

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

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DEC 20 2013

SC Court of Appeals

W.C.C. FILE NO.: 1214612

JAMES A. SMOAK,

EMPLOYEE,
CLAIMANT/RESPONDENT

vs

HUSQVARNA,

EMPLOYER,

and

ACE AMERICAN INS. CO.,

CARRIER,
DEFENDANTS/APPELANTS

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

Appellate Panel Decision and Order filed:

11-20, 2013

APPEARANCES:

Claimant/Respondent, James A. Smoak, was represented by William D. Wilson, Jr., Esquire, of the Wilson Law Office, LLC in Goose Creek, South Carolina.

Defendants/Appellants, were represented by Shelby H. Kellahan, Esquire of the Huff Law Firm in Irmo, South Carolina.

STATEMENT OF THE CASE

The Parties were originally heard by Commissioner Avery B. Wilkerson, Jr. on May 22, 2013 in St. Matthews, South Carolina. On June 18, 2013, the Hearing Commissioner issued the following Order:

IT IS THEREFORE ORDERED that the Claimant sustained an injury by accident

Notice of Appeal
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arising out of and in the course of his employment and is found to be entitled back-owed TTD benefits since October 18, 2012 and to have these benefits continue until the Claimant is found to be at MMI by his authorized treating physician(s).

IT IS FURTHER ORDERED that the Claimant is entitled to medical treatment with his authorized treating physicians at Southeastern Spine Institute until it is determined that he has reached MMI.

IT IS FURTHER ORDERED that the Defendants shall pay for past causally-related medical treatment and shall provide to Claimant reimbursement of all expense related to his date of injury of October 17, 2012.

AND IT IS SO ORDERED.

Within the statutory time period, Defendants filed an Application for Review in the case, setting fourth their reasons for Review, copies of which were furnished to all interested parties. All parties appeared at oral arguments on October, 15, 2013, and presented their case on appeal.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and find a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order dated June 18, 2013.

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50, review the award, weigh the evidence as presented at the initial hearing, and if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent or inconsistent with those of the Hearing Commissioner.

Although the Full Commission is empowered to make its own findings of fact and to

reach its own conclusions of law, it is logical for the Full Commission, which did not have the benefit of observing the witnesses, to give weight to the Single Commissioner's opinion. *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162(1992). In this case, the preponderance of evidence in the record supports a **FULL AFFIRMATION** of the Single Commissioner's findings.

FINDINGS OF FACT

Based on the testimony of the Claimant, when he testified as to how the accident happened, we find that the Claimant was in an unusual position and as such, his injury arose out of and in the course of his employment when he bent over to repair the lawnmower. Therefore, based upon the testimony, exhibits and APA submissions, we find the greater weight of the evidence supports the following findings:

1. Claimant suffered a compensable injury by accident arising out of and in the course of his employment to his back on October 17, 2012.
2. Claimant is entitled to continued medical benefits with Drs. Johnson and Poletti of Southeastern Spine Institute hereby named the Claimant's authorized treating physicians since the Defendants chose to never authorize treatment. Further, the Claimant was referred to Southeastern Spine Institute by his family doctor.
3. Claimant is entitled to back-owed TTD benefits from October 18, 2012 to continue until it is determined by the authorized treating physicians that the Claimant has reached maximum medical improvement.
4. Claimant is entitled to reimbursement of medical treatment already paid and related mileage.

CONCLUSIONS OF LAW

Accordingly, as is provided in §42-17-40 of the South Carolina Code of Laws, 1976 as amended, it is the determination of this Commission that:

1. Claimant sustained an injury by accident arising out of and in the course of his employment within the meaning of §42-1-160.

2. Claimant is entitled to medical treatment until maximum medical improvement as determined by his authorized treating physicians. §42-15-60.

3. Claimant is entitled to back owed TTD benefits and continuing TTD benefits pursuant to regulation 67-1602 and South Carolina Code of Laws §42-9-10. Further, the Claimant is entitled to reimbursement of expenses pursuant to Regulation 67-1601.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Claimant sustained an injury by accident arising out of and in the course of his employment and is found to be entitled back-owed TTD benefits since October 18, 2012, and to have these benefits continue until the Claimant is found to be at MMI by his authorized treating physician(s).

IT IS FURTHER ORDERED that the Claimant is entitled to medical treatment with his authorized treating physicians at Southeastern Spine Institute until it is determined that he has reached MMI.

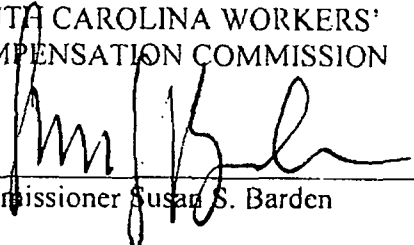
IT IS FURTHER ORDERED that the Defendants shall pay for past causally-related medical treatment and shall provide to Claimant reimbursement of all expenses related to his date of injury of October 17, 2012.

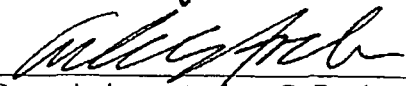
IT IS SO ORDERED.

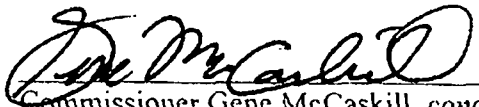
AFFIRMED

SIGNATURES ON THE FOLLOWING PAGE

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Susan S. Barden

Commissioner Andrea C. Roche, *concurring*

Commissioner Gene McCaskill, *concurring*

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 Valerie Deller on November 20, 2013

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