

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

**CLIFFORD PASLEY,**  
**EMPLOYEE, CLAIMANT**  
**RESPONDENT-APPELLANT**

**v.**

**LEONARD ENTERPRISES, INC., TRANS AGRI, INC.,**  
**EMPLOYERS**

**and**

**S.C. UNINSURED EMPLOYERS' FUND,**  
**APPELLANTS-RESPONDENTS**

**WCC FILE NO. 0202022**

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

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**APPEARANCES:** Claimant Represented by Frank A. Barton, Esquire and the Mullis Law  
Firm, Columbia, South Carolina

Defendant, Uninsured Employers' Fund represented by Natalie Byars  
Fisher, Clawson & Staubes, LLC, Charleston, South Carolina.

## STATEMENT OF THE CASE

The parties were heard by Commissioner Gene McCaskill on June 27, 2012, in Columbia, South Carolina. On January 4, 2013, Commissioner McCaskill issued his Order with the following specific Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. The Claimant sustained an injury to his back arising out of and in the course of his employment on January 17, 2002.
2. The Claimant was employed by Leonard Enterprises at the time of his injury. Leonard Enterprises was a down-stream employer or subcontractor for Trans Agri, Inc.
3. Leonard Enterprises and Trans Agri are bound to and subject to the South Carolina Workers' Compensation Act, by regularly employing four or more employees.
4. Based upon his tax returns as the best evidence, the Claimant's average weekly wages were One Hundred Eighty-three and 54/100 (\$183.54) Dollars, resulting in a compensation rate of One Hundred Twenty-two and 42/100 (\$122.42).
5. As a result of the injury, the Claimant did not work for the remainder of 2002, nor for all of 2003.
6. The Claimant returned to work in 2004, earning substantially more in 2004 than he did in 2001, and has continued to work since that time.
7. It is reasonable to conclude that whatever injury or aggravation of his pre-existing spondylolisthesis that the Claimant suffered on January 17, 2002, has resolved.

8. In 2009, the Claimant was assigned a thirty (30%) percent disability from the VA to his back, for military service preceding the January 17, 2002 injury.
9. Because military disability is assigned for service related injuries and there is no definitive medical evidence in this case causally connecting the Claimant's continuing back issues to the injury of January 17, 2002, reimbursement for medical treatment and care after January 1, 2004, is denied.
10. The Claimant is not entitled to any future medical care and treatment under the Act.
11. The Claimant was temporarily totally disabled from January 17, 2002, until December 31, 2003.
12. The Claimant is entitled to reimbursement for any out-of-pocket medical expenses incurred from January 17, 2002, until December 31, 2003, for which documentation can be provided.
13. As Travelers Insurance did not provide coverage for Trans Agri, Inc. in South Carolina at the time of this accident, they are dismissed from the case.

#### **CONCLUSIONS OF LAW**

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1. Under §42-1-60, the Claimant sustained an injury to his back arising out of and in the course of his employment.
  2. Under §42-1-40, the Claimant's average weekly wages were One Hundred Eighty-three and 54/100 (\$183.54) Dollars, resulting in a compensation rate of One Hundred Twenty-two and 42/100 (\$122.42) Dollars.

3. Under §42-1-150, Leonard Brown d/b/a Leonard Enterprises and Trans Agri, Inc., both regularly employed four or more employees and were subject to the Act.
4. Under §42-9-10, the Claimant was temporarily totally disabled from January 17, 2002 until December 31, 2003.
5. Under §42-9-30, the Claimant has failed to met his burden of proving that he sustained any loss of use or disability to his back, as a result of this accident, but, instead only a temporary aggravation of a pre-existing condition, for which he is receiving a 30% disability.
6. Under §42-15-60 and §42-15-80, the Claimant is entitled to causally related medical treatment only until January 1, 2004.
7. Under §42-9-10, 42-9-20 and 42-9-30, or any other provisions of the Act, the Claimant is not entitled to any further benefits."

Within the statutory period for review, counsel for both Claimant and Defendants filed an application for review setting forth their grounds for review, copies of which were furnished to all interested parties, prior to oral argument before the Appellate Panel on July 15, 2013.

### DISCUSSION

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 have since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1989), 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 with or inconsistent with those of the Hearing Commissioner.

After considering all of the evidence in the record and the arguments presented, the Appellate Panel, by unanimous vote, affirms the Order of the Hearing Commissioner with amendments. Accordingly, the following Findings of Fact and Conclusions of Law shall become, and hereby are, the law of the case:

#### **FINDINGS OF FACT**

1. The Claimant sustained an injury to his back arising out of and in the course of his employment on January 17, 2002.
2. The Claimant was employed by Leonard Enterprises at the time of his injury. Leonard Enterprises was a down-stream employer or subcontractor for Trans Agri, Inc.
3. Leonard Enterprises and Trans Agri are bound to and subject to the South Carolina Workers' Compensation Act, by regularly employing four or more employees.
4. Claimant's Average Weekly Wage and Compensation Rate are amended based on his actual earnings to be \$ 781.25 and \$ 520.86.
5. As a result of the injury, the Claimant did not work for the remainder of 2002, or for the majority of the first two months of 2003.

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6. The Claimant returned to work in February of 2003, and he has continued to work since that time.
7. It is reasonable to conclude that whatever injury or aggravation of his pre-existing spondylolisthesis that the Claimant suffered on January 17, 2002, has resolved.

8. In 2009, the Claimant was assigned a thirty (30%) percent disability from the VA to his back, for military service preceding the January 17, 2002 injury.
9. Because military disability is assigned for service related injuries and there is no definitive medical evidence in this case causally connecting the Claimant's continuing back issues to the injury of January 17, 2002, reimbursement for medical treatment and care after January 1, 2004, is denied.
10. The Claimant is not entitled to any future medical care and treatment under the Act.
11. The Claimant was temporarily totally disabled from January 17, 2002, until February 18, 2003.
12. The Claimant is entitled to reimbursement for any out-of-pocket medical expenses incurred from January 17, 2002, until December 31, 2003, for which documentation can be provided.
13. As Travelers Insurance did not provide coverage for Trans Agri, Inc. in South Carolina at the time of this accident, they are dismissed from the case.

#### **CONCLUSIONS OF LAW**

1. Under §42-1-60, the Claimant sustained an injury to his back arising out of and in the course of his employment.
2. Under §42-1-40, the Claimant's average weekly wages were \$ 781.25 with a corresponding compensation rate of Five Hundred Twenty and 86/100 Dollars (\$ 520.86).
3. Under §42-1-150, Leonard Brown d/b/a Leonard Enterprises and Trans Agri, Inc., both regularly employed four or more employees and were subject to the Act.

4. Under §42-9-10, the Claimant was temporarily totally disabled from January 17, 2002 until February 18, 2003.
5. Under §42-9-30, the Claimant has failed to met his burden of proving that he sustained any loss of use or disability to his back, as a result of this accident, but, instead only a temporary aggravation of a pre-existing condition, for which he is receiving a 30% disability.
6. Under §42-15-60 and §42-15-80, the Claimant is entitled to causally related medical treatment only until January 1, 2004.
7. Under §42-9-10, 42-9-20 and 42-9-30, or any other provisions of the Act, the Claimant is not entitled to any further benefits.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the Employers, Leonard Enterprises and Trans Agri, Inc., shall pay to the Claimant temporary total disability compensation for the period of January 17, 2002, until February 18, 2003.

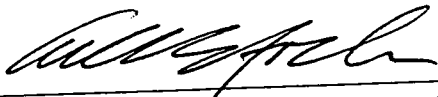
**IT IS, FURTHER, ORDERED** that the Employers, Leonard Enterprises and Trans Agri, shall pay all causally related medical expenses, including the Claimant's out-of-pocket expenses until January 31, 2004.

**IT IS, FURTHER, ORDERED** that should the Employers, Leonard and Trans Agri,, be unable to or not make payments per this Order, that the South Carolina Uninsured Employer's Fund shall do so with the full right of recovery as provided in the Act.

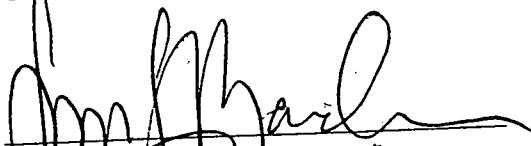
**IT IS, FURTHER, ORDERED** that the Claimant is not entitled to additional benefits under the Act.

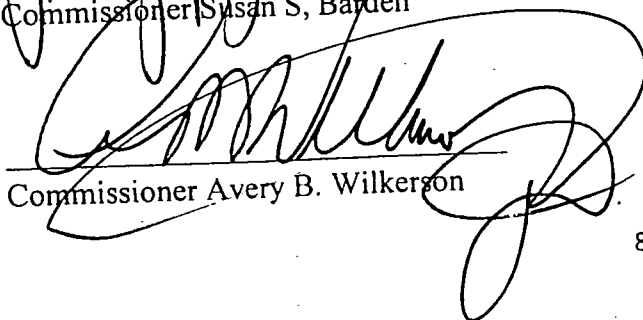
**AND IT IS SO ORDERED.**

South Carolina Workers' Compensation Commission

By:   
Commissioner Andrea C. Roche, Chair  
South Carolina Workers' Compensation Commission

**AFFIRMATION WITH AMENDMENT  
CONCUR:**

  
Commissioner Susan S. Barden

  
Commissioner Avery B. Wilkerson

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 3rd day of December, 2013

By Valerie D. Deller

Administrative Assistant to the Commissioner

Trans Agri Inc  
Leonard Enterprises  
Lisa Glover  
Margaret M Urbanec  
Pamela L. Mullis  
Frank Anthony Barton