

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

W.C.C. FILE NO: 0726488  
SCSIF NO: 147109

LIBERTY MUTUAL INSURANCE COMPANY  
AND CRENLO INC.,

Carrier/Employer/Respondent,

vs.

SOUTH CAROLINA SECOND INJURY FUND

Appellant,

FULL AFFIRMATION

In re: Maurice Anthony Green.

Appellate Panel Review Hearing held in Columbia, South Carolina on April 15, 2013, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed 7-31, 2013.

APPEARANCES:

Appellant represented by  
Latonya D. Edwards, Esquire of Columbia, South Carolina.

Carrier/Employer/Respondents represented by  
J. Brandon Hylton, Esquire of Florence, South Carolina

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SEP 03 2013

**South Carolina Court of Appeals**

## STATEMENT OF THE CASE

The parties were heard by Single Commissioner Avery B. Wilkerson, Jr., at a hearing on October 3, 2012, in Florence South Carolina. As a result of the hearing, the Single Commissioner issued an Order filed on November 20, 2012, from which the Appellant takes his appeal.

Within the statutory period, counsel for the Appellant filed an Application for Review in the case setting forth grounds for review, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on April 15, 2013.

Pursuant to S.C. Code Ann. 42-17-50 (1976, as amended), we, the Appellate Panel, have reviewed the Award and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the Briefs of the Appellant and Respondents, as well as the arguments made before this Panel at oral arguments. In its Form 30, Request for Commission Review, the Appellant asserted four (4) errors, as follows:

1. Did the Hearing Commissioner err in concluding (Conclusion of Law No. 4) that pursuant to S.C. Code Ann. § 42-9-400, Claimant's preexisting back injury/condition is a hindrance and/or obstacle to employment and/or re-employment, when such Conclusion is against the greater weight of the reliable, probative and substantial evidence in the record?

2. Did the Hearing Commissioner err in concluding (Conclusions of Law No. 6) that pursuant to S.C. Code Ann. § 42-9-400, as a result of this combination and/or aggravation, Claimant experienced substantially greater lost time from work, greater permanent disability, and substantially greater medical costs that that which would have resulted from the June 25, 2007 injury alone, when such Conclusion of Law is against the greater weight of the reliable, probative and substantial evidence in the record?

3. Did the Hearing Commissioner err in concluding (Conclusions of Law No. 8) that pursuant to S.C. Code Ann. § 42-9-400, the Respondents are entitled to full statutory reimbursement from the South Carolina Second Injury Fund for all compensation and medical costs pertaining to the injuries Claimant sustained on June 25, 2007, while employed with Crenlo, Inc., including, but not limited to, injuries to the Claimant's back, when such Conclusion is against the greater weight of the reliable, probative and substantial evidence in the record?

4. Did the Hearing Commissioner err in failing to find the Carrier's claim was barred by Injury Fund's S.C. Code Ann. § 42-7-320(B)?

As noted above, both the Appellant and the Respondents have submitted their Briefs, which have been considered by members of the Appellate Panel. After careful review in the instant case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined that all of the Single Commissioner's Findings of Fact are correct as stated. Further, this Appellate Panel has determined that all of the Single Commissioner's Conclusions of Law are correct as stated. As a result, the Appellate Panel issues the following Findings of Fact and Conclusions of Law.

#### **FINDINGS OF FACT**

After carefully reviewing the entire file, including the APA Submissions and the Commission's file in this case, and after an extensive pretrial conference, we make the following Findings of Fact:

1. The Claimant sustained an admitted compensable accident to his back on June 25, 2007.

2. The greater weight of the evidence supports the finding that the Claimant had a preexisting back condition. This is clearly delineated in the medical reports, including, but not limited to, the records of Pee Dee Orthopaedic Associates and Carolinas Health Center.

3. Because the Employer had knowledge of the Claimant's preexisting back condition, pursuant to the affidavit of Dr. Alexander dated March 2, 2011, we find the Claimant's preexisting back condition is permanent in nature and that it constitutes a hindrance or obstacle to employment or reemployment.

4. Based upon the medical reports submitted and the medical questionnaire of Dr. Alexander, we find the Claimant's prior permanent physical impairment (prior back injury),

combined with his injury of June 25, 2007, while employed with Crenlo, Inc., causing the Claimant disability that was substantially greater than that which had resulted from the June 25, 2007 injury alone.

5. Based upon the medical reports submitted and the medical questionnaire of Dr. Alexander, we find that the Employer/Carrier established Claimant's June 25, 2007 work injury combined with and/or aggravated his permanent preexisting back condition to cause substantially greater liability for medical payments than that which had resulted from the June 25, 2007 injury alone.

6. We find that based on the medical records and the medical questionnaire of Dr. Alexander that the Claimant's pre-existing back condition is to be considered a permanent condition and that his June 25, 2007 injury did most probably aggravate or combine with his preexisting back condition to cause substantially greater lost time from work, substantially greater permanent disability and substantially greater medical costs than that which would have occurred from the June 25, 2007 injury, alone. Dr. Alexander also opines that the Claimant's preexisting back condition is to be considered a hindrance or obstacle to obtaining employment or reemployment.

7. We find the medical questionnaire of Dr. Alexander related to the Claimant's back to be very persuasive and we ascribed it of great weight in this case.

8. We find that the Claimant's preexisting injury/condition is considered arthritis per the questionnaire completed by Dr. Alexander.

9. Pursuant to South Carolina Code of Laws, Ann. Section 42-9-400 and based upon the APA Submissions related to the preexisting back injury, the Petitioners/Respondents have carried their burden, have proved they are entitled to full statutory reimbursement from the South

Carolina Second Injury Fund for both compensation, medical costs as it pertains to the injuries the Claimant sustained on June 25, 2007, while employed with Crenlo, Inc., including, but not limited to, the injuries to the Claimant's back.

10. Pursuant to South Carolina Code of Laws, Ann. Section 42-9-400, the Petitioners/Respondents are entitled to full statutory reimbursement from the South Carolina Second Injury Fund for all compensation and medical costs pertaining to the injuries Claimant sustained on June 25, 2007, while employed with Crenlo, Inc., including, but not limited to, injuries to the Claimant's back.

#### **CONCLUSIONS OF LAW**

Pursuant to S.C. Code Ann. 42-17-40, and based upon the Findings of Fact, I make the following conclusions of law:

1. Pursuant to S.C. Code Ann. § 42-9-400, the Claimant, Maurice A. Green, sustained a serious injury to his back on June 25, 2007, while in the employ of Crenlo, Inc.;
2. Pursuant to S.C. Code Ann. § 42-9-400, the Petitioners satisfied the knowledge requirement as the Employer was aware of the Claimant's pre-existing back injury/condition;
3. Pursuant to S.C. Code Ann. § 42-9-400, Claimant's pre-existing back injury/condition is permanent in nature;
4. Pursuant to S.C. Code Ann. § 42-9-400, Claimant's pre-existing back injury/condition is a hindrance and/or obstacle to employment and/or re-employment;

5. Pursuant to S.C. Code Ann. § 42-9-400, Claimant's June 25, 2007 injury combined with and/or aggravated his pre-existing back injury/condition;
6. Pursuant to S.C. Code Ann. § 42-9-400, as a result of this combination and/or aggravation, Claimant experienced substantially greater loss time from work, greater permanent disability, and substantially greater medical costs than that which would have resulted the June 25, 2007 injury alone;
7. Pursuant to S.C. Code Ann. § 42-9-400 and based upon the APA Submissions, Petitioners have carried their burden and have proven they are entitled to full statutory reimbursement from the South Carolina Second Injury Fund, as it pertains to injuries sustained on June 25, 2007, while employed with Crenlo, Inc., including but not limited to injuries to the Claimant's back.
8. Pursuant to S.C. Code Ann. § 42-9-400, the Petitioners are entitled to full statutory reimbursement from the South Carolina Second Injury Fund for all compensation of medical costs pertaining to the injuries Claimant sustained on June 25, 2007, while employed with Crenlo, Inc., including but not limited to injuries to the Claimant's back.

#### **ORDER**

Based upon the Findings of Fact and Conclusions of law,

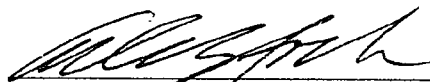
**IT IS ORDERED** that the Findings of Fact and Conclusions of Law are incorporated herein verbatim.

**IT IS FURTHER ORDERED** that the South Carolina Second Injury Fund shall reimburse the Petitioners/Respondents, pursuant to South Carolina Code of Laws, Ann. 42-9-400 for all compensation and medical costs pertaining to all injuries the Claimant sustained on June

25, 2007 while employed with Crenlo, Inc., including, but not limited to, injuries to the Claimant's back.

**IT IS SO ORDERED.**

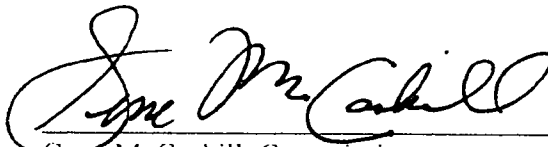
**S. C. WORKERS' COMPENSATION COMMISSION**



Andrea C. Roche, Commissioner



Aisha Taylor, Commissioner



Gene McCaskill, 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 31, 2013***