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SC Court of Appeals

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable T. Scott Beck; The Honorable R. Michael Campbell;
and The Honorable Gene McCaskill.

SCWCC File No.: 2305908

Antwain T. Littlejohn,

Claimant,

v.

Personnel Solutions, Inc.,

Employer,

and

Prescient National Ins. Co.,

Carrier,

Defendants.

AFFIRMED

Hearing held in Richland County, South Carolina,
on August 26, 2024

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

Appearances: Donald E. Kamb, Jr., Esq., of Williams & Kamb, LLC, appeared
on behalf of Claimant/Appellant.¹

Mark A. Allision, Esq., of McAngus, Goudelock & Courie, LLC,
appeared on behalf of Defendants/Respondents.

Court Reporter: Elizabeth Holt, 1230 Richland St, Columbia, SC 29201, 803-
252-3445, contact@creelreporting.com.

Filed: November 4, 2024

¹ The Commission approved Donald Kamb's request to be relieved as counsel for Antwain T. Littlejohn (Claimant), effective October 10, 2024.

I. STATEMENT OF THE CASE

On February 15, 2024, a hearing was held before a Single Commissioner to determine the issues set forth on the parties' Forms 50 and 51. Antwain Littlejohn (Claimant) asserted he sustained at-work injuries to his left hand, left knee, back, left ankle, left arm, and head on May 5, 2023, when he fell from a fence after his worksite closed early and he was unable to leave the premises in the designated manner. Claimant further asserted that he was not at maximum medical improvement for his injuries. Claimant sought a medical evaluation and treatment for the same. Claimant also sought temporary total disability (TTD) benefits.

Personnel Solutions, Inc., (Employer) and Prescient National Insurance Company (Carrier) (hereinafter collectively known as "Defendants") denied Claimant's claim. Defendants asserted Claimant's injuries were not causally related to his alleged work-related accident on May 5, 2023. Defendants specifically maintained Claimant had been off work but remained on the premises for two hours until the worksite closed. Defendants further maintained Claimant then exited said property in a manner that he knew, or should have known, was unsafe when there were safer means of egress readily available to him. Defendants sought a finding that Claimant's claim was not compensable and he was, therefore, not entitled to benefits under the Act.

The Single Commissioner determined:

It is therefore ordered that Defendants shall make the following payments:

1. All causally related medical treatment and expenses from May 5, 2023, to the present and continuing, including such continuing medical treatment as is recommended by the orthopaedic surgeons.
2. Temporary Total Disability compensation benefits for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, until further Order of the Commission or agreement of the parties.

(Single Commissioner's Decision and Order filed on June 3, 2024, p. 36.)

This matter is now before the South Carolina Workers' Compensation Commission's

Appellate Panel pursuant to issues raised on appeal by Claimant. Within the statutory period, Claimant filed a Form 30, Request for Commission Review. Accordingly, the parties presented for oral arguments before the Appellate Panel on August 26, 2024.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. An employee/employer relationship existed between the parties at the time of Claimant's injury. This finding is based on the parties' stipulation.
2. Claimant worked for Employer-Defendant for only about 10 days prior to his injury. This finding is based on Claimant's testimony and personnel records submitted into the record.
3. Defendants submitted a Form 20 based on an allegedly similar employee, but the form 20 is based on only three weeks of wages rather than the 52 weeks of wages contemplated by the Act. This finding is based on a review of the Form 20 in the Commission's file.
4. The similar employee Form 20 submitted by Defendants is invalid, as it is not based on 52 weeks of wages as the statute requires. This finding is based on a review of the Form 20 in the Commission's file.
5. Claimant properly subpoenaed wage records from Defendants, but these records were never supplied so there are no wage records available in the record. This finding is based on all the evidence on the record and Defendants' admission.
6. Defendants provided no employee witness from an accounting or finance department to verify Claimant's wages, hours worked, or any information as to what time or times Claimant was paid. This finding is based on all the evidence on the record.
7. Claimant testified that he was to be paid \$14.00, or \$14.25, per hour for full-timework and that he worked about 10 days before he was injured, including every day except

Saturday and Sunday. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and personnel records submitted into the record.

8. Personnel documents submitted into the record show that Claimant was hired by Personnel Solutions on April 25, 2023, was assigned to AB/Prime, and was to be paid \$14.00 per hour for full-time employment. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and personnel records submitted into the record.

9. The production supervisor, Harold Oglesby, stated that it is hard to give an average number of hours worked for someone in Claimant's position, as it depends on what is needed, but a light week would be about 30 hours worked, a normal week would be about 40 hours, and a heavy week would be about 50 hours. This finding is based on the testimony of Harold Oglesby.

10. Based on the wage rate of \$14.00 per hour at the normal 40-hour week, Claimant's average weekly wage is \$560.00, for a corresponding compensation rate of \$373.35. This finding is based on all the evidence on the record, including but not limited to the testimony of Claimant and Harold Oglesby, and personnel records submitted into the record.

11. Given the evidence on the record, the above average weekly wage and compensation rate is the best estimation of Claimant's earning capacity and is not unfair to either party. This finding is based on all the evidence on the record, including but not limited to the testimony of Claimant and Harold Oglesby, and personnel records submitted into the record.

12. Claimant is 32 years old, is a high school graduate, and attended three years of college. This finding is based on Claimant's testimony.

13. Though Claimant rambled and was unclear at times, his testimony was on point a majority of the time. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony, and this Commissioner's observation of the witness.

14. Claimant's work duties at AB/Prime included running a standing forklift, sorting deliveries from the trucks, and picking products from a sheet of orders to put together pallets of materials for the production workers. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

15. Claimant mostly worked with one other co-employee, Brad Thomas, in the warehouse area, which was separate from the production areas. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

16. Claimant stated that while they would sometimes see a production employee in the warehouse with an emergency pick order, it was not unusual to go hours or even a whole night without seeing other employees. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

17. Claimant worked second shift, from 1:30 p.m. to 10:00 p.m., and he stated that when it was time to leave, he would exit the warehouse, go through the first section of the production area to the second, where he would clock out at the office and proceed through a nearby door to the parking lot, where his ride would meet him. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

18. This was the designated way to leave work, and Claimant never left any other way. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

19. On May 5, 2023, Claimant did his normal work with Brad, picking orders and getting ready for the next day of production work, but when it was time to leave he and his co-worker found that the rest of the plant outside of the warehouse was dark and deserted. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

20. Claimant clocked out at 10:01 p.m., and exited the plant in the normal way, but found that the gate in the parking lot was locked, preventing him from leaving. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

21. Claimant was eventually paid for all the time that he worked, including the night of May 5, 2023 through 10:01 p.m. when he clocked out as he normally did. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

22. After attempting to find another way out and attempting to reach his supervisor without success, Claimant and his co-worker, Brad, climbed the fence and hopped over. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

23. While climbing the fence, something on the fence cut claimant's left hand, wrist, forearm, and elbow; some sort of cap on top of a pole fell off and struck his left knee, and he fell onto his left ankle and back when he hit the ground. This finding is based on all the evidence on the record, including but not limited to claimant's testimony.

24. Claimant knew right away that he was injured, as his hand was bleeding, his elbow was scratched up, his left ankle was painful due to landing on it, and his left knee and back were also hurting. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

25. Claimant's left knee and left hand injuries were the worst problems initially, and while his hand and arm eventually healed up, his left ankle and knee got worse and he continues to have trouble with his back, hip, and neck. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records.

26. Claimant has not worked since May 5, 2023, the day of his fall, and Employer has not offered him any work since that time. This finding is based on all the evidence on the record,

including but not limited to Claimant's testimony.

27. Angela Black, who is also known as "Mustang" testified for Defendants. This finding is based on all the evidence on the record, including but not limited to the testimony of Angela Black.

28. Angela Black is a 10-year employee of AB/Prime whose job as an inventory specialist and group lead for the warehouse brought her into contact with Claimant, as lead person over him. This finding is based on all the evidence on the record, including but not limited to the testimony of Angela Black.

29. Angela Black stated on several occasions in her testimony that she "unfortunately" remembers what happened to Claimant on May 5, 2023, but in fact, she really had no first-hand knowledge of what happened to him, as she works on an earlier shift, leaves every day at 5:00 p.m., was not there when Claimant's incident occurred. This finding is based on all the evidence on the record, including but not limited to the testimony of Angela Black.

30. Angela Black did not know that the second shift was shut down early after she left, so she could not have told Claimant that the shift was ending early that night. This finding is based on all the evidence on the record, including but not limited to the testimony of Angela Black.

31. Angela Black testified that she worked with Claimant and Brad Thomas cleaning up in the back of the plant and that she remembers a conversation there between the three of them about the fence and a gap in the fence; however, Ms. Black demonstrated a spotty memory concerning this event, as she could not say specifically what was said by whom when she was talking to Claimant or Brad Thomas during this alleged discussion. This finding is based on all the evidence on the record, including but not limited to the testimony of Angela Black.

32. Defendants' attorney attempted to submit into evidence a photo contained in his personal phone; however, this was not allowed and was not accepted into evidence since there was

no way to verify the photo and Defendants had not provided notice of such a photo to Claimant prior to the hearing as required.

33. Considering the totality of Ms. Black's testimony, weight is given to her description of the back area of the plant, but little weight is given elsewhere to any of the rest of her testimony. This finding is based on all the evidence on the record, including but not limited to the testimony of Angela Black.

34. Justin Ross also testified for Defendants, and he is a 10-year employee of AB/Prime who was in a supervisory position over Claimant. This finding is based on all the evidence on the record, including but not limited to the testimony of Justin Ross.

35. Justin Ross was not working on May 5, 2023, as he had called out that day, so he had no first-hand knowledge about what happened that day, as he was not in the plant at all that day and was not there when Claimant's incident occurred. This finding is based on all the evidence on the record, including but not limited to the testimony of Justin Ross.

36. Justin Ross was not at work on May 5, so he could not have told Claimant that the shift was ending early that night. This finding is based on all the evidence on the record, including but not limited to the testimony of Justin Ross.

37. Justin Ross testified that he saw Claimant working at the plant without apparent difficulty at some point a few days after May 5; however, Mr. Ross demonstrated a spotty memory concerning this event, as he could not say specifically when this occurred. This finding is based on all the evidence on the record, including but not limited to the testimony of Justin Ross.

38. Considering the totality of Mr. Ross's testimony, little weight is given to his testimony. This finding is based on all the evidence on the record, including but not limited to the

testimony of Justin Ross.

39. Harold Oglesby, who is also known as "H.D.," testified for Defendants. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

40. Harold Oglesby is a 10-year employee of AB/Prime, and as the production supervisor, was in a supervisory position over Claimant. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

41. Harold Oglesby stated that he recalls the incident climbed the fence, but in fact, while he worked that night, he had left the plant approximately two hours before Claimant's fall, was not there when Claimant's incident occurred, and therefore had no first-hand knowledge of what happened to Claimant in that incident. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

42. Second shift normally runs from 1:30 to 10:00 p.m. but that hours vary depending on the load and sometimes the shift ends early, as it did on May 5. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

43. The process for an early shut-down is that Harold Oglesby communicates to the leads or other leadership that they are going to shut down, and the leads/leadership pass the word along to their employees. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

44. About 30 minutes prior to the shut-down, Harold Oglesby walks around the plant turning off lights, dryers, fans, and air compressors. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

45. The timing of this shut-down process as described by Harold Oglesby would be about right for Claimant to see part of the plant shut down at about 7:30 or 8:00 p.m., as he testified. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

46. The timing of this shut-down process as described by Harold Oglesby would be about right for Claimant to have seen Mr. Oglesby walk through the warehouse at about 7:30 or 8:00 p.m. during his walk around the plant. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

47. Harold Oglesby testified that to his knowledge, before he shut everything down, no one was in the warehouse and that he did not see and did not know where Claimant was or where his co-worker was; however, he admitted that if not in the warehouse, they could have been in the canteen in the back of the warehouse, as he did not actually walk through there. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

48. Claimant testified that he took his break in the back canteen on the evening of May 5, 2023, as that is where he saw that the back gate was locked. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

49. There are generally three breaks, one 15-minute break at about 3:30 p.m., a supper break at about 6:30 or 7:00 p.m., and one other 15-minute break. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

50. Harold Oglesby did not go to Claimant or to Brad on the night of May 5, 2023 to tell them that the plant was shutting down early, as his process was to tell the lead person or supervisor. This finding is based on all the evidence on the record, including but not limited to the testimony of

Harold Oglesby.

51. Since Claimant's lead person, Justin Ross, was not there on May 5, 2023, the only way Claimant would have been able to hear about the early shut-down was from another employee, if he happened to be on break with or see someone other than Brad who disclosed the information. This finding is based on all the evidence on the record, including but not limited to the testimony of Harold Oglesby.

52. Claimant testified that other than a glimpse of Harold Oglesby at about 7:30 or 8:00 p.m. -who did not communicate anything to him- he did not see anyone else other than Brad on the night of May 5, 2023. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

53. The greater weight of the evidence shows that the early shut-down on May 5, 2023, was not successfully communicated to Claimant or his co-worker, Brad, and that they did not know that the plant was shutting down early, as Claimant testified. This finding is based on all the evidence on the record, including but not limited to the testimony of Claimant, Angela Black, Justin Ross, and Harold Oglesby.

54. Claimant reported the fence incident to Employer, Personnel Solutions, at least by May 11, 2023, and thus timely and properly notified Employer-Defendant of his injury by accident. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the personnel records submitted into the record.

55. Claimant was sent by Employer for medical treatment at After Hours Family Practice, where he was restricted from working through May 22, 2023. This finding is based on all the evidence on the record, including but not limited to the medical records of After Hours Family Practice.

56. The initial medical reports from After Hours Family Practice state that claimant "may" be referred to an orthopaedic specialist, rather than he "will" be referred to an orthopaedic specialist. This finding is based on the medical records of After Hours Family Practice.

57. Defendants denied the claim and further medical evaluation and treatment was not provided. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

58. Claimant sought out medical treatment on his own, eventually with Dr. Tollison and Dr. Cook of Piedmont Orthopaedics, where he was referred for MRI examinations and physical therapy. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison and Dr. Cook.

59. Dr. Tollison opined that Claimant sustained injury to his left ankle related to his work accident when he fell from the fence, and he recommended related medical treatment, including medications, bracing, and physical therapy. This finding is based on the medical records of Dr. Tollison.

60. Dr. Tollison placed restrictions on Claimant's ability to work on November 7, 2023. This finding is based on the medical records of Dr. Tollison.

61. Dr. Cook opined that Claimant sustained injury to his left knee related to his work accident when he fell from the fence, specifically a patellar contusion, and she recommended related medical treatment, including physical therapy. This finding is based on the medical records of Dr. Cook.

62. Dr. Cook placed restrictions on Claimant's ability to work on December 18, 2023. This finding is based on the medical records of Dr. Cook.

63. Given the totality of the evidence on the record, as found herein, the greater weight

of the evidence supports Claimant's contention that he was where he was supposed to be to the best of his knowledge, was working as he was supposed to be throughout the evening of May 5, 2023, and took reasonable actions under the circumstances to exit the premises. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

64. Given the totality of the evidence on the record, as found herein, the greater weight of the evidence does not support Defendants' contention that Claimant knew or had reason to know that the plant shut down early, that he was not where he was supposed to be, that he was not working as he was supposed to be throughout the evening of May 5, 2023, and that his actions in exiting the plant were unreasonable under the circumstances. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

65. The greater weight of the evidence shows that Claimant sustained compensable injuries to his left knee and left ankle as a result of his compensable injury by accident on May 5, 2023. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison, Dr. Cook, and Dr. Lee.

66. Except as otherwise determined in findings stated herein, equal weight is given to any conflicts in the testimony on the record.

67. Claimant has not reached maximum medical improvement from his injuries. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison, Dr. Cook, and Dr. Lee.

68. Additional medical evaluation and treatment has been recommended for Claimant's left knee and left ankle injuries, and such treatment will likely lessen the degree of impairment. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison, Dr. Cook, and Dr. Lee.

69. Claimant is in need of and is entitled to continuing medical treatment for his left knee and left ankle, as recommended by the orthopaedic surgeons. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison, Dr. Cook, and Dr. Lee.

70. The medical evaluation and treatment Claimant has received to date for his compensable injuries, whether provided by Defendants or sought out by Claimant in the absence of medical evaluation and treatment being provided by Defendants has tended to lessen the period of his disability. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison, Dr. Cook, and Dr. Lee.

71. Because of his compensable injuries, Claimant has been unable to work in any capacity and temporarily totally disabled for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, and he remains unable to work in any capacity and temporarily totally disabled. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Tollison and Dr. Cook.

72. Claimant is entitled to and Defendants are responsible for temporary total disability compensation benefits for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, until further Order of the Commission or agreement of the parties. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Tollison and Dr. Cook.

73. Defendants scheduled an IME appointment for Claimant with Dr. Daniel Lee and communicated the scheduling information to Claimant; however, Claimant was late to the

appointment, was not seen, and caused Defendants to be charged with a no-show fee of \$750 in order to get the appointment rescheduled. Based on all the evidence on the record, claimant exercised bad judgment in not being on time, and this no-show fee must be reimbursed and paid out of the financial award in this claim when it is paid.

CONCLUSIONS OF LAW

1. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits.
2. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, the similar employee Form 20 submitted by Defendants is improper since it is not based on 52 weeks of wages.
3. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, Claimant's average weekly wage is \$560.00, for a corresponding compensation rate of \$373.35.
4. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, the above average weekly wage and compensation rate is the best estimation of Claimant's earning capacity, based on the evidence and is not unfair to either party.
5. In Davaut v. University of South Carolina, our Supreme Court reversed the Commission and found an employee's injuries sustained while exiting her employment were compensable. The Court noted approvingly that:

"An injury occurs in the course of employment 'when it occurs within the period of employment at a place where the employee reasonably may be in the performance of his duties and while fulfilling those duties or engaged in something incidental thereto.'" "In determining whether a work-related injury is compensable, the Workers' Compensation Act is liberally construed toward providing coverage and any reasonable doubt as to the construction of the Act will be resolved in favor of coverage."

Consistent with this rule of construction, we have recognized that:

employment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment

Thus, "[t]he act of leaving the employer's premises is 'in the course or one's employment if the employee leaves the premises as contemplated at the close of the work day.'"

Davaut v. Univ. of S.C., 418 S.C. 627, 633-34, 795 S.E.2d 678, 681 (2016)(citations omitted).

6. To the extent that Defendants argue that Claimant should have done something different than climb the fence to exit the locked plant or to investigate the darkened production area, they are impermissibly injecting fault in the equation. See Nicholson v. S.C. Dep't of Soc. Servs., 411 S.C. 381, 769 S.E.2d I (2015). The Nicholson court stated as follows:

The court of appeals erred in requiring a Claimant to prove the existence of a hazard or danger because it erroneously injected fault into workers' compensation law. The Workers' Compensation Act was designed to supplant tort law by providing a no-fault system focusing on quick recovery, relatively ascertainable awards, and limited litigation. Therefore, an employee need only prove a causal connection between the conditions under which the work is required to be performed and the resulting injury. As Professor Larson has aptly observed:

The right to compensation benefits depends on one simple test: Was there a work-connected injury? Negligence, and, for the most part, fault, are not in issue and cannot affect the result. Let the employer's

conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of employment, the employee receives an award. Reverse the positions, with a careless and stupid employer and a wholly innocent employee and the same award issues.

Thus, the test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The essence of applying the test is not a matter of assessing blame, but of marking out boundaries.

Requiring an employee to prove a fall was the "fault" of the employer in creating a danger or hazard is unfaithful to the principles underlying the creation of workers' compensation and turns the entire system on its head. For an accidental injury to be compensable under the workers' compensation scheme there must be a causal connection between the employment and the injury; that is the test and the claimant need prove nothing more.

Nicholson v. S.C. Dep't of Soc. Servs., 411 S.C. 381, 389-90, 769 S.E.2d 1, 5 (2015)(citations omitted). Here, the causal connection is found in Claimant's act of leaving Employer's premises at the close of the work day, as in Davaut above.

7. Under S.C. Code Ann. § 42-1-160, Claimant sustained compensable injury by accident arising out of and in the course of his employment with Employer-Defendant on May 5, 2023, causing compensable injuries to his left knee and left ankle/left foot.

8. Under S.C. Code Ann. § 42-15-20, Claimant timely notified Employer of the accidental injury.

9. Claimant has not reached maximum medical improvement from his injuries. See Dodge v. Broccoli, Clark. Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999)(maximum

medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment).

10. Under S.C. Code Ann. § 42-15-60, Claimant is entitled to and Defendants are responsible for all causally related medical treatment and expenses from May 5, 2023, to the present and continuing, including such continuing medical treatment as is recommended by the orthopaedic surgeons.

11. Under S.C. Code Ann. §§ 42-1-120 and 42-9-10, Claimant is entitled to and Defendants are responsible for temporary total disability compensation benefits for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, until further Order of the Commission or agreement of the parties.

III. ISSUES ON APPEAL

1. The Hearing Commissioner erred in failing to find Claimant is entitled to TTD benefits from 5/23/2023, through 11/6/2023, in addition to the TTD awarded; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023.
2. The Hearing Commissioner erred in making his Finding of Fact #55 and finding that “[C]laimant was sent by Employer for medical treatment at After Hours Family Practice, where he was restricted from working through May 22, 2023”; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023.
3. The Hearing Commissioner erred in making his Finding of Fact #56 and finding that “[t]he initial medical reports from After Hours Family Practice state that Claimant ‘may’ be referred to an orthopaedic specialist, rather than he ‘will’ be referred to an orthopaedic specialist”; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023.

4. The Hearing Commissioner erred in making his Finding of Fact #71 and finding that "[b]ecause of his compensable injuries, Claimant has been unable to work in any capacity and temporarily totally disabled for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing ..."; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023.
5. The Hearing Commissioner erred in making his Finding of Fact #72 and finding that "[C]laimant is entitled to and Defendants are responsible for temporary total disability compensation benefits for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing ..."; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023.
6. The Hearing Commissioner erred in making his Finding of Fact #73 and finding that "[D]efendants scheduled an IME appointment for Claimant with Dr. Daniel Lee and communicated the scheduling information to Claimant; however, Claimant was late to the appointment, was not seen, and caused Defendants to be charged with a no-show fee of \$750 in order to get the appointment rescheduled. Based on all the evidence on the record, Claimant exercised bad judgment in not being on time, and this no-show fee must be reimbursed and paid out of the financial award in this claim when it is paid"; the error being that the evidence overwhelmingly demonstrates that Defendants failed to communicate correct and complete information concerning the appointment, that this failure was at least as responsible for Claimant not being seen on the date in question, and Claimant should not be held responsible for the no-show fee.
7. The Hearing Commissioner erred in making his Ruling of Law #11 and ruling that "[u]nder S.C. Code Ann. §§ 42-1-120 and 42-9-10, Claimant is entitled to and Defendants are responsible for temporary total disability compensation benefits for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, until further Order of the Commission or agreement of the parties"; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023, and as such, the

Commissioner should have ruled that [u]nder S.C. Code Ann. §§ 42-1-120 and 42-9-10, Claimant is entitled to and Defendants are responsible for TTD compensation benefits for the period from May 11, 2023, to the present and continuing until further Order of the Commission or agreement of the parties.

8. The Hearing Commissioner erred in ordering that "Defendants shall make the following payments ... [t]emporary total disability compensation benefits for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, until further Order of the Commission or agreement of the parties"; the error being that the evidence overwhelmingly demonstrates that Claimant was also temporarily totally disabled from working and is entitled to TTD benefits from 5/23/2023, through 11/6/2023, and as such, the Commissioner should have ordered that Defendants shall pay TTD compensation benefits for the period from May 11, 2023, to the present and continuing until further Order of the Commission or agreement of the parties.

IV. DECISION OF THE APPELLATE PANEL

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the respective Appellant and Respondent briefs of the parties, as well as those issues raised at the Full Commission Review Hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby fully **AFFIRM** the Decision and Order of the Single Commissioner filed on June 3, 2024.

ORDER

THEREFORE IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on June 3, 2024, is fully **AFFIRMED**.

ACCORDINGLY, IT IS THEREFORE ORDERED THAT Defendants shall make the following payments:

1. All causally related medical treatment and expenses from May 5, 2023, to the present and continuing, including such continuing medical treatment as is recommended by the orthopaedic surgeons.
2. Temporary Total Disability compensation for the periods from May 11, 2023, to May 22, 2023, and from November 7, 2023, to the present and continuing, until further Order of the Commission or agreement of the parties.

AND SO IT IS ORDERED.

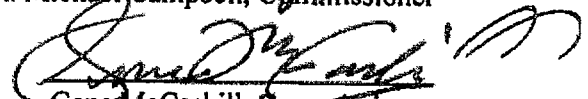
_____ (date)
Columbia, SC



T. Scott Beck, Commissioner



R. Michael Campbell, Commissioner



Gene McCaskill, Commissioner

Order Served via USPS:

Antwain Littlejohn 782 Leonard Street Spartanburg, SC 29303	Mark A. Allison McAngus Goudelock & Courie P. O. Box 2980 Greenville, SC 29602
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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 November 4, 2024