

I. APA SUBMISSIONS

Pursuant to the South Carolina Workers' Compensation Act and the South Carolina Administrative Procedure Act, the following evidence was submitted into the record without objection:

On Behalf of Defendants:

- APA#1 Medical Records of Dr. Dana Rawl, Lexington Medical Center Occupational Health, dated 7/25/11- 8/23/11, consisting of 49 pages;
- APA#2 Medical Records of Dr. David Fulton – Moore Orthopaedics, dated 8/31/11 – 12/21/12, consisting of 16 pages;
- APA#3 Medical Records of Lockett James, Nurse Case Manager, dated 12/5/12, consisting of 2 pages;
- APA#4 Medical Records of InMed Diagnostic Services of S.C., LLC, dated 4/25/12, consisting of 2 pages;

On Behalf of Claimant:

- APA #5 Medical Records of Dr. David Fulton – Moore Orthopaedics, dated 8/5/11 – 6/28/12, consisting of 39 pages;
- APA #6 Medical Records of Lexington Medical Center Occupational Health, dated 2/12/09-8/23/11, consisting of 2 pages;
- APA#7 Medical Records of Sumter Physical Therapy dated 10/11/12-12/03/12, consisting of 9 pages; and
- APA #8 Medical Records of Columbia Rehabilitation Clinic, Tracy Hill, P.T., dated 1/23/13, consisting of 46 pages;

EXHIBITS

On Behalf of Claimant:

Over the objection of Defendants, the report of Dr. Guy dated March 4, 2013 was admitted into evidence.

II. STIPULATIONS

The parties at the hearing stipulated to the following issues:

1. The Claimant's average weekly was Nine Hundred Eighty-One and 86/100 Dollars (\$981.86) with a corresponding compensation rate of Six Hundred Fifty-Four and 60/100 Dollars (\$654.60);
2. The venue in Greenville County is proper;
3. The Commission file becomes part of the record of this case;
4. Notice of the hearing was timely and properly served upon the parties of interest;
5. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved.

III. STATEMENT OF THE CASE

The Claimant, Clayton Shelton Sims, Jr., alleges that he is not at maximum medical improvement (hereinafter "MMI") for his admitted left shoulder injury, which arose out of an accident occurring July 25, 2011. Claimant further contends that he is entitled to a second opinion evaluation with Dr. Jeffrey Guy, which he obtained the day before the hearing. Claimant also contends that the authorized treating physician should be changed from Dr. Fulton to Dr. Guy. Finally, Claimant contends that if he has reached MMI, the impairment rating assigned to him by the Physical Therapist he hired is the more appropriate measure of his disability.

The Defendants contend Claimant reached MMI on December 5, 2012 as evidenced by the Form 14B completed by Dr. Fulton on December 21, 2012. Defendants further contend they are entitled to a credit for all TTD benefits paid to Claimant after the date of MMI pursuant to Curiel v. Environmental Mgmt. Serv., 376 S.C. 23 (2007). Defendants also contend that Claimant's IME report of Dr. Jeffrey Guy was untimely under the APA and that

any of Claimant's ongoing problems or complaints are due to a subsequent, intervening accident. Finally, Defendants contend the impairment rating assigned by Claimant's IME physical therapist is inadmissible as S.C. Code Ann. § 42-1-160 requires medical evidence to be in the form of expert opinion or testimony stated to a reasonable degree of medical certainty and the opinion proffered by the Physical Therapist was not stated within a reasonable degree of medical certainty.

IV. EVIDENCE OF THE CASE

The Claimant was the only witness to testify live at the hearing. He admitted that Dr. Fulton released him to return to work without restrictions on December 5, 2012. (See Defendants' APA #2 at p. 66 and Claimant's APA #5 at p. 109). On that same date, Claimant reported occasional popping in his shoulder, but stated that his pain was much better than before his surgery. (Claimant's APA #5 at p. 109). During Claimant's physical examination, he exhibited full range of motion in the shoulder in all planes. Id. Dr. Fulton reported Claimant exhibited no muscle wasting as well as good deltoid and cuff strength. Id. As a result, he released Claimant to return to work without restrictions. Id. Dr. Fulton assessed Claimant as having a three percent (3%) impairment rating to the left shoulder and further opined that Claimant would not require any future medical treatment related to his left shoulder injury. (Defendants' APA #2 at p. 66).

The Claimant further testified that subsequent to being released at MMI and without restrictions by Dr. Fulton, he injured his left shoulder while changing a tire on his personal vehicle. Subsequent to this incident, Claimant has submitted an application to work for the new tire plant in Sumter County, Continental Tire.

The record, such as was necessary for a decision, was made of the proceeding and after careful consideration of all of the evidence, the following findings of fact are accordingly made:

IV. FINDINGS OF FACT

1. Claimant's pretrial request to submit opinion of Dr. Guy's report of March 4, 2013 was granted. Defendants do not request to perform additional discovery based on this opinion. Claimant's request to obtain deposition of Dr. Fulton was not granted. The first discussion of taking the deposition was not until February 7, 2013, and it has not been set, even at the date of the hearing, March 5, 2013; such finding is based on evidence in the record and the pre-trial conference conducted by the attorneys representing the parties.
2. This claim involves an admitted left shoulder injury; such finding is based on evidence in the record, including but not limited to the testimony of Claimant and the Commission's file.
3. Claimant is at Maximum Medical Improvement ("MMI") as of December 5, 2012 per the opinion of Dr. Fulton. The undersigned gives greater weight to the opinion of the treating physician, Dr. Fulton. Dr. Fulton has seen Claimant throughout his treatment, and at the relevant time of his release in December of 2012; such finding is based on evidence in the record, including but not limited to the medical records.
4. The event where the Claimant changed the tire would have been a new incident. This is not directly or indirectly related to the original workers'

compensation claim; such finding is based on evidence in the record, including but not limited to the testimony of Claimant.

5. Claimant indicates that his pain has now come back about to the level it was before he changed the tire; such finding is based on evidence in the record, including but not limited to the testimony of Claimant.
6. Since being released at MMI by Dr. Fulton and subsequent to the tire-changing event in which in allegedly re-injured his left shoulder, Claimant has applied for work at Continental Tire; such finding is based on evidence in the record, including but not limited to the testimony of Claimant.
7. Claimant was assessed as having a three percent (3%) permanent partial impairment rating by Dr. Fulton. The undersigned finds that based on Claimant's testimony and the medical evidence, he has a seven percent (7%) permanent partial disability to the left shoulder as a result of this admitted accident.
8. Pursuant to Curiel, the Defendants are entitled to a credit for all TTD benefits paid to Claimant since the date of MMI, December 5, 2012.
9. Pursuant to the opinion of Dr. Fulton, Claimant will not require any future medical treatment for his left shoulder injury; such finding is based on evidence in the record, including but not limited to the medical records and specifically, the Form 14B completed by Dr. Fulton.
10. Defendants are entitled to stop payment of Claimant's temporary total disability benefits as of December 5, 2012, the date of MMI; such finding is

based on evidence in the record, including but not limited to the testimony of Claimant, the medical records and contents of the Commission's file.

V. CONCLUSIONS OF LAW

Accordingly, as provided in S.C. Code Ann. §42-17-40, it is the determination of this Commissioner that:

1. Under S.C. Code Ann. §42-1-160, the Claimant, Clayton Shelton Sims, Jr., sustained a compensable injury by accident on July 25, 2011 which is limited to an injury to his left shoulder;
2. Under S.C. Code Ann. §42-9-10 and 42-9-20, Claimant is no longer entitled to further temporary total or temporary partial disability compensation because he has reached maximum medical improvement, and no longer has an temporary incapacity due to injury produced limitations on his ability to work as a result of his July 25, 2011 injury by accident;
3. Under S.C. Code Ann. §42-9-30, Claimant has sustained a seven percent (7%) permanent partial disability to his left shoulder;
4. Under S.C. Code Ann. §42-15-60, Defendants are responsible for all authorized, causally related medical treatment through December 5, 2012, the date of maximum medical improvement;
5. Under S.C. Code Ann. §42-9-210 and Curiel v. Environmental Mgmt. Serv., 376 S.C. 23 (2007), Defendants are entitled to a credit for overpayment of temporary total disability payments made to Claimant after December 5, 2012 (date of MMI).

VI. ORDER

IT IS, THEREFORE, ORDERED that Defendants may stop payment of temporary total disability compensation as of December 5, 2012;


IT IS FURTHER ORDERED that Defendants shall pay to Claimant the sum of twenty-one (21) weeks of compensation at the agreed weekly rate of Six Hundred Fifty-Four and 60/100 Dollars (\$654.60), representing seven percent (7%) permanent partial disability to his left shoulder;

IT IS FURTHER ORDERED that Defendants shall pay all authorized medical expenses causally related to the July 25, 2011 injury through December 5, 2012;

IT IS FURTHER ORDERED that Defendants are entitled to a credit for overpayment of temporary total disability compensation paid to Claimant after December 5, 2012, the date of Maximum Medical Improvement.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.



Commissioner Melody L. James

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 certified mail addressed to any unrepresented party.
July 31, 2013

By: Tamara Morris, Administrative Assistant to Commissioner James