

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION

W.C.C. No. 0202022

~~Y/M/13~~ Clifford Pasley

Appellant,

70857

v.

Leonard Enterprises, Inc./Trans Agri, Inc.
and SC Uninsured Employers' Fund

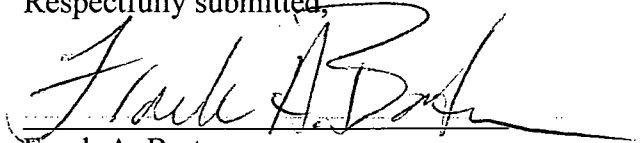
Respondents

NOTICE OF APPEAL

Clifford Pasley appeals the decision of the South Carolina Workers' Compensation Commission dated December 3, 2013, upon the attached grounds which are incorporated by reference.

Other Counsel of Record for the SCUEF are: Margaret Urbanik, 126 Seven Farms Drive, Suite 200, Charleston, SC 29492, 843-619-0366 and Lisa C. Glover, P.O. Box 210039 Columbia, SC 29221, 803-896-5898.

Respectfully submitted,



Frank A. Barton
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P.O. Box 7757
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Attorney for Appellant

December 31, 2013

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SC Court of Appeals

Grounds for Appeal

1. The Commission erred as a matter of law and fact in failing to find that Claimant sustained permanent disability to his back and legs as a result of the admitted work accident which took place on January 17, 2002.
2. The Commission erred as a matter of law and fact in failing to award benefits for the disabling result of the work accident's aggravating to the point of disability a pre-existing, but previously quiescent and not disabling back condition.
3. The Commission erred as a matter of fact and law in concluding that Claimant's pre-existing, service related, sore back which was diagnosed only as chronic back pain in 1982 and which required no treatment beyond pain medicine and exercise was actually, even before the work accident in 2002, a pre-existing condition of spondylolisthesis, where this conclusion was wholly contradicted by the evidence submitted, including the medical reports indicating instead that Claimant's original service-related complaint of a sore back with no history of back injury had improved with only medication and exercise and where there was no diagnosis or indication of spondylolisthesis or other severe or disabling back condition over the next twenty years prior to the work accident on January 17, 2002.
4. The Commission erred as a matter of fact and law in failing to recognize from the overwhelming evidence submitted that Claimant's pre-existing, service related sore back was previously quiescent and not disabling as he completed his military service and then performed strenuous manual labor up to the time of the January 17, 2002, work accident after which, for the first time, spondylosis along with disc narrowing at L5-S1 was observed and diagnosed.
5. The Commission erred as a matter of law and fact in denying benefits for the disabled condition of Claimant's back and legs on the basis that Claimant was receiving benefits for disability to the same body parts from the Veteran's Administration, a collateral source, where the medical records establish that the VA found service related disability as the result of the 2002 work accident's aggravating the previous complaint of service-related back pain to the point of disability.
6. The Commission erred as a matter of law and fact in denying benefits for the disabling injuries to Claimant's back and legs where the aggravation of a pre-existing, but previously not disabling condition is compensable under the Act.
7. The Commission erred in failing to find Claimant totally and permanently disabled as the result of the Commission's failing to apply the accepted definition of total and permanent disability that there is not a reasonable market for the Claimant's services, and as the result of the Commission's failing to recognize that total disability does not require complete helplessness, but that the inability to perform common labor is total disability for one who is not qualified by training or experience for any other employment.

8. The Commission erred in failing to award benefits for total and permanent disability or in the alternative, benefits for permanent partial disability or, in the alternative, benefits for substantial permanent partial disability, greater than 50% loss of use to the back under Section 42-9-30 (21) and substantial permanent partial disability to the legs under Section 42-9-30(16) where entitlement to such benefits was well established by the evidence submitted.

9. The Commission erred as a matter of law and fact in concluding only that Claimant was able to continue to work from 2003 forward where, in fact, as the result of his back and leg pain, Claimant was forced over the years to cut back on his truck driving work until he was finally forced to take light-duty job for drastically lower wages at the VA.

10. The Commission erred in failing to interpret the Workers' Compensation Act in a manner favorable to the injured worker and for his support as required by the nature and scope of the Act.

11. The Commission erred as a matter of law and fact in failing to find that Claimant sustained injuries and permanent disability to his back and legs as a result of the admitted work accident on January 17, 2002;

12. The Commission erred as a matter of law and fact in erroneously finding that the admitted work accident on January 17, 2002, had resulted only in a temporary aggravation of a pre-existing, military-service-related injury to Claimant's back where the evidence as well as the chain of events reasonably and logically supports only a finding that the admitted January 17, 2002, work accident aggravated and worsened a previously quiescent and not previously disabling pre-existing condition of Claimant's back.

13. The Commission erred as a matter of law and fact in failing to award permanent disability benefits for the injuries to Claimant's back and legs, where such decision is not supported but contradicted by the evidence submitted.

14. The Commission erred as a matter of law and fact in not distinguishing between impairment and disability and in not finding that the Claimant had sustained substantial disability as the result of the work injuries affecting his back and legs.

15. The Commission erred as a matter of law and fact in not interpreting the Workers' Compensation Act in a manner favorable to the Claimant as required by the nature and scope of the Act.

16. The Commission erred as a matter of law and fact in finding that the admitted injury to Claimant's back did not cause or contribute to his disabling back condition where such finding is against the greater weight and preponderance of the evidence.

17. The Commission erred as a matter of law and fact in finding that the admitted injury to Claimant's back did not cause or contribute to his disabling bilateral leg condition where such finding is against the greater weight and preponderance of the evidence.

18. The Commission erred as a matter of law and fact in concluding that Claimant would not have been awarded benefits for disability to his back and legs if the resulting disability was actually due to a later work accident's aggravating and worsening a complaint of back pain from 1982, which was originally related to military service, upon erroneously supposing that military disability is "assigned for service related injuries" only, unaffected by later injuries not related to military service.

19. The Commission erred as a matter of law and fact in finding that it was reasonable to conclude that the injuries to Claimant's back resulting from the work accident, including spondylolisthesis, had resolved where such conclusion is contradicted by the medical records showing that injuries to Claimant's back and the disabling effect on his legs continue and where there is no medical evidence establishing that Claimant's injuries have ever resolved.

20. The Commission erred in concluding that there was any lack of medical evidence causally connecting Claimant's admitted work accident to his immediately and dramatically worsened back condition given the objective test results which Claimant obtained on his own when the Employer failed to provide medical evaluation or care despite admitting the accident and despite the Employer's obligation to provide care under the Act.

21. The Commission erred as a matter of law and fact in not taking into consideration or awarding benefits for the disability to or loss of use of the Claimant's legs.

22. The Commission erred as a matter of law and fact in not awarding continued medical benefits for treatment of Claimant's back and legs.

23. The Commission erred as a matter of law and fact in failing to award benefits for the disability to Claimant's back and legs given that the medical evidence establishes that Claimant's work accident and injury to his back had negatively affected his use of his back and his use of his legs to perform work.

24. The Commission erred as a matter of law and fact in not finding Claimant permanently disabled, totally or partially, as the compensable result of the admitted work accident.

25. The Commission erred as a matter of law and fact in not considering the effects of Claimant's injuries on his ability to work and earn wages where the effect of his injuries clearly interferes with Claimant's ability to work manual labor given that, at the time of the admitted work accident, Claimant was able to perform the strenuous work of a long distance truck driver but after and as a result of the work accident he was forced to cut down the duration, length, and exertion of his road trips and eventually to stop driving long-distance trucks altogether.

26. The Commission erred as a matter of law and fact in placing a date limit on the Order that Defendants be responsible for Claimant's "causally related medical care" where Defendants should be held responsible for all causally related medical care under the Act.

27. The Commission erred in failing to find Defendants responsible for the entire cost of Claimant's medical care which was causally related to the admitted work accident.

28. The Commission erred in failing to find Defendants responsible for the entire cost of Claimant's out of pocket expenses incurred in relation to his work injuries.

29. The Commission erred as a matter of law and fact in ruling that Claimant was not entitled to medical treatment and care or reimbursement for medical treatment and care causally related to the admitted work accident after January 1, 2004.

30. The Commission erred as a matter of law and fact in ruling that Claimant was not entitled to further medical care where this finding is unsupported by the medical evidence submitted and inconsistent with the Act.

31. The Commission erred as a matter of law and fact in assuming that Claimant's objectively established injuries resulting from the admitted work accident did not result from the work accident where such assumption was contradicted by and inconsistent with the evidence submitted.

32. The Commission erred as a matter of law and fact in interpreting the evidence in a manner favorable to the Defendants and not in a manner favorable to the injured worker.

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WCC FILE NO: 0202022

Clifford Pasley,

Claimant-Appellant,

v.

Leonard Enterprises, Inc., TransAgri, Inc.,
and S.C. Uninsured Employers' Fund

Respondents.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of the MULLIS LAW FIRM do hereby certify that I have served the Appellant's Notice of Appeal this 31st day of December, 2013, by mailing the Notice, by regular U.S. mail, with proper postage affixed to the following:

Margaret M. Urbanik, Esq.
Clawson and Staubes
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

SC Workers' Comp. Commission
Judicial Department
PO Box 1715
Columbia SC 29202-1715

Lisa C. Glover, Esq.
P.O. Box 210039
Columbia, SC 29221-0039

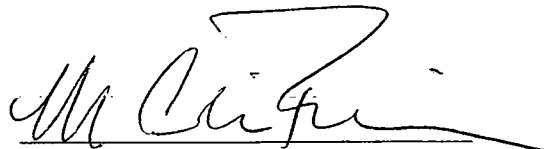
Leonard Enterprises
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Columbia, SC 29212

TransAgri, Inc.
371 W. Hill Street
Goldsboro, NC 27534-7307

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PAMELA R. MULLIS
ATTORNEY AT LAW

J. MARVIN MULLIS, JR.
1940 - 2012

December 31, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Dear Ms. Kitchings:

Please find enclosed the Notice of Appeal on behalf of Claimant-Appellant along with proof of service, the filing fee, and a copy of the Order on Appeal.

Please do not hesitate to contact me should there be any questions or concerns regarding this communication.

Sincerely,



Frank A. Barton

FAB/mcr

Enclosures

Cc: Margaret M. Urbanik, Esq.
Lisa Glover, Esq.
TransAgri, Inc.
Leonard Enterprises, Inc.
SC Workers Compensation Commission

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SC Court of Appeals

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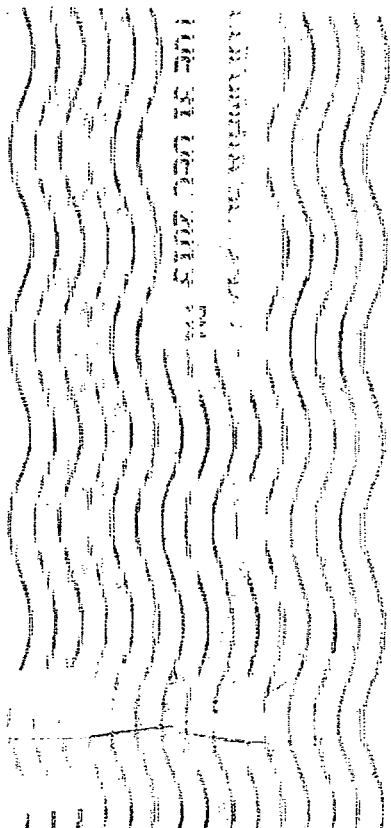
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FIRST CLASS



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