

STATEMENT OF THE CASE

The initial Hearing in this matter was held in Dorchester County, South Carolina on January 31, 2013.

This claim was before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed by the Claimant. It is Claimant's contention that he sustained an injury to his back as the result of lifting scaffolding material while acting within the course and scope of his employment on or about mid-April, 2012. Claimant further contends that he is entitled to temporary total disability benefits from May 2, 2012, to present and continuing. Claimant further contends that he is entitled to payment of causally related medical care provided thus far, and for future causally related medical care until such time as he reaches maximum medical improvement.

Defendant contends that Claimant never suffered an acute injury within the course and scope of his employment, and denies compensability of the claim in its entirety. Defendant further contends that Claimant's condition is related to a non-work-related incident.

A Decision and Order was entered by Commissioner T. Scott Beck on April 25, 2013 finding in favor of the Employee Jason Coggins which was appealed by the Employer/Insurer to this panel. This Decision orders a full affirmation of, and is entered consistent with the Decision of Commissioner Beck.

I. EVIDENCE OF THE CASE

A. The Claimant's Testimony

The Claimant, Jason Coggins testified as the first witness. Mr. Coggins testified that he is a carpenter by trade, and has worked building scaffold for the last eight years or so. (Tr. 9). He testified that scaffold building is a very intense job. (Id.) There would anywhere from ten to sixty workers building a big structure, and the workers would line up above each other, passing up material, building platforms for maintenance work. (Id.) There are supervisors and laborers. (Id.) The supervisors would constantly yell out material lists and stay on the workers to continue to pass the material. (Id.)

Mr. Coggins testified that Mike Shea was like a boss at Brand in 2012. (Id., 10) Mr. Coggins worked for Mike Shea for three or four different companies over the past eight years. (Id.) Mr. Coggins testified that Mikey Burgess was a supervisor for Brand. (Id.) Mr. Coggins testified that in 2011 he was a leadman or foreman for Brand. (Id., 12).

Mr. Coggins testified about a Brand job at the SCE&G plant in Cope, South Carolina. (Id.) He testified that Brand was building a structure around two cone-shaped vessels, which were probably eighty to one hundred feet high, and about two hundred feet around. (Id.) They were building scaffold from the bottom all the way to the top with a deck on every level so welders could weld beams onto it. (Id.) Mr. Coggins stated that Brand worked on the Cope project approximately two weeks, and then would come back and tear it down. (Id., 13) The supervisors on the Cope job were Pat Brown, and Mikey Burgess. (Id.) Mike Shea was the head over everything, and everyone answered to him. (Id.)

Mr. Coggins testified that on the day of his injury he was about thirty to forty feet up in the air, there was a guy standing above him, handing down eight by four inch pieces of plywood, which he in turn would send down to the next man. (Id.) When Mr. Coggins grabbed one sheet of plywood, he felt a pull or pop in his back. (Id., 14). He described it as a weird feeling. (Id.) He automatically stopped, and waved or motioned down, and hollered down to his supervisors that he was hurt and was coming down. (Id., 15) A worker named Steven, from Pat Brown's crew, was sent up to replace Mr. Coggins on the line. (Id.)

Mr. Coggins testified that once he got down on the ground, he told his supervisors about it, and Mikey Burgess told him to just work on the ground and see how he felt at the end of the day. (Id.) Mr. Coggins testified that he informed Pat Brown that he was injured, but that he was not sure whether Pat Brown fully understood, as Mr. Brown often times wears a Blue Tooth device in his car, and sometimes talks on the phone while talking to someone in person. (Id., 16) Mr. Coggins believes he worked the rest of the Cope job, about two weeks, on the ground. (Id.) Mr. Coggins could not recall the exact day of his injury, but stated that it was around mid-April. (Id., 17) Mr. Coggins testified that he believed Mikey Burgess knew that his back was hurting at the Cope job. (Id., 24)

Mr. Coggins testified that the first medical treatment he received after his injury was to the emergency room approximately one week after the injury to get a shot. (Id., 18) The shot gave him some relief, but he still had a tightness, and a pinch or grinding sensation in his back, and he knew something was wrong. (Id.) On May 11, 2012, Dr. Oetting performed surgery on

Mr. Coggins's back, and Mr. Coggins testified that he needs additional physical therapy. (Id., 19)

Mr. Coggins testified that he has not worked since May 2, 2012, because his back has been holding him back. (Id., 25). Dr. Oetting has not released Mr. Coggins back to full-duty work. (Id.) Mr. Coggins states that it is almost impossible to lift anything. (Id., 26)

B. Michael Burgess's Testimony

Mr. Michael Burgess testified via deposition. (APA 14). Mr. Burgess testified that he worked for a supervisor for Brand. (Id., 7-9). Mr. Burgess testified that he recalled working the job in Cope, South Carolina in late April or early May, 2012. (Id., 12) Mr. Burgess remembers Mr. Coggins telling him he hurt his back on the job. (Id.) Mr. Burgess recalls Mr. Coggins was in the chain line passing material when he told Mr. Burgess he hurt his back. (Id.) Mr. Coggins told him that he had to come down, his back was bothering him, and that he went down to the ground and got someone to relieve him. (Id.) Mr. Burgess testified that a Steven Barfield replaced Mr. Coggins in the chain line, and that Mr. Coggins worked the ground the rest of the time. (Id., 13)

Sometime later at the Cope job, Mr. Coggins told Mr. Burgess that his back was not feeling better, but Mr. Burgess recalls that Mr. Coggins asked him not to make a report. (Id.) Mr. Burgess believes Mr. Coggins hurt his back on the Cope job because there is a lot of strain in the chain line on the arms, back, and legs, and he has seen several people that can not handle working on the chain line. (Id.) Mr. Burgess further testified that Mr. Coggins appeared to be fine physically prior to reporting that his back was hurting. (Id., 14) Mr. Burgess testified that he never recalled Mr. Coggins telling him his back was hurting prior to the Cope job. (Id. 38).

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Mr. Burgess testified that Mr. Coggins told him that he informed Bobby Kern and Pat Brown, two supervisors at the Cope job, that he injured his back. (Id., 32). Mr. Burgess further testified that Mr. Coggins was a hard worker, one of the hardest workers Brand had. (Id., 15)

C. Patrick Brown's Testimony

The Employer/Insurer called Patrick Brown as a witness. (Id., 50). Mr. Brown testified that he was a supervisor at the Cope job. (Id., 51) Mr. Brown stated that he speaks with contractors at the plants on a Blue Tooth device while at job sites. (Id.) Mr. Brown testified that Mr. Coggins did not report a work injury to him at the Cope job. (Id.) On cross-examination, Mr. Brown further testified that Mr. Coggins was on Mikey Burgess's crew, and Mr. Burgess was Mr. Coggins's supervisor at the Cope job. (Id., 55) Mr. Brown admitted that he observed Mr. Coggins on the ground at the Cope job. (Id., 56)

D. Dr. Oetting's Testimony

Dr. Gregory M. Oetting testified via deposition. (APA 13). Dr. Oetting stated that in his initial visit with Mr. Coggins, Mr. Coggins was experiencing intractable back and right-sided leg pain. (Id., 5) Two days after their initial visit, on May 11, 2012, Dr. Oetting performed a discectomy on Mr. Coggins. (Id., 6)

Dr. Oetting was asked to assume the following facts as true: "On or about September 15, 2011, Mr. Coggins injured his low back, right leg, and right foot, while climbing down scaffolding at a job site. Mr. Coggins tried to deal with this injury as best as he could. On March 18, 2012, Mr. Coggins presented to the emergency room at MCG with severe right lower back pain which began after an episode of vomiting. He had been working for over 100 hours in construction work that week, which required heavy lifting. On or about May 1, 2012, Mr.

Coggins again injured his low back, right leg, and right foot when he twisted his back while tearing down scaffolding at a SCE&G project in Cope, South Carolina.” (Id., 370). At his deposition, Dr. Oetting was asked to opine on the following hypothetical: “Assuming Mr. Coggins’s work history is true, do you believe his work-related injuries on September 15, 2011, and May 1, 2012, caused, aggravated, or contributed to his condition that necessitated his surgery on May 11, 2012?” (Id., 371). Dr. Oetting stated “More than likely, yes, based on that story line, yes. Can I conclude conclusively? No, but, sure, certainly, yes.” (APA 13). Dr. Oetting further stated that it is more likely than not that Mr. Coggins’s work caused, aggravated, or contributed to his need for surgery. (Id.)

At the time of the deposition, Dr. Oetting had not yet assessed Mr. Coggins to determine if he was at maximum medical improvement. (Id., 19). Dr. Oetting also testified that he and Mr. Coggins had discussed physical therapy because of the persistence of back pain. (Id., 7).

E. Medical Reports

On May 2, 2012, Mr. Coggins presented to the emergency room at University Hospital in Augusta, Georgia. (APA 2, 52). He stated that he had been having lower back pain for several weeks, but that it was not getting any better. (Id.) He thought he reinjured his back, and the onset of the problem began three weeks prior. (Id.) He was discharged, but readmitted to the University Hospital emergency room on May 8, 2012. (Id., 69). In the assessment, it states

Pt developed back pain that went away in a few days after a minor twisting injury. This was about six weeks ago. # weeks ago while lifting a heavy load over the side of a building had a sudden severe pain in his lower back again that has never gone away but eased with pain meds, steroids, muscle relaxants. Today he vomited and had a much more severe pain in the back and since then has not been able to walk, has to crawl to BR. He has pain down into the right leg. (Id.)

Dr. Oetting was called to consult. (Id.) The next day, Dr. Oetting consulted with Mr. Coggins, and diagnosed him with a herniated right L4-L5 disc with downward migrating free fragment with significant compression on the right LF nerve root and acute right L5 radiculopathy. (Id., 87). Dr. Oetting recommended that Mr. Coggins undergo a right L4-5 microdiscectomy, which Mr. Coggins agreed to. (Id., 88). Dr. Oetting performed the procedure at University Hospital on May 11, 2012. (Id., 105-106).

On July 20, 2012, Mr. Coggins was seen by J. Polhill, PA-C, at Augusta Back. (APA 4, 369). Mr. Polhill stated "Patient states that on May 1st at work he had a twisting episode and developed worsening back and right leg pain that became severe. If this is the case, as he describes it, then certainly the work could have contributed to his condition that necessitated surgery which was a large herniated disc with free fragment." (Id.)

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the medical records and exhibits submitted through the APA, IT IS FOUND AS A FACT THAT:

1. The Claimant has satisfied his burden of proving a compensable injury to his back.
2. Claimant has dismissed file # 1121541 with prejudice.
3. Claimant is entitled to causally related medical care to his back
4. I find the actual date of injury was mid-April, while working on scaffolding at the SCE&G project in Cope, South Carolina.
5. Claimant is entitled to temporary total disability benefits from May 2, 2012, to the present and continuing.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, Section 42-17-40, it is the determination of this Commission that:

1. Under § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, the Claimant was a covered employee at the time in question.
3. Under § 42-1-140, the Defendant-Employer was a covered employer under the Act.
4. Under § 42-3-150, there was an employer/employee relationship between the Claimant and the Defendant-Employer.
6. Under § 42-17-20, venue in Dorchester County was proper and agreed to by the parties.
7. Under § 1-23-320(b) and Regulation 67-607, notice of a hearing was timely and properly served on all parties of interest.
8. Under § 42-1-160, the Claimant sustained a compensable injury by accident arising out of and in the course of her employment.
10. Under § 42-15-20, the Claimant gave timely notice of the accident to the Defendant.
11. Under § 42-1-40, the Claimant's compensation rate is \$704.92.
12. Under § 42-9-20, Claimant is entitled to temporary total disability benefits of \$704.92 per week from May 2, 2012 to the present and continuing.
13. Under § 42-15-60, the Claimant is entitled to all past causally related medical care.

14. Under § 42-15-60, the Claimant has not reached maximum medical improvement and is entitled to further medical improvement as directed by his authorized treating physicians.

ORDER

Now, finding a FULL AFFIRMATION of Commissioner Beck's Decision and Order, it is therefore

IT IS THEREFORE ORDERED that the Defendant-Employer shall pay or cause to be paid all past due temporary total disability benefits currently owed to the Claimant;

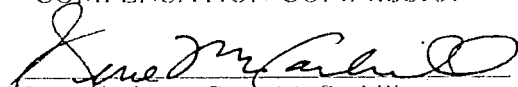
IT IS FURTHER ORDERED that the Defendant-Employer shall pay or cause to be paid all future temporary total disability benefits owed to the Claimant;

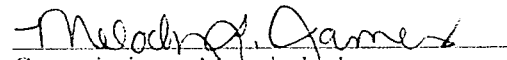
IT IS FURTHER ORDERED that the Defendant-Employer cover the costs of all work-related medical treatment as ordered by Claimant's authorized treating physicians.

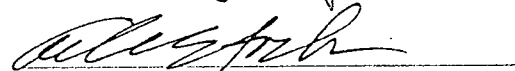
IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'

COMPENSATION COMMISSION


Commissioner Gene McCaskill


Commissioner Melody L. James


Commissioner Andrea C. Roche

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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 September 10, 2013