

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable T. Scott Beck; The Honorable Gene McCaskill; and
The Honorable Melody L. James.

SCWCC File No.: 2216315

Amos Mack,

Claimant,

v.

Don's Car Crushing,

Employer,

and

Business First Insurance Co.,

Carrier,

Defendants.

RECEIVED

JUL 03 2025

SC Court of Appeals

AFFIRMED

Hearing Held in Richland County, South Carolina,
on March 10, 2025

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

● **Appearances:** Amos Mack, Claimant/Appellant, *pro se*.

Nicolas L. Haigler, Esq., of Robinson Gray Sepp & Laffitte,
LLC, represents Defendants/Respondents.

Court Reporter: Skylet Kean, 803-609-0134.

Filed:

May 16, 2025

I. STATEMENT OF THE CASE

Single Commissioner

On May 15, 2024, a hearing was held before a Single Commissioner to determine issues set forth on the parties' Forms 50 and 51.¹

Claimant asserted he sustained injuries on October 14, 2022, to his left shoulder, left arm, right hip and right leg when he slipped and fell in the course and scope of his employment with Employer. Claimant further asserted he was not at maximum medical improvement for his injuries. Claimant sought a finding of compensability and causally related medical treatment for the same. Claimant further sought Temporary Total Disability benefits from October 18, 2022, to the present and continuing. In the alternative, Claimant sought a permanent total disability determination.

Claimant asserted on his Pre-Hearing Brief that he sustained additional injuries to his right shoulder, right arm, bilateral wrists, and low back in his work accident on October 14, 2022. However, during the initial hearing, Claimant testified that his right shoulder injury was not a part of this claim. (Hr. Tr. p. 75.)

Defendants denied Claimant's claim. Defendants specifically asserted during the initial hearing that Claimant had been receiving workers' compensation benefits under the state laws of Louisiana for the past 9-10 years, and did not work during this period. (Hr. Tr. p. 13.) Defendants continued that Claimant was allegedly injured within one (1) hour of returning to work in South Carolina, but failed to report said injury to Employer for five (5) days. (*Id.*) Defendants maintained these events, combined with the ongoing discrepancy as to Claimant's injured body parts and lack of medical causation in

¹ This matter was originally heard by the Honorable Avery B. Wilkerson, Jr. on May 15, 2024. Following the hearing, Commissioner Wilkerson recused himself from the proceeding in accordance with Canon 3E, Rule 501 SCACR. The case was assigned to Commissioner R. Michael Campbell, II, for adjudication. Commissioner Campbell reviewed the record and determined it was not necessary to reconvene the Hearing, as all parties had given testimony, submitted medical evidence, and there was sufficient evidence in the record to render a decision. (Single Commissioner's Decision and Order filed on September 9, 2024, p. 2.)

evidence, formed the basis of their denial. (*Id.* at 13-15.)

The Single Commissioner determined, *inter alia*:

[C]laimant is not entitled to receive, nor are Defendants required to provide compensation or medical benefits, as Claimant has failed to meet his burden to prove by the preponderance of the evidence that his left shoulder, hip, neck, back, or bilateral arms injuries arose out of and occurred in the course of employment.

(Single Commissioner's Decision and Order filed on September 9, 2024, p.11.)

Appellate Panel

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 before the Appellate Panel on March 10, 2025.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injury occurring while in the employment of Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over the issue.
2. Notice of Hearing was timely and properly served on all parties of interest.
3. Venue is proper in Calhoun County, South Carolina.
4. Claimant's average weekly wage and corresponding compensation rate are \$900.00 and \$600.03, respectively.
5. Claimant alleges on October 14th, 2022, he was an employee of Don's Car Crushing, Inc., and that he was welding in a two-story building and fell injuring his shoulders, both arms, both wrists, and low back. (Tr. P. 7.)
6. Defendants assert October 14th, 2022 was Claimant's first day on the job and he was injured within the first hour or so of being there. They further assert that for the ten years prior to the alleged injury he had been on an award of workers' compensation benefits under the laws of the State of Louisiana, that he subsequently settled or stopped receiving benefits sometime in 2021, came back to work after 10 years on disability, alleges he was hurt within one hour of returning

to work, and did not report the alleged injury for 5 more days. Defendants deny any entitlement to benefits. (Tr. P. 13.) Defendants assert no physician has causally-related any of Claimant's complaints to the alleged injury on October 14th, 2022.

7. Claimant testified that he is 61 years old, married, with one adult son. He graduated High School in 1981. He obtained his welding certificate in 1982. He has had two previous workers' compensation claims. He has worked as a welder in a shipyard. He served two and one-half years in prison for drug-related crime. Upon release, he returned to welding. In 2001 he was imprisoned again for two and one-half years for failure to stop for a blue light. Upon release he again returned to working as a welder. In 2012 he sustained an on-the-job injury, for which he received a settlement of \$125,000.00 at the time and then was on an award of \$2,600.00 per month for the next ten years under the Louisiana Workers' Compensation Law. He had shoulder surgery in 2012 in South Carolina with Dr. Mazoue. He began work with Don's Car Crushing on October 14th, 2022. (Tr. p. 21-24.)
8. Claimant testified that he was getting down off the building where he was welding when his feet slid out from under him and as he was falling he grabbed ahold of some steel with his hands to stop his fall. (Tr. p. 26.) He testified he fell five to eight feet. (Tr. p. 27.)
9. Claimant testified the accident was witnessed by his foreman, Paul, and a co-worker known as "Taco". (Tr. p. 28.) Neither alleged witness testified at the Hearing.
10. Claimant testified he told Paul what happened and continued to work for the day. (Tr. p. 29.) He testified he came back the next day, Sunday, and worked for two hours before he clocked out due to not being able to stand up. (Tr. p. 29.) He testified he took off from work on Monday to attend a court hearing related to a traffic ticket. (Tr. p. 29.)
11. Claimant testified he went to the emergency room on Monday, October 17th, 2022. Claimant testified he told the emergency room he injured both arms/wrists, hip, neck, and back. (Tr. p. 30.) Claimant testified he was written out of work and gave that note to Mitch, the superintendent that hired him for the job. (Tr. p. 32.) He also alleges he wrote a note describing his accident and gave it to Ms. "Danielle", or a similar name, a secretary in the office. (Tr. p. 35.)
12. Claimant was seen at the Regional Medical Center in Orangeburg, SC, on October 17th, 2022 for hip pain and left shoulder pain. (Claimant's APAs, p. 1.) Claimant was diagnosed with a contusion of left shoulder, contusion of right hip region, degenerative disc disease, and degenerative joint disease. Impressions noted no signs of traumatic injury, bilateral hip

osteoarthritis, mild glenohumeral and moderate acromioclavicular osteoarthritis, L4-5 degenerative disc disease and degenerative spondylosis, and diffuse facet osteoarthritis. (Claimant's APAs p. 4-8.)

13. Claimant was evaluated by Julia Watson, FNP, on November 14th, 2022. Ms. Watson diagnosed him with Dorsalgia, unspecified, pain in unspecified limb, pain in right wrist, pain in left wrist, fall, subsequent encounter, and elevated blood-pressure. She referred him to orthopaedics for an evaluation and told him to try wrist braces for pain. (Claimant's APAs p. 14.) She opined: "Please admit back to work/school not until further notice". (Claimant's APAs p. 16.)
14. He was subsequently seen by Ms. Watson on January 11th, 2023, January 26th, 2023, and March 16th, 2023. Ultimately, she referred him to orthopaedic surgery for "Pt with lower back pain, possibly due to herniated disc in the lower back, along with wrist and leg pain from a fall at work last Fall". (Claimant's APAs p. 26.)
15. On February 22, 2023, in an IME for Claimant, Dr. Dowse D. Rustin of Orthopedic Associates of Charleston opined: "Mr. Mack says that his injuries occurred on 10/14/2022, his first day on the job at DCC recycling when he slipped on a beam and fell landing on his buttocks catching some of his weight on both upper extremities on an adjacent beam . . . It would be my recommendation that he be referred to a sports medicine physician as well as a spine specialist for review of the complaints he has with his low back and right lower extremity. I believe his right hip pain is secondary to his osteoarthritis as he has a history of primary osteoarthritis that in my opinion predated his injury on 10/14/2022. It is unfortunate he had this fall the first day of his work at his new job with DCC. However, it would be my recommendation that he have a follow-up and be scheduled for physical therapy and any additional studies, as well as consultation with a qualified spine specialist and sports medicine specialist. He has evidence of tendinosis and tendinitis involving his right shoulder with some displacement of distal biceps tendon. He has also indication of a displaced disc in his lumbar spine which is superimposed on what I believe is pre-existing spondylosis of the spine. If the insurance carrier sees fit to denying him access to evaluation and treatment, then I would recommend he be rated at 6% of the right upper extremity for permanent aggravation of DID and tendinosis of his right shoulder. 5% additional for his right-hand dominance for a total of 11% impairment of his right upper extremity that would be equivalent to 18% of his right shoulder. For his low back pain with disc displacement and radiculopathy with myelopathy, I would recommend a rating of DRE lumbar

Category II for aggravation of DDD and spondylosis of 8% whole person impairment. This would be equivalent to 9% impairment of the lumbar spine. . . Please know that I hold the statements, comments and opinions, as well as recommendations within this report to be to a reasonable degree of medical certainty." (Claimant's APAs p. 33 – 37.)

16. On 08/03/2023, however, in his deposition testimony Dr. Rustin testified after being presented with Claimant's medical history that Claimant was less than truthful with him about his medical history, and he could not rely on what Claimant had told him. (Deposition transcript, p. 64, 68.)
17. On April 21, 2023, Claimant was evaluated by Lisa Etheridge, F RN, NP. She diagnosed him with bilateral wrist pain, left shoulder pain, lumbar herniated disc, lumbar pain, and pain in left wrist. At Claimant's request, she referred him to Midlands Orthopaedic for further evaluation. (Claimant's APAs p. 38-41.)
18. On 11/07/2023, in his medical notes, Dr. Seth H. Bowman of Midlands Orthopaedics and Neurosurgery opined: "Patient has severe bilateral CMC arthritis, right side is worse. His insurance denied is CMC arthroplasty despite two previous injections, neither of which provide long-lasting relief radiographic evidence of stage IV CMC arthritis, failure of brace treatment. Not quite sure why this happened, he is now in physical therapy although again I think that this is completely a waste of time there is no benefit to this, multiple studies have shown this. He will finish his therapy for documentation's sake and we will see him back in 4-6 weeks at which point we will try to get his surgery re-approved." (Defendant's APAs, p. 2.)
19. On 01/12/2024, in an FCE for Claimant, PT Philip Lowe of Lowe's Therapy opined: "Amos fell while at work injuring several parts of his body. This was a year ago, now he is at maximum medical improvement. The 5th Edition was used to estimate impairment. The spine was diagnosed with lumbar disc disease with radiculopathy. The DRE method was used to estimate impairment. He receives a 13% whole person impairment according to table 15-3 on page 384. 13% whole person is converted to regional spine impairment by dividing by .75 to equal a 20% lumbosacral spine impairment. The left shoulder was injured. He was diagnosed with degenerative joint disease, tendinosis and tendinitis. He lacks the normal range of motion. The range of motion method was used to estimate impairment. His flexion was 150°. Figure 16-40 on page 476 allows for a 2% upper extremity impairment. His abduction was 155°. Figure 16-43 on page 477 allows for a 1% upper extremity impairment. These two are added together for a 3% upper extremity impairment, which is converted to a shoulder impairment by dividing by

- .62 equal a 5% left shoulder impairment." (Claimant's p. 56.) (Drafting party to detail FCE.)
20. Claimant also submitted medical records from his prior 2012 injury. On December 27th, 2012, Dr. Christopher Mazoue gave Claimant a post-operative diagnosis of Right shoulder impingement syndrome, right shoulder acromioclavicular degenerative joint disease, right shoulder rotator cuff tendinopathy, and right shoulder proximal biceps tendinopathy. (Claimant's APAs p. 68-72.)
21. Based on Claimant's sworn testimony at the hearing, particularly regarding his medical history and discrepancies with his deposition testimony, I find his testimony to be unreliable. As a result, I cannot rely on physician's opinions in the record that are based on what Claimant has or has not told them. Just as Claimant's IME physician, Dr. Rustin, testified he could not rely on what Claimant had told him. I make no finding as to whether Claimant's unreliable statements were intentional or malicious, as his statements are outweighed by the extensive medical evidence in the record.
22. I give greater weight to Dr. Rustin's deposition testimony than to his report from February, 2023, as he had a more complete [sic] of Claimant's medical history at that time and was subject to cross-examination.
23. Furthermore, other than Claimant's subjective complaints, the record is absent of an opinion from a physician having been presented with Claimant's complete medical history that states to a reasonable degree of medical certainty that Claimant's alleged injuries/aggravations are a result of his alleged work-related accident. While Nurse Watson indicated that Claimant's current complaints may have been related to his alleged fall at work, her opinion is not clearly stated to a reasonable degree of medical certainty. (Claimant's APAs p. 16.) Further, while Ms. Watson is certainly a qualified and capable health-care provider, she is not a "physician or surgeon" as that narrow phrase is used in the Act.
24. Therefore, I find Claimant has not met the legal requisite to satisfy his burden of proof that he sustained compensable injuries/aggravations arising out of and in the course and scope of his employment. Claimant did not produce any witnesses to the accident, nor did any physician who was provided with all the facts state to a reasonable degree of medical certainty that his current complaints were causally related to the accident. Defendants showed Claimant had extensive pre-existing conditions, as well as permanent disability arising from his 2012 injury in Louisiana.
25. Claimant's request for benefits under the Act is hereby denied.

CONCLUSIONS OF LAW

1. The preponderance of the evidence establishes that Claimant failed to meet his burden to prove that he sustained a compensable injury arising out of and in the course of employment. "'Injury' and 'personal injury' mean only injury by accident arising out of and in the course of employment. . ." S.C. Code Ann. § 42-1-160 (2021). "Arising out of refers to the injury's origin and cause, whereas 'in the course of' refers to the injury's time, place, and circumstances." Barnes v. Charter 1 Realty, 411, S.C. 391, 398 (2015) (internal citations omitted). "For an injury to arise out of employment, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury." (*Id.*) (internal citations omitted). "In other words, but for the claimant being at work, the injury would not have occurred." Nicholson v. S.C. Dept. of Social Servs., 411 S.C. 381, 386 (2015). "Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident." Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 341 (1999) (internal citations omitted).
2. The occurrence of a work-related injury is further complicated by the lack of a physician's opinion that Claimant's current issues are causally related to his alleged work-related accident. The preponderance of the evidence in the record establishes Claimant's self-serving statements that his injury is work related, but his statements are not corroborated by a medical doctor. The lack of a physician's opinion on the etiology of Claimant's injury is not dispositive, but the conflicting testimony and statements to healthcare providers by Claimant, and lack of an eyewitness further erode the validity of the claim such that "an unprejudiced mind [cannot] reasonably infer the injury was caused by the accident" or that the accident occurred at all. (*Id.*)
3. The discrepancies in Claimant's deposition testimony and hearing testimony neither support nor detract from the compensability of this claim. Rather, it is the preponderance of the evidence viewed as a whole that renders this claim non-compensable. "[A] credibility finding has no force independent of context. . . the trier of fact must weigh and measure each piece of evidence. . . [and] must explain how the credibility determination is important to making the particular factual finding." Clark v. Philips Electronics, 433

S.C. 186, 192 (Ct. App. 2021) (citing Crane v. Raber's Disc. Tire Rack, 429 S.C. 636, 647 (2020)). As previously stated, the absence of an eyewitness, testimony of Dr. Rustin, and lack of a clear causation statement from a fully-informed physician obviates the necessity of a credibility finding in this claim. An independent finding of Claimant's credibility adds little to the analysis given the balance of the evidence in the record. Claimant is neither credible nor incredible.

III. ISSUE ON APPEAL

Whether the Single Commissioner erred as a matter of fact and law that Claimant failed to meet his burden to prove by the preponderance of the evidence that his alleged injuries arose out of and occurred in the course of his employment on October 14, 2022?

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 September 9, 2024.

Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as to this claim.

FINDINGS OF FACT

1. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon alleged injury occurring while in the employment of Defendant Employer, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over the issue.
2. Notice of Hearing was timely and properly served on all parties of interest.
3. Venue is proper in Calhoun County, South Carolina.

4. Claimant's average weekly wage and corresponding compensation rate are \$900.00 and \$600.03, respectively.
5. Claimant alleges on October 14th, 2022, he was an employee of Don's Car Crushing, Inc., and that he was welding in a two-story building and fell injuring his shoulders, both arms, both wrists, and low back. (Tr. P. 7.)
6. Defendants assert October 14th, 2022 was Claimant's first day on the job and he was injured within the first hour or so of being there. They further assert that for the ten years prior to the alleged injury he had been on an award of workers' compensation benefits under the laws of the State of Louisiana, that he subsequently settled or stopped receiving benefits sometime in 2021, came back to work after 10 years on disability, alleges he was hurt within one hour of returning to work, and did not report the alleged injury for 5 more days. Defendants deny any entitlement to benefits. (Tr. P. 13.) Defendants assert no physician has causally-related any of Claimant's complaints to the alleged injury on October 14th, 2022.
7. Claimant testified that he is 61 years old, married, with one adult son. He graduated High School in 1981. He obtained his welding certificate in 1982. He has had two previous workers' compensation claims. He has worked as a welder in a shipyard. He served two and one-half years in prison for drug-related crime. Upon release, he returned to welding. In 2001 he was imprisoned again for two and one-half years for failure to stop for a blue light. Upon release he again returned to working as a welder. In 2012 he sustained an on-the-job injury, for which he received a settlement of \$125,000.00 at the time and then was on an award of \$2,600.00 per month for the next ten years under the Louisiana Workers' Compensation Law. He had shoulder surgery in 2012 in South Carolina with Dr. Mazoue. He began work with Don's Car Crushing on October 14th, 2022. (Tr. p. 21-24.)
8. Claimant testified that he was getting down off the building where he was welding when his feet slid out from under him and as he was falling he grabbed ahold of some steel with his hands to stop his fall. (Tr. p. 26.) He testified he fell five to eight feet. (Tr. p. 27.)
9. Claimant testified the accident was witnessed by his foreman, Paul, and a co-worker known as "Taco". (Tr. p. 28.) Neither alleged witness testified at the Hearing.
10. Claimant testified he told Paul what happened and continued to work for the day. (Tr. p. 29.) He testified he came back the next day, Sunday, and worked for two hours before he clocked out due to not being able to stand up. (Tr. p. 29.) He testified he took off from work on

Monday to attend a court hearing related to a traffic ticket. (Tr. p. 29.)

11. Claimant testified he went to the emergency room on Monday, October 17th, 2022. Claimant testified he told the emergency room he injured both arms/wrists, hip, neck, and back. (Tr. p. 30.) Claimant testified he was written out of work and gave that note to Mitch, the superintendent that hired him for the job. (Tr. p. 32.) He also alleges he wrote a note describing his accident and gave it to Ms. "Danielle", or a similar name, a secretary in the office. (Tr. p. 35.)
12. Claimant was seen at the Regional Medical Center in Orangeburg, SC, on October 17th, 2022 for hip pain and left shoulder pain. (Claimant's APAs, p. 1.) Claimant was diagnosed with a contusion of left shoulder, contusion of right hip region, degenerative disc disease, and degenerative joint disease. Impressions noted no signs of traumatic injury, bilateral hip osteoarthritis, mild glenohumeral and moderate acromioclavicular osteoarthritis, L4-5 degenerative disc disease and degenerative spondylosis, and diffuse facet osteoarthritis. (Claimant's APAs p. 4-8.)
13. Claimant was evaluated by Julia Watson, FNP, on November 14th, 2022. Ms. Watson diagnosed him with Dorsalgia, unspecified, pain in unspecified limb, pain in right wrist, pain in left wrist, fall, subsequent encounter, and elevated blood-pressure. She referred him to orthopaedics for an evaluation and told him to try wrist braces for pain. (Claimant's APAs p. 14). She opined: "Please admit back to work/school not until further notice". (Claimant's APAs p. 16.)
14. He was subsequently seen by Ms. Watson on January 11th, 2023, January 26th, 2023, and March 16th, 2023. Ultimately, she referred him to orthopaedic surgery for "Pt with lower back pain, possibly due to herniated disc in the lower back, along with wrist and leg pain from a fall at work last Fall". (Claimant's APAs p. 26.)
15. On February 22, 2023, in an IME for Claimant, Dr. Dowse D. Rustin of Orthopedic Associates of Charleston opined: "Mr. Mack says that his injuries occurred on 10/14/2022, his first day on the job at DCC recycling when he slipped on a beam and fell landing on his buttocks catching some of his weight on both upper extremities on an adjacent beam . . . It would be my recommendation that he be referred to a sports medicine physician as well as a spine specialist for review of the complaints he has with his low back and right lower extremity. I believe his right hip pain is secondary to his osteoarthritis as he has a history of

primary osteoarthritis that in my opinion predated his injury on 10/14/2022. It is unfortunate he had this fall the first day of his work at his new job with DCC. However, it would be my recommendation that he have a follow-up and be scheduled for physical therapy and any additional studies, as well as consultation with a qualified spine specialist and sports medicine specialist. He has evidence of tendinosis and tendinitis involving his right shoulder with some displacement of distal biceps tendon. He has also indication of a displaced disc in his lumbar spine which is superimposed on what I believe is pre-existing spondylosis of the spine. If the insurance carrier sees fit to denying him access to evaluation and treatment, then I would recommend he be rated at 6% of the right upper extremity for permanent aggravation of DID and tendinosis of his right shoulder. 5% additional for his right-hand dominance for a total of 11% impairment of his right upper extremity that would be equivalent to 18% of his right shoulder. For his low back pain with disc displacement and radiculopathy with myelopathy, I would recommend a rating of DRE lumbar Category II for aggravation of DDD and spondylosis of 8% whole person impairment. This would be equivalent to 9% impairment of the lumbar spine. . . Please know that I hold the statements, comments and opinions, as well as recommendations within this report to be to a reasonable degree of medical certainty." (Claimant's APAs p. 33 – 37.)

16. On 08/03/2023, however, in his deposition testimony Dr. Rustin testified after being presented with Claimant's medical history that Claimant was less than truthful with him about his medical history, and he could not rely on what Claimant had told him. (Deposition transcript, p. 64, 68.)
17. On April 21, 2023, Claimant was evaluated by Lisa Etheridge, F RN, NP. She diagnosed him with bilateral wrist pain, left shoulder pain, lumbar herniated disc, lumbar pain, and pain in left wrist. At Claimant's request, she referred him to Midlands Orthopaedic for further evaluation. (Claimant's APAs p. 38-41.)
18. On 11/07/2023, in his medical notes, Dr. Seth H. Bowman of Midlands Orthopaedics and Neurosurgery opined: "Patient has severe bilateral CMC arthritis, right side is worse. His insurance denied is CMC arthroplasty despite two previous injections, neither of which provide long-lasting relief radiographic evidence of stage IV CMC arthritis, failure of brace treatment. Not quite sure why this happened, he is now in physical therapy although again I think that this is completely a waste of time there is no benefit to this, multiple studies have

shown this. He will finish his therapy for documentation's sake and we will see him back in 4-6 weeks at which point we will try to get his surgery re-approved." (Defendant's APAs, p. 2.)

19. On 01/12/2024, in an FCE for Claimant, PT Philip Lowe of Lowe's Therapy opined: "Amos fell while at work injuring several parts of his body. This was a year ago, now he is at maximum medical improvement. The 5th Edition was used to estimate impairment. The spine was diagnosed with lumbar disc disease with radiculopathy. The DRE method was used to estimate impairment. He receives a 13% whole person impairment according to table 15-3 on page 384. 13% whole person is converted to regional spine impairment by dividing by .75 to equal a 20% lumbosacral spine impairment. The left shoulder was injured. He was diagnosed with degenerative joint disease, tendinosis and tendinitis. He lacks the normal range of motion. The range of motion method was used to estimate impairment. His flexion was 150°. Figure 16-40 on page 476 allows for a 2% upper extremity impairment. His abduction was 155°. Figure 16-43 on page 477 allows for a 1% upper extremity impairment. These two are added together for a 3% upper extremity impairment, which is converted to a shoulder impairment by dividing by .62 equal a 5% left shoulder impairment." (Claimant's p. 56.) (Drafting party to detail FCE.)
20. Claimant also submitted medical records from his prior 2012 injury. On December 27th, 2012, Dr. Christopher Mazoue gave Claimant a post-operative diagnosis of Right shoulder impingement syndrome, right shoulder acromioclavicular degenerative joint disease, right shoulder rotator cuff tendinopathy, and right shoulder proximal biceps tendinopathy. (Claimant's APAs p. 68-72.)
21. Based on Claimant's sworn testimony at the hearing, particularly regarding his medical history and discrepancies with his deposition testimony, we find his testimony to be unreliable. As a result, we cannot rely on physician's opinions in the record that are based on what Claimant has or has not told them. Just as Claimant's IME physician, Dr. Rustin, testified he could not rely on what Claimant had told him. We make no finding as to whether Claimant's unreliable statements were intentional or malicious, as his statements are outweighed by the extensive medical evidence in the record.
22. We give greater weight to Dr. Rustin's deposition testimony than to his report from February, 2023, as he had a more complete [understanding] of Claimant's medical history at that time

and was subject to cross-examination.

23. Furthermore, other than Claimant's subjective complaints, the record is absent of an opinion from a physician having been presented with Claimant's complete medical history that states to a reasonable degree of medical certainty that Claimant's alleged injuries/aggravations are a result of his alleged work-related accident. While Nurse Watson indicated that Claimant's current complaints may have been related to his alleged fall at work, her opinion is not clearly stated to a reasonable degree of medical certainty. (Claimant's APAs p. 16.) Further, while Ms. Watson is certainly a qualified and capable health-care provider, she is not a "physician or surgeon" as that narrow phrase is used in the Act.
24. Therefore, we find Claimant has not met the legal requisite to satisfy his burden of proof that he sustained compensable injuries/aggravations arising out of and in the course and scope of his employment. Claimant did not produce any witnesses to the accident, nor did any physician who was provided with all the facts state to a reasonable degree of medical certainty that his current complaints were causally related to the accident. Defendants showed Claimant had extensive pre-existing conditions, as well as permanent disability arising from his 2012 injury in Louisiana.
25. Claimant's request for benefits under the Act is hereby denied.

CONCLUSIONS OF LAW

1. The preponderance of the evidence establishes that Claimant failed to meet his burden to prove that he sustained a compensable injury arising out of and in the course of employment. "'Injury' and 'personal injury' mean only injury by accident arising out of and in the course of employment. . ." S.C. Code Ann. § 42-1-160 (2021). "Arising out of refers to the injury's origin and cause, whereas 'in the course of' refers to the injury's time, place, and circumstances." Barnes v. Charter 1 Realty, 411, S.C. 391, 398 (2015) (internal citations omitted). "For an injury to arise out of employment, there must be a causal connection between the conditions under which the work is required to be performed and the resulting injury." (Id.) (internal citations omitted). "In other words, but for the claimant being at work, the injury would not have occurred." Nicholson v. S.C. Dept. of Social Servs., 411 S.C. 381, 386 (2015). "Proof that a claimant sustained an injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident."

Tiller v. National Health Care Center of Sumter, 334 S.C. 333, 341 (1999) (internal citations omitted).

2. The occurrence of a work-related injury is further complicated by the lack of a physician's opinion that Claimant's current issues are causally related to his alleged work-related accident. The preponderance of the evidence in the record establishes Claimant's self-serving statements that his injury is work related, but his statements are not corroborated by a medical doctor. The lack of a physician's opinion on the etiology of Claimant's injury is not dispositive, but the conflicting testimony and statements to healthcare providers by Claimant, and lack of an eyewitness further erode the validity of the claim such that "an unprejudiced mind [cannot] reasonably infer the injury was caused by the accident" or that the accident occurred at all. (*Id.*)
3. The discrepancies in Claimant's deposition testimony and hearing testimony neither support nor detract from the compensability of this claim. Rather, it is the preponderance of the evidence viewed as a whole that renders this claim non-compensable. "[A] credibility finding has no force independent of context. . . the trier of fact must weigh and measure each piece of evidence. . . [and] must explain how the credibility determination is important to making the particular factual finding." Clark v. Philips Electronics, 433 S.C. 186, 192 (Ct. App. 2021) (citing Crane v. Raber's Disc. Tire Rack, 429 S.C. 636, 647 (2020)). As previously stated, the absence of an eyewitness, testimony of Dr. Rustin, and lack of a clear causation statement from a fully-informed physician obviates the necessity of a credibility finding in this claim. An independent finding of Claimant's credibility adds little to the analysis given the balance of the evidence in the record. Claimant is neither credible nor incredible.

ORDER

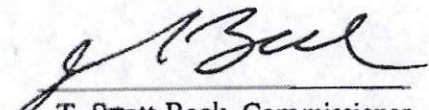
THEREFORE IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner filed in the above-captioned matter on September 9, 2024, is hereby fully **AFFIRMED**.

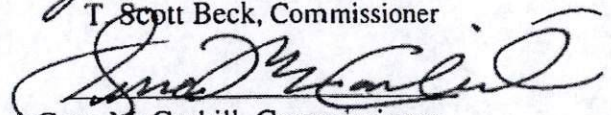
ACCORDINGLY:

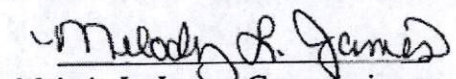
IT IS FURTHER ORDERED that Claimant is not entitled to receive, nor are Defendants required to provide compensation or medical benefits as Claimant has failed to meet his burden to prove by the preponderance of the evidence that his left shoulder, hip, neck, back, or bilateral arms injuries arose out of and occurred in the course of employment.

AND SO IT IS ORDERED.

_____(date)
Columbia, SC


T. Scott Beck, Commissioner


Gene McCaskill, Commissioner


Melody L. James, Commissioner