

APPELLATE PANEL DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1119380

Everett Davis

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

Southlake Transport, Inc.

EMPLOYER,

AND

Lumberman's Underwriting Alliance

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on June 18, 2013 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

8-12-13

APPEARANCES: Claimant/Appellant represented by John D. Clark, Esquire

Defendants/Respondents represented by M. Chad Abramson, Esquire

RECEIVED

AUG 29 2013

SC Court of Appeals

STATEMENT OF THE CASE

Everett Davis alleged that he was injured in a compensable work-related injury that occurred on November 28, 2011. In particular, Mr. Davis alleged that he was involved in a motor vehicle accident that caused injuries to his left knee and back. Defendants initially denied this claim as compensable but, pursuant to a Consent Order, agreed to provide causally-related medical treatment pursuant to S.C. Code Ann. Section 42-15-60 to Claimant's back and left knee. Mr. Davis filed a Form 50 seeking an award for additional medical treatment for his left knee and back, to include a total knee replacement. Claimant further alleged that he had sustained an aggravation of the pre-existing arthritis in his left knee and low back.

Defendants denied that Claimant was entitled to additional medical treatment and contended that his pre-existing arthritis was unrelated to this workers' compensation claim. Further, Defendants requested that the Single Commissioner issue an award finding that Claimant had reached maximum medical improvement.

A hearing was held before the Single Commissioner in Lexington, South Carolina on November 21, 2012. Pursuant to a Decision and Order dated January 29, 2013, the Single Commissioner found, *inter alia*, that Claimant had reached maximum medical improvement for the injuries to his left knee and low back that occurred in the compensable work-related accident on November 28, 2011, and that Claimant's current left knee complaints were not causally related to his workers' compensation claim; therefore, his claim for additional medical treatment to the left knee was denied. The Single Commissioner did not rule on the issue of permanency, holding that issue in abeyance as the hearing was set on Claimant's Form 50 and Claimant had not requested a determination of that issue on his Form 50.

On February 8, 2013 the Claimant/Appellant timely filed a Form 30, Request for

Commission Review. Both parties served timely briefs supporting their positions for review. A Review Hearing was held before the Appellate Panel of the Workers' Compensation Commission (Full Commission) on June 18, 2013. The Order of the Full Commission is as follows:

EVIDENCE OF THE CASE

Before the Single Commissioner, the following evidence was presented:

Testimony of Claimant:

Mr. Davis testified that he is fifty years old and lives in Sumter. (H. Tr. p. 6, ll. 21-24). He is currently divorced and has three children, one of whom he supports. (H. Tr. p. 7, ll. 1-7). Mr. Davis also testified that he takes care of his grandchildren. (H. Tr. p. 7, ll. 8-10). He graduated from high school and then attended Central Carolina Technical College where he studied Industrial Maintenance. (H. Tr. p. 7, ll. 14-21).

Mr. Davis has a commercial driver's license that he has had for about fifteen years. (H. Tr. p. 9, ll. 2-3). His previous employment history consists of working in the Bosch Plant for 10-11 years and also working in a warehouse. (H. Tr. p. 8, ll. 7-14). He testified that approximately twenty years ago, he had surgery on his left knee. (H. Tr. p. 8, ll. 20-24). Mr. Davis said that he has not received medical treatment to his knee in the past twenty years. (H. Tr. p. 9, ll. 2-4). He further indicates that he has not had previous problems with his back before the accident. (H. Tr. p. 9, ll. 5-7).

When asked to describe the accident, Mr. Davis testified that he was heading north toward Philadelphia to pick up a load around 5:00 in the evening. He heard a loud boom and thought he may have blown a tire on the truck. All of the sudden the truck lunged forward, so he proceeded to pull over to the left of the road when he saw something shoot past the driver's side

of the truck. Upon looking in his rearview mirror he saw a car driving erratically and by the time he pulled onto the side of the road, the car was spinning in the median. (H. Tr. pp. 9-10, ll. 11-23). Mr. Davis said that when the truck lunged forward, he hit his left knee on the bottom of the dashboard. (H. Tr. p. 11, l. 14). The skin on his knee was broken and it was bleeding a little bit. (H. Tr. p. 11, ll. 20-21). Mr. Davis said his knee was hurting after the accident, but he did not think anything of it. (H. Tr. p. 12, ll. 9-10). As time went on, Mr. Davis said the pain started hurting more. (H. Tr. p. 12, ll. 13-15). Mr. Davis did not go to the doctor because he had a previously scheduled appointment for a physical so he planned to talk to the doctor about it then. (H. Tr. p. 12, ll. 18-23). Mr. Davis testified that the pain was gradual and increased each week. He also said that his back started to bother him gradually. He assumed it was from putting pressure on his other leg. (H. Tr. p. 13, ll. 6-18).

Before the accident, Mr. Davis testified that he walked with a limp which was due to him undergoing a surgical procedure in the past. (H. Tr. p. 13, ll. 19-25). He said that his limp is worse now. Sometimes he is in so much pain that he can barely walk or he will have to stop walking. He testified that he can walk without knee pain or back pain for a city block. (H. Tr. p. 14, ll. 7-16). Mr. Davis said that after a period of standing, his back hurts but sitting does not bother him. (H. Tr. p. 14, ll. 17-24). Mr. Davis testified that he is not currently taking any medication and he has continued to work. (H. Tr. p. 15, ll. 1-3). He said that his knee pain has increased since the accident. (H. Tr. p. 15, ll. 17 - 22).

Mr. Davis testified that he wants additional treatment for his left knee and his back because the pain is unbearable. (H. Tr. p. 16, ll. 2 -9). He said he cannot afford to take off of work because he has bills to pay and he has always worked. (H. Tr. p. 16, ll. 10-18).

On cross-examination, Mr. Davis testified that he did not ask the State Trooper at the

time of the accident to call an ambulance for him. (H. Tr. p. 18, ll. 1-3). Further, Mr. Davis testified that he continued to drive from the accident scene to Philadelphia which was approximately three hours. (H. Tr. p. 18, ll. 10-16). The following day, he drove from Philadelphia to Florida. (H. Tr. p. 18, ll. 24-25). Mr. Davis admitted that he drove through South Carolina on his way to Florida. (H. Tr. p. 19, ll. 6-10). Mr. Davis admitted that his knee was not bothering him the following day to the extent that he needed medical treatment. (H. Tr. p. 19, ll. 11-18). He further admitted that he did not ask anyone with the employer to send him to the doctor for his left knee or low back. (H. Tr. p. 20, ll. 3-7). Mr. Davis continued to perform his normal job duties after his accident. (H. Tr. p. 20, ll. 8-10). Mr. Davis first sought medical treatment for his alleged injuries on December 27, 2011. (H. Tr. p. 20, ll. 19-22). This appointment was scheduled before the injury happened at work. (H. Tr. p. 21, ll. 3-6).

Mr. Davis testified that since his work accident, *he has not missed any time from work due to his left knee pain and low back pain.* (H. Tr. p. 21, ll. 19-23). He has driven approximately eleven hours per day, working five, six or seven days per week. This equates to approximately 50 hours per week and an average of 2,900 miles per week. (H. Tr. p. 22, ll. 1-14). Mr. Davis *has not made complaints to any of his supervisors about ongoing left knee or low back pain.* (H. Tr. p. 22, ll. 15-18).

When asked if Mr. Davis had prior problems with his left knee, he testified no. (H. Tr. p. 24, ll. 11-17). However, Defense counsel produced a medical record (Defendants' APA p. 29), from Dr. Compton dated September 7, 2011 in which Dr. Compton notes occasional pains in the left knee from arthroscopy about fifteen years ago. Mr. Davis continued to deny that he suffered from occasional left knee pain. (H. Tr. p. 25, ll. 15-24). Thereafter, Defense counsel asked Mr. Davis if he recalled testifying in his deposition that he was not having any pain in his left knee

before the accident, and he said he was not having pain. (H. Tr. p. 27, ll. 8-16). Mr. Davis also denied receiving medical treatment for his left knee prior to the accident, yet he saw Dr. Compton on September 7, 2011 for his left knee.

Mr. Davis testified that he is *not taking any medication for his left knee pain*. (H. Tr. p. 28, ll. 22-24), *nor is he taking medication for his low back*. (H. Tr. p. 29, ll. 2-4). However, he did testify that he takes both Advil and Tylenol. (H. Tr. p. 30, ll. 13-15).

Testimony of Carrie Glenn:

Ms. Glenn testified that she is employed as the Safety Director at Southlake Transport and has been working there for twelve years. (H. Tr. p. 21, ll. 20-25). Ms. Glenn knows Claimant and is familiar with his accident. She testified that after the accident, he did not request medical attention nor did he miss any time from work. (H. Tr. p. 33, ll. 1-10). Ms. Glenn said that Claimant did not ask for any medical treatment in 2012 for his low back and left knee. In fact, she was not even aware that he was treating for his problems. (H. Tr. p. 33, ll. 15-19). Further, Ms. Glenn said that Claimant has been working his regular job duties, which entails driving a truck approximately 500-600 miles a day delivering dry goods. (H. Tr. p. 33, ll. 20-24).

Ms. Glenn said that Claimant would open the swing doors on the trailer, roll down landing gear and switch out trailers as a part of his normal job duties. She testified he does this 5-6 days per week and drives approximately 2,800-3,000 miles per week. (H. Tr. p. 34, ll. 4-13). Ms. Glenn asked Claimant after the accident if he was suffering from any injuries and he said no. In January, he came into her office rubbing his knee and told her that the doctor said he may have some arthritis. (H. Tr. p. 34, ll. 17-25).

Ms. Glenn testified that the company policy for reporting a workers' compensation claim is that the driver files a report within 24 hours of the injury, which she said was not done in this

case. (H. Tr. p. 35, ll. 9-11). If for instance Mr. Davis came to her indicating that he was suffering from knee pain that would prevent him from working, Ms. Glenn said they would immediately call the workers' compensation carrier and file a claim. (H. Tr. p. 36, ll. 1-5). Ms. Glenn said that Mr. Davis has not reported low back pain to her and she has not noticed him walking with a noticeable limp. (H. Tr. p. 36, ll. 14-20)

On cross-examination, Ms. Glenn testified that the majority of Mr. Davis' time is spent away from the office. (H. Tr. p. 37, ll. 3-5). Further, Ms. Glenn indicates that she does not make the decisions about whether Mr. Davis receives medical treatment for a work-related accident. (H. Tr. p. 38, ll. 21-25). However, she would decide if he was given time off from work for his injuries, and he never asked for time off. (H. Tr. p. 39, ll. 1-3).

Summary of Medical Evidence:

1. On September 7, 2011, Claimant reports to his family physician, Dr. Compton, that he has occasional pains in his left knee from arthroscopy about fifteen years ago. (Defendants' APA p. 29).

2. On December 27, 2011, Claimant reports that approximately two weeks ago he was in a car accident where he banged his left knee against the dashboard of his car. He reports that several days later, his pain began to intensify and now for the last several days, it hurts to walk or even to move out of a sitting position. (Defendants' APA p. 29).

3. On December 27, 2011, Claimant was sent for x-rays at Tuomey Medical Center. The x-ray of his left knee shows degenerative changes with no obvious acute osseous abnormality.

4. On January 30, 2012, Claimant was seen by Dr. Michael K. Drakeford. Claimant reports left knee pain to include a constant ache/pain, limited range of motion and indicates that

the pain has been present for one month, but no significant pain until motor vehicle accident 1½ months ago. Dr. Drakeford finds that he has left knee arthralgia with severe degenerative joint disease, genu varum, and intra articular loose body. (Claimant's APA pp. 4-5).

5. On May 31, 2012, Claimant was seen by Dr. Robert DaSilva. He reports left knee and lower back pain. In particular, Dr. DaSilva notes that Claimant has chronic pain in the left knee and with a recent accident he has noticed increased pain. Dr. DaSilva further finds that the patient has an antalgic gait using no assistive devices. Claimant shows full range of motion of the lumbar spine. Dr. DaSilva indicates that there is severe arthritis of the left knee pre-existing and not related to the injury. Dr. DaSilva recommends a knee replacement which is again unrelated and pre-existing to the injury. (Defendants' APA p. 31).

6. On August 30, 2012, Claimant was seen by Dr. LaMotta regarding his lower back pain. Dr. LaMotta notes that the medical records he reviewed do not indicate reports of back pain after the accident. However, Claimant reports back pain that has gotten worse in the past two months. An x-ray of his lumbar spine shows mild anterior lumbar spondylosis. Dr. LaMotta opines that Claimant has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. He indicates that the diagnosis for left knee pain and low back pain are not causally related to his accident. (Defendants' APA p. 36).

Summary of Deposition Testimony of Robert M. DaSilva:

On December 27, 2012 the deposition testimony of Dr. Robert M. DaSilva was taken. Dr. DaSilva is an orthopedic surgeon with Midlands Orthopaedics. (Depo. p. 4 ll. 10-14). Dr. DaSilva evaluated the Claimant on May 31, 2012. (Depo. p. 4 ll.19-23). Dr. DaSilva testified that when he saw the Claimant, he was given a history of chronic left knee pain. (Depo. p. 6 ll. 22-24). Further, the Claimant told him that he had a recent accident and noticed increased pain in

the left knee. (Depo. p. 7 ll. 1-3). Dr. DaSilva reviewed or ordered an x-ray which showed severe arthritis. (Depo. p. 7 ll. 14-16). Dr. DaSilva testified that the Claimant had severe arthritis that pre-existed the accident and the accident didn't cause the arthritis. (Depo. p. 8 ll. 8-13). He did note that the Claimant had increased pain from the accident and an analgesic gate which he cannot say whether it was worse after the accident or not. (Depo. p. 8 ll. 17-25).

Dr. DaSilva further found that the Claimant had positive pain on the median and lateral joint line. He cannot say whether this was present before the accident, but would assume that with severe arthritis he had some discomfort of the knee. (Depo. p. 9 ll. 11-23). However, Dr. DaSilva did say that the Claimant complained of increased pain after the accident. (Depo p. 10 ll. 4-6).

Dr. DaSilva went on to testify regarding his recommendation that the Claimant undergo a total knee replacement. He indicates that a patient with severe knee arthritis has options. To continue as they are and the only surgical option is a knee replacement. (Depo. p. 11 ll. 5-12). Further, when he recommends a knee replacement, the timing is up to the patient and with the Claimant he gave him the two options. (Depo. p. 11 ll. 13-22). Dr. DaSilva thinks the Claimant has three options, no treatment at all as arthritis is the natural aging process, medical treatment which is anti-inflammatories or injections, and surgery. (Depo. p. 12 ll. 1-24 and p. 13 ll. 1-9). In Dr. DaSilva's opinion, you have to have severe arthritis both radiographically and clinically before proceeding with a knee replacement. (Depo. p. 13 ll. 24-25 and p. 14 ll. 1-5). In the Claimant's case, he has severe arthritis and it's up to the patient to determine if he wants a knee replacement based on the amount of pain and discomfort he's having. (Depo p. 14 ll. 6-15).

Dr. DaSilva also notes that the Claimant has loose bodies, but does not recommend removal. He explains his reasoning indicating that if someone has a loose body and no arthritis.

you recommend arthroscopy in the knee to remove the loose body. (Depo. p. 14 ll. 22-25). However in the Claimant's case, he would put him through an option that would not change the outcome of his health. (Depo. p. 15 ll. 5-8).

With regards to Dr. DaSilva's finding that the Claimant has pain on the median and lateral joint line, he indicates that he uses his index finger and pushes on the medial and lateral joint line to see if it solicits pain. (Depo. p. 15 ll. 17-22). Dr. DaSilva does not know whether the Claimant had this pain before the accident. (Depo p. 16 ll. 2-5) Dr. DaSilva does not know whether his knee is more painful now than it was before the accident. (Depo. p. 16 ll. 12-14). Based on the Claimant's history it is more painful now, but he cannot tell that objectively. (Depo. p. 16 ll. 16-23).

Dr. DaSilva testified that if the Claimant had pre-existing arthritis but did *not* have an increase in pain, he would not recommend a total knee replacement. (Depo. p. 17 ll. 14-18). In order to make a recommendation for a knee replacement, it depends on the amount of pain a patient is in. (Depo. p. 19 ll. 12-16). Dr. DaSilva hasn't seen anything indicating that the Claimant has been complaining of pain over the past twenty years. (Depo. p. 19 ll. 21-24).

On cross-examination, Dr. DaSilva further testified that based on his review of a report dated September 7, 2011 from Dr. Arland H. Compton, the Claimant was complaining of occasional pains in his left knee. Further, Dr. Compton diagnosed the Claimant with degenerative joint disease of the left knee. (Depo p. 22 ll. 5-8 and ll. 11-12), which was consistent with what he found objectively on his examination as well. (Depo p. 22 ll. 13-16).

Dr. DaSilva indicates that the patient has chronic pain in his left knee which means that it's been going on a long time. (Depo. p. 22 ll. 19 - 25). Dr. DaSilva testified that his opinion recommending a knee replacement was unrelated and pre-existing to the injury is that he

believed to a reasonable degree of medical certainty that the Claimant did not require a knee replacement surgery because of his work accident. (Depo. p. 23 ll. 9-20). Dr. DaSilva further testified that the Claimant's condition could be aggravated but the aggravation is not what prompts him to proceed with a knee replacement. This is a chronic condition. (Depo. p. 24 ll. 9-19). An aggravation can cause the pain, but in his medical experience, with severe arthritis of the knee, that's not the causative factor. (Depo. p. 24 ll. 22-25 and p. 25 ll. 1-2). Dr. DaSilva then indicates that based on the information that the Claimant has continued to work for the employer doing the same job since the work accident, to a reasonable degree of medical certainty, the Claimant does not require knee replacement surgery because of any type of aggravation caused by this accident. (Depo p. 25 ll. 20-25 and p. 26 ll. 1-4).

On re-direct, Dr. DaSilva notes that the report he reviewed from Dr. Compton was for a physical. (Depo. p. 26 ll. 25). Further, that the pain the Claimant complained of to him was different than what was described in Dr. Compton's report. (Depo. p. 28 ll. 5-9). However, Dr. DaSilva said that the main part of recommending a knee replacement is that he has severe arthritis on an x-ray. (Depo. p. 30 ll. 12-17). If the Claimant presented with mild arthritis or even moderate arthritis and had the same accident and the same amount of pain, he would not recommend a knee replacement. (Depo. p. 30 ll. 22-25). Dr. DaSilva cannot provide an opinion that if he had increased pain from the accident and now needs knee replacement that the increased pain is what tipped the scales in favor of the knee replacement. (Depo. p. 32 ll. 15-25 and p. 33 ll. 1).

On re-cross, Dr. DaSilva maintained his opinion that to a reasonable degree of medical certainty, the work accident that the Claimant was involved in did not exacerbate his pre-existing arthritis to the extent where he now requires a total knee replacement. (Depo. 34 ll. 15-22). The

knee replacement is not treating something the injury did. (Depo. p. 36 ll. 8-9).

FINDINGS OF FACT OF THE SINGLE COMMISSIONER

Based upon the testimony and evidence submitted by both parties, the Single Commissioner made the following Findings of Fact in the Decision and Order of January 29, 2013:

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission Act.

2. Claimant's average weekly wage is Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars with a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars. I base this finding upon stipulation of the parties.

3. Claimant was injured in a compensable work-related accident on November 28, 2011 and suffered from an injury to his left knee and back. I base this finding upon stipulation of the parties.

4. Claimant has not missed any time from work due to his injury, and I find that he is a hard working individual who is still driving for this company. I base this finding upon stipulation of the parties, Claimant's testimony and testimony of Carrie Glenn.

5. Claimant currently drives an average of 11 hours per day, 5-7 days a week and does not take any medications now for either his low back or his left knee. I base this finding upon Claimant's testimony, testimony of Carrie Glenn, and the medical records in evidence.

6. Claimant continues to complain of pain in his left knee; however, based on the evidence as a whole, specifically the reports and testimony of Drs. DaSilva and LaMotta, I find that his complaints are not causally related to his work injury. I base this finding upon Claimant's testimony and medical evidence in the record.

7. Claimant's current left knee problems are not causally related to his work injury. I base this finding upon the deposition testimony of Dr. DaSilva.

8. Based on the evidence as a whole, I do not find that Claimant has proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this accident. I base this finding upon Dr. DaSilva's deposition testimony and Dr. LaMotta's medical records. Both opine that the degeneration process in Claimant's knee has caused the need for his further medical treatment. The evidence on this point could not be more clear. I cannot speculate, like Dr. DaSilva does (in part) that Claimant's pain (a subjective component) is sufficient to meet his burden of proof in this case.

9. Claimant is at maximum medical improvement for his left knee and his back. I base this finding upon the medical evidence in the record.

10. As permanency was not requested in Claimant's Form 50, that issue is held in abeyance pending any future Hearing requests from either party.

CONCLUSIONS OF LAW OF THE SINGLE COMMISSIONER

The Single Commissioner reached the following Conclusions of Law in the Decision and Order of January 29, 2013:

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. Sections 42-1-130 and 42-1-140, Claimant was an employee of the Employer.

3. Pursuant to S.C. Code Ann. Section 42-1-40 and 42-1-50, Claimant's average weekly wage is \$897.43 with a corresponding compensation rate of \$598.32.

4. Pursuant to S.C. Code Ann. Section 42-1-60, Claimant suffered from a

compensable injury by accident to his left knee and low back on November 28, 2011.

5. Pursuant to S.C. Code Ann. Section 42-15-20, notice of the accident was given to the Employer.

6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided causally related medical treatment to Claimant.

7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is not entitled to additional medical treatment to his left knee, specifically a left knee replacement as it is not causally related to this accident.

8. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is at maximum medical improvement for his left knee and low back.

As stated above, within the statutory period, Claimant/Appellant filed an Application for Review in the case, copies of which were furnished to all parties. By appeal, Appellant respectfully contends the Single Commissioner erred in the following manner:

- 1) Whether the Single Commissioner erred in finding that Claimant's current left knee problems are not causally related to his work injury, based upon the deposition testimony of Dr. DaSilva.
- 2) Whether the Single Commissioner erred in finding that Claimant has not proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this work accident.
- 3) Whether the Single Commissioner erred in finding that Claimant's pain is sufficient to meet his burden of proof in this case.
- 4) Whether the Single Commissioner erred in finding that Claimant is at maximum medical improvement for his left knee and his back.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration. In addition, the parties have briefed and orally argued their positions before the Panel.

In an Appellate Panel review under S. C. Code Ann. § 42-17-50, the Commission's Appellate Panel shall review the award, weigh the evidence as presented at the initial Hearing.

and, if good grounds be shown therefore, make its own findings and conclusions consistent with or inconsistent with those of the Single Commissioner.

After careful review of the record in this case, the Commission, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. The Single Commissioner's Order is affirmed in its entirety, and the Findings of Fact and Conclusions of Law and Order, as set forth below, are hereby the law of this case:

FINDINGS OF FACTS

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission Act.

2. Claimant's average weekly wage is Eight Hundred Ninety-Seven and 43/100 (\$897.43) Dollars with a corresponding compensation rate of Five Hundred Ninety-Eight and 32/100 (\$598.32) Dollars. This finding is based upon stipulation of the parties.

3. Claimant was injured in a compensable work-related accident on November 28, 2011 and suffered from an injury to his left knee and back. This finding is based upon stipulation of the parties.

4. Claimant has not missed any time from work due to his injury, and we find that he is a hard working individual who is still driving for this company. We base this finding upon stipulation of the parties, Claimant's testimony and testimony of Carrie Glenn.

5. Claimant currently drives an average of 11 hours per day, 5-7 days a week and does not take any medications now for either his low back or his left knee. We base this finding upon Claimant's testimony, testimony of Carrie Glenn, and the medical records in evidence.

6. Claimant continues to complain of pain in his left knee; however, based on the evidence as a whole, specifically the reports and testimony of Drs. DaSilva and LaMotta, we find

that his complaints are not causally related to his work injury. We base this finding upon Claimant's testimony and medical evidence in the record.

7. Claimant's current left knee problems are not causally related to his work injury. We base this finding upon the deposition testimony of Dr. DaSilva.

8. Based on the evidence as a whole, we do not find that Claimant has proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to this accident. We base this finding upon Dr. DaSilva's deposition testimony and Dr. LaMotta's medical records. Both opine that the degeneration process in Claimant's knee has caused the need for his further medical treatment. The evidence on this point could not be more clear. We cannot speculate, like Dr. DaSilva does (in part) that Claimant's pain (a subjective component) is sufficient to meet his burden of proof in this case.

9. Claimant is at maximum medical improvement for his left knee and his back. We base this finding upon the medical evidence in the record.

10. As permanency was not requested in Claimant's Form 50, that issue is held in abeyance pending any future Hearing requests from either party.

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. Sections 42-1-130 and 42-1-140, Claimant was an employee of the Employer.

3. Pursuant to S.C. Code Ann. Section 42-1-40 and 42-1-50, Claimant's average weekly wage is \$897.43 with a corresponding compensation rate of \$598.32.

4. Pursuant to S.C. Code Ann. Section 42-1-60, Claimant suffered from a

compensable injury by accident to his left knee and low back on November 28, 2011.

5. Pursuant to S.C. Code Ann. Section 42-15-20, notice of the accident was given to the Employer.

6. Pursuant to S.C. Code Ann. Section 42-15-60, Defendants provided causally related medical treatment to Claimant.

7. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is not entitled to additional medical treatment to his left knee, specifically a left knee replacement as it is not causally related to this accident.

8. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is at maximum medical improvement for his left knee and low back.

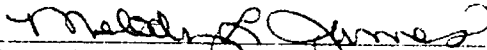
ORDER

IT IS HEREBY ORDERED, that Claimant has reached maximum medical improvement for the injuries to his left knee and low back that occurred in a compensable work-related accident on November 28, 2011.

IT IS FURTHER ORDERED that Claimant's current left knee complaints are not causally related to his workers' compensation claim; therefore, his claim for additional medical treatment to the left knee is denied.

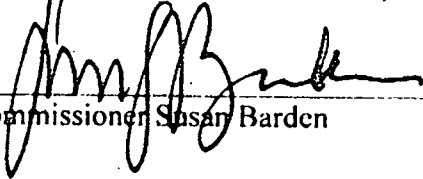
IT IS FINALLY ORDERED that no costs are assessed for this Hearing.

SO ORDERED.


Commissioner Melody James
For the Appellate Panel

WE CONCUR:


Commissioner Gene McCaskill


Commissioner Susan Barden

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 August 12, 2013