simply incorrect medical history given to him by Claimant (see Findings of Fact Four (4) and Twelve (12), above). Thus, Dr. LaMotta's opinion is not based on full and accurate information and can be discounted.

24. I find that Claimant has suffered eight (8%) permanent partial disability to his back as a result of his causally related injuries. This finding is based on the opinion of the authorized treating physician, Dr. Nallu. This award of twenty-four (24) weeks shall be paid in a lump sum and commuted to present value (23.8850 weeks).

25. I find that Claimant has suffered no (0%) permanent partial disability to his bilateral hips as a result of his causally related injuries. This finding is based on the opinion of the authorized treating physician, Dr. Noojin.

26. Defendants are entitled to credit for overpayment of TTD benefits paid since January 17, 2023.

CONCLUSIONS OF LAW
(SINGLE COMMISSIONER)

Accordingly, as provided in § 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;

2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.

3. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.

4. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.

5. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.

6. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation.

7. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.

8. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.

9. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.

10. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

11. That S.C. Code Ann. §42-9-30 sets forth the schedule of period of disability and compensation;

12. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards;

13. That S.C. Code Reg. 67-1605 is applicable in lump sum payments.

III. ISSUES ON APPEAL

- I. WHETHER THE SINGLE COMMISSIONER PROPERLY DETERMINED THAT DEFENDANTS' DUTIES UNDER THE PRIOR ORDER WAS TO PROVIDE TREATMENT UNTIL THE AUTHORIZED TREATING PHYSICIANS OPINED THAT CLAIMANT IS AT MMI.
- II. WHETHER THE SINGLE COMMISSIONER PROPERLY DETERMINED THAT CLAIMANT IS AT MMI.

III. DECISION OF THE APPELLATE PANEL

1. We hereby find that the undersigned forwarded directives regarding this Order to the parties on May 8, 2023, *via e-mail*.

2. We hereby find that the parties had the opportunity to and did put their respective positions (outlined *supra*) on the record.

3. We hereby find that all parties agreed to move forward with the hearing despite the absence of the Claimant; the parties agreed that the Claimant's testimony was not necessary to the proceeding.

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noted that Claimant's pain was relieved by nothing. Defendants' APA p. 25. Claimant was diagnosed with sciatica, left side. Defendants' APA p. 29.

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Pursuant to § 42-15-60, the Claimant is entitled to, and the Defendants are responsible for, additional medical treatment to the bilateral hips and low back *as recommended by the authorized treating physicians necessary for Claimant to reach maximum medical improvement*. Order, p. 14, Conclusion of Law Five (5) (emphasis added); and

IT IS FURTHER ORDERED that the Claimant has not reached MMI and needs further treatment for his bilateral hips and lumbar spine injuries *by orthopedic doctors chosen by Defendants*, and Claimant's attorney must be copied on all correspondence in compliance with Section 42-15-95. Order, ¶ three (3).

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opinions follow the entry of Commissioner Dooley's Order. Further, Dr. LaMotta's opinion was based on a false or simply incorrect medical history given to him by Claimant (see Findings of Fact Four (4) and Twelve (12), above). Thus, Dr. LaMotta's opinion is not based on full and accurate information and can be discounted.

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25. We hereby find that Claimant has suffered no (0%) permanent partial disability to his bilateral hips as a result of his causally related injuries. This finding is based on the opinion of the authorized treating physician, Dr. Noojin.

26. We hereby find that Defendants are entitled to credit for overpayment of TTD benefits paid since January 17, 2023.

VI. CONCLUSIONS OF LAW

Accordingly, as provided in § 42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of the undersigned Commissioner as follows:

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;
2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.
3. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.
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8. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.
9. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.
10. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;
11. That S.C. Code Ann. §42-9-30 sets forth the schedule of period of disability and compensation;
12. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards;
13. That S.C. Code Reg. 67-1605 is applicable in lump sum payments.

ORDER

By majority vote, the Order of the Single Commissioner from which this appeal has been taken is hereby Affirmed by the Appellate Panel. This Order shall constitute the final Decision and order of the South Carolina Workers' Compensation Commission.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Claimant is entitled to future medical coverage for his 1/19/2021 work accident injury to his lumbar spine, to include the treatment that would tend to lessen his period of disability, as set forth by Dr. Nallu in her Form 14B (lumbar steroid injections, physical therapy, and medications); and it is further

ORDERED that the greater weight of the evidence supports a finding that the Claimant is at maximum medical improvement as of January 17, 2023, per the medical opinions of Dr. Nallu and Dr. Noojin; and it is further

ORDERED, ADJUDGED AND DECREED that based on the preponderance of the evidence as a whole, the Claimant is entitled to an award of Permanent Partial Disability of Eight Percent (8%) to his back as a result of his work-related injuries; and it is further

ORDERED, ADJUDGED AND DECREED that based on the preponderance of the evidence as a whole, the Claimant has suffered no Permanent Partial Disability to his bilateral hips as a result of his work-related injuries; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendants are entitled to credit for overpayment of TTD benefits since the date of MMI.

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

_____(date)
Columbia, South Carolina




T. Scott Beck, Commissioner, Chair



R. Michael Campbell, II, Commissioner

DISSENTING: Defendants failed to provide treatment as ordered by Commissioner Dooley.



Aisha G. Taylor, Commissioner

Order Served via email:

<p>Timothy B. Killen Holder Padgett Littlejohn & Prickett tkillen@hplplaw.com</p>	<p>Benjamin Cruse Shelly Leeke Law Firm ben@leekelaw.com</p>
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CERTIFICATE OF SERVICE

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

By Eugenia Hollmon on March 15, 2024