

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-42-3904

Jesus Lugo

Kohler Co.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Al Martin

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

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SPARTANBURG COUNTY
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NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

2135
Judge Code

12/5/13
Date



STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

Jesus Lugo,)
Claimant,)

v.)

Kohler Co.,)
Employer/Self-Insured,)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH CIRCUIT

W.C.C. FILE NO: 0626795

C.A. No.: 2012-CP-42-03904

ORDER

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This matter came before the Court on an Appeal from the Workers' Compensation Commission filed by the Defendant. This matter was initially decided by the Single Commissioner on April 2, 2012.

The Commissioner found Mr. Lugo to be Permanently and Totally Disabled with Paraplegia pursuant to 42-9-10, and entitled to lifetime medical treatment and lifetime indemnity benefits.

Defendant filed an Application for Review within the statutory time period. Arguments were heard before the Full Commission. The Appellate Panel Decision and Order was issued unanimously affirming the Single Commissioner's Order in its entirety on August 20, 2012. Defendant filed this Appeal seeking reversal of the Appellate Panel's Decision and Order.

On March 6, 2013, an appeal hearing was held before this Court. Defendants conceded on the record that Mr. Lugo is Permanently and Totally Disabled as a result of his work injury. (Tr. p. 7, lines 8-9) Defendant disputed the determination that Claimant suffers "incomplete paraplegia" and is therefore entitled to lifetime benefits. First, Defendant/Appellant argued it was not the legislature's intent that paraplegia under S.C. Code §42-9-10 would encompass incomplete paraplegia. Secondly, Defendant/Appellant argued the Single Commissioner's Order and Full Commission Order were not supported by substantial evidence because the evidence did not support

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a diagnosis of "incomplete paraplegia." Defendant argued the only surgeon rendering an opinion disputed Claimant suffered incomplete paraplegia.

Claimant/Respondent argued that incomplete paraplegia is a valid medical diagnosis recognized and accepted by the medical community. Moreover, the Court of Appeals previously addressed the application of S.C. Code 42-9-10 to incomplete paraplegia in *Reed-Richards v. Clemson University*, 371 S.C. 304, 638 SE2d 77 (Ct. App. 2006). Regarding the substantial evidence argument, Claimant noted the overwhelming weight of the evidence supported the Commission's determination that Mr. Lugo suffers incomplete paraplegia. Three authorized treating physicians completed questionnaires confirming Mr. Lugo met the definition of incomplete paraplegia recognized by the International Standards of Neurologic Classification of Spinal Cord Injury and the American Spinal Injury Association (ASIA) which were adopted by South Carolina's Court of Appeals in *Reed-Richards*. Additionally, a fourth authorized treating doctor diagnosed Mr. Lugo with Cauda Equina Syndrome which is a subcategory of incomplete paraplegia. The only evidence Defendant/Appellant relied upon to dispute the diagnosis of incomplete paraplegia was its IME doctor's opinion. However, the IME doctor acknowledged in his deposition that he was not relying on the recognized medical standard, but his own personal opinion.

STANDARD-OF REVIEW

According to *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E. 2d 304, the *Administrative Procedures Act*, §1-23-380 provides the scope of judicial review for Workers' Compensation Commission appeals. Specifically, the *Administrative Procedures Act* provides that:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;



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Code for “Incomplete Paraplegia”; *Reed-Richard v. Clemson University*, 371 S.C. 304, 638 SE2d 77 (Ct. App. 2006); *State of Ohio Ex. Rel. Owens Corning Fiberglass, Relator, The Industrial Commission of Ohio and Mark F. Roberts Respondents*, 2004-Ohio-38-41 (Ct. App. OH); and, the opinions of Dr. Mourtada (APA 2, pg. 21), Dr. Nowatka (APA #15, pg. 128), Dr. Stressing (APA #1, pg. 13B);, and Dr. Ringel (APA 17, pg. 152).

2. In 2006, the same year that this accident occurred, the South Carolina Court of Appeals ruled that “incomplete paraplegia” amounts to paraplegia for the purpose of awarding lifetime benefits under 42-9-10, *Reed-Richard v. Clemson University*, 371 S.C. 304, 638 SE2d 77 (Ct. App. 2006).
3. There was sufficient and substantial evidence to establish Claimant suffers from “incomplete paraplegia”, based upon the Claimant’s testimony, and the opinion of the authorized treating pain management doctor, Dr. Husam Mourtada, Board Certified in Physical Medicine and Rehabilitation per APA 3, pg. 21; the opinion of the authorized treating urologist, Dr. Albert Stressing, Board Certified in Urology, per APA 1, pg. 13B; the opinion of the authorized treating primary care doctor, Dr. Thomas Nowatka, Board Certified in Internal Medicine, in APA 15, pg. 128, and the opinion of the authorized neurologist, Dr. Robert Ringel, Board Certified in Neurology, per APA #17, pg. 152.
4. It was proper for the Commission to give greater weight to the opinions of the three authorized treating physicians that relied on the accepted definition of “Incomplete Paraplegia”, than the opinion of Defendants’ IME doctor who acknowledged under oath he was not using the accepted definition and whose

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definition was inconsistent with applicable case law and accepted medical science, based on APA's of Claimant's treating doctors, Dr. Stressing (APA #1), Dr. Mourtada (APA#3), and Dr. Nowatka (APA #15); Medical Journal articles submitted by Claimant, ICD-10 Code for "incomplete paraplegia"; Reed-Richard v. Clemson University, 371 S.C. 304, 638 SE2d 77 (Ct. App. 2006); Dr. Kanos depo., pg. 17, lines 17-25; pg. 18, lines 1-19; pg. 20, lines 12-25; pg. 21, 23, 24, 27, 28, 29.

5. The Commission was in the best position to make determinations regarding the credibility of witnesses and appropriate weight to be given evidence and the record reflects that the Commission properly relied upon the relevant testimony, medical records and other evidence presented at the hearing, based on the testimony of Jesus Lugo, deposition of Dr. Kanos, and APA #2, pg. 21; APA #15, pg. 128; APA #1, pg. 13B; APA #17, pg. 152; APA #3; pg. 21; APA #1; APA #3; APA #15.

CONCLUSIONS OF LAW

1. The Court must defer to the Commission on its determinations of credibility and how it weighed the testimony and documentary evidence. "The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact." *S.C. Code Ann.* §1-23-380(A)(6). "The final determination of witness credibility and the weight to be accorded evidence is left to the Full Commission." *Ross v. American Red Cross*, 298 S.C. 490, 381 S.E.2d 728 (1989), as cited in *McGuffin v. Schlumberger-Sangamo*, 307 S.C. 184, 414 S.E.2d 162. (1992)



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2. The decisions of both the Single Commissioner and the Appellate Panel were supported by substantial evidence. *Gattis v. Murrells Inlet VFW # 10420*, 353 S.C. 100, 576 S.E.2d 191, rehearing denied (Ct. App. 2003).
3. Pursuant to South Carolina Code Ann. § 42-1-160, Claimant sustained a compensable injury by accident to his back and both legs resulting in incomplete paraplegia, urological system, bladder/bowel, stomach/digestive tract, skin, coronary system, and psyche, pursuant to the terms of the South Carolina Workers' Compensation Act. An "accident" is an "unlooked for and unward event that the person who suffered the injury did not expect design intentionally cause." *Yates v. Life Ins. Co.*, 291 S.C. 301, 304, 353 S.E.2d 297, 299 (Ct. App. 1987). . . .
4. The definition of "incomplete paraplegia" that the three authorized treating doctors have endorsed comes directly from the American Spinal Injury Association's (ASIA) guidelines for Neurological Classification of Spinal Cord Injuries, and the International Standards of Neurologic Classification of Spinal Cord Injury, Revised Sixth Edition, dated 2000. ASIA and the International Standards of Neurologic Classification of Spinal Cord Injury have been recognized and accepted by the medical community as the gold standard for assessing Spinal Cord Injury to include "incomplete paraplegia." In *Reed-Richards v. Clemson University*, 371 S.C. 304, 638 SE2d 77 (Ct. App. 2006), South Carolina expressly recognized and adopted this definition for incomplete paraplegia.

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5. "Section 42-9-10(C) awards lifetime benefits for totally disabled claimants suffering "physical brain damage" as an exception to the normal five-hundred-week limitation along with only two other conditions: paraplegia and quadriplegia. Both of these conditions are by definition severe, permanent physical impairments." (Emphasis added). Sparks v. Palmetto Hardwood, No. 27229, May 22, 2013.

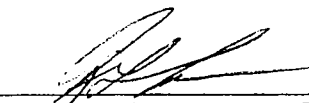
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6. Per *Reed-Richards* and South Carolina Code Ann. §42-9-10, a finding of "incomplete paraplegia" is consistent with being a paraplegic, for purposes of determining a Claimant's eligibility to receive benefits for life not subject to the five hundred week limitation.

7. Pursuant to South Carolina Code Ann. §42-9-10 and *Reed-Richards*, Claimant is totally and permanently disabled and a paraplegic as a result of his compensable injury, and therefore entitled to lifetime benefits at the weekly rate of \$616.48 and lifetime medical treatment for all his causally-related medical problems.

THEREFORE, IT IS HEREBY ORDERED that substantial evidence supports the Appellate Panel's findings and conclusions that Mr. Lugo suffers from incomplete paraplegia, and that his incomplete paraplegia entitles him to lifetime benefits in accordance with 42-9-10 and *Reed-Richards*.

IT IS SO ORDERED



The Honorable Roger L. Couch
Seventh Circuit

Spartanburg, South Carolina

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