

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

COMMISSION PANEL: THE HONORABLE T. SCOTT BECK, THE
HONORABLE SUSAN S. BARDEN; THE HONORABLE ANDREA C. ROCHE

SCWCC FILE NO.: 1214593

Leroy Radford,

Claimant

v.

Goodwill Industries of Lower SC,

Employer, and

PA Manufacturers Association Insurance Co.,

Carrier, Defendants.

Hearing held in Columbia,
South Carolina on September 17th, 2013
Per notice timely and properly served upon all Parties of Interest.

Appearances: Mr. Leroy Radford, Claimant pro se, for Claimant/
Appellant

Anne V. Noonan, Attorney at Law for Defendants/
Respondents

Filed:

1-10-14

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SC Court of Appeals

STATEMENT OF THE CASE

Leroy Radford (Claimant) suffered a work accident arising out of and in the course of his employment with Goodwill Industries of Lower SC (Employer) on July 4, 2012, when during the course of moving a television with a co-worker, the television was released by the co-worker, leaving Claimant attempting to hold it on his own before he fell. Claimant fell onto his right leg/hip/back. As a result of the work accident, Employer and its Carrier, PA Manufacturers Association Insurance Company (collectively "Defendants") admitted the accident and provided treatment to Claimant's thoracic spine only.

After the date of injury, Claimant was treated conservatively for multiple contusions, back pain, and thoracic pain.

On January 14, 2013, Claimant filed a Form 50 alleging injury to the upper back, neck and head, and requested a hearing. Defendants in their Form 51 dated February 1, 2013, admitted injury to Claimant's thoracic spine only. A hearing was held before Commissioner McCaskill in Conway, South Carolina, on March 26, 2013.

Claimant sought a determination of whether Claimant's alleged neck and head injuries were causally related to the July 4, 2012, accident and thereby compensable. Claimant further sought a determination of whether Claimant was entitled to additional medical treatment to his neck and head. Claimant argued that on the date of accident he also hit his head when he fell thereby causing injury to his neck. Claimant further argued that he reported neck pain to treating physicians the day after the accident, but that the doctor simply failed to note this complaint. Defendants argued that Claimant's cervical spine injury does not relate to the July 4, 2012, work accident, and is therefore not compensable, in that Defendants contended that Claimant did not complain of neck pain until more than two months after the accident. Defendants also insisted that an MRI of Claimant's cervical spine supports their defense of non-compensability because the MRI indicated degenerative changes only. Finally, Defendants argued that because Claimant's

neck injury is not compensable, he is not entitled to any benefits under the Act for the unrelated neck or head claim.

On May 13th, 2013, the single Commissioner issued his Decision and Order containing the following findings of fact and conclusions of law:¹

FINDINGS OF FACT

1. *That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Leroy Radford as Employee-Claimant and Lower SC Goodwill Industries as Employer and PA Manufacturers Assn. Ins. Co. as Carrier, Defendants.*

2. *That the average weekly wage of Employee at the time of the above-described accident was \$140.62, and his compensation rate was \$93.75.*

3. *The Claimant suffered an injury to his back – specifically to his thoracic spine (there was an initial report of lumbar pain and knee pain as well) arising out of and within the course and scope of his employment on July 4, 2012.*

4. *The Defendants have provided medical care and treatment for his injury. That treatment focused on the thoracic spine.*

5. *The Claimant is now alleging an injury to his cervical spine/neck as well.*

6. *The Claimant does complain of pain in his neck, but does not do so until more than two months after his accident.*

7. *While he says he has had a "severe" neck pain since the day after his accident, I find it troubling that he treats for some weeks without reporting that "severe" neck pain.*

8. *An assertion by the Claimant that he told the medical professionals of his neck pain from the onset of treatment and they failed to listen is simply unbelievable.*

9. *An MRI on 10/02/12 shows that he does have "degenerative change" to the cervical spine.*

10. *The Claimant is 70 years-old.*

¹ Pursuant to the Order of Commissioner James, dated May 2nd, 2013, Attorney Jill Wright was relieved as attorney of record for the Claimant. Claimant proceeded with his appeal pro se.

11. Dr. Merritt does say on October 9, 2012, that the Claimant has "Cervical degenerative joint disease with associated work-injury." He also says in that report, "MRI does reveal some moderate cervical DJD, particularly at the C6-C7 level. There is (sic) no fractures, pathological lesions, or other problems."

12. The PT notes in this case do not reflect complaints as to neck pain.

13. The initial medical report on July 4, 2012, reflects complaints of pain in the lumbar and thoracic regions of the back as well as knee pain.

14. The Claimant suffers from degenerative joint disease and may well have accompanying pain from that condition.

15. When the evidence is considered as a whole and based on the greater weight of the evidence, the Claimant simply has not met his burden to causally relate his neck condition and accompanying pain to this accident.

16. Medical treatment to the cervical spine and neck as causally related to his accident of July 4, 2012, is denied.

17. Medical treatment to the head as causally related to his accident of July 4, 2012, is denied.

18. All other issues are held in abeyance.

RULINGS OF LAW

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant suffered an injury to his back only. Specifically to his thoracic spine, as a result of his work injury on July 4, 2012.

3. Under § 42-1-160, Claimant did not sustain an injury to his neck, specifically his cervical spine, or head, by accident arising out of and in the course and scope of his employment on July 4, 2012.

4. Under § 42-15-60, Claimant is not entitled to medical treatment provided by Defendants for his neck or head.

ORDER AND AWARD

IT IS ORDERED that as a result of Claimant's accidental injury occurring on July 4, 2012, Claimant sustained a compensable injury to his back for which Defendants have been providing causally related medical treatment.

IT IS FURTHER ORDERED that Claimant did not sustain a compensable injury to his neck or head as a result of the July 4, 2012, accident. Therefore, Defendants are not obligated to provide medical treatment for Claimant's neck or head.

No hearing costs are assessed in this instance.

ISSUES ON APPEAL

Claimant filed a Form 30 Request for Commission Review of the Decision and Order of Commissioner McCaskill, contending that he also injured his neck.

FULL COMMISSION FINDINGS OF FACT

Following a Hearing before the appellate panel of the Workers' Compensation Commission, the Full Commission makes the following findings of fact:

1. The Appellate Panel affirms the decision of the Hearing Commissioner that Claimant injured his back, but reverses the finding that Claimant's neck was not injured. The Panel finds compelling the video capturing the accident itself, and further finds that Claimant complained of neck problems one month after date of the accident at the very latest.

2. Videotape of the Claimant's accident was submitted into evidence and reviewed by the Appellate Panel at regular speed and in slow motion. The Panel finds as a fact that the videotape depicts the following:

As Claimant loses his grip of the television and then his balance, he initially lands on his right leg/hip but then forcefully rolls onto his shoulder and spine. As Claimant continues to roll to the ground, his head and torso go out of view, but Claimant's feet fly up in the air. The fact that Claimant's feet fly up in the air renders his testimony -- that his neck and head hit the ground -- very credible. Claimant then comes back up to a sitting position.

3. The Appellate Panel reverses Finding of Fact number 15, and finds that the problems with Claimant's neck are causally related to his injury by accident on July 4th, 2012.
4. The Appellate Panel reverses Finding of Fact number 16, and finds that Claimant is entitled to medical treatment for the cervical spine.
5. As Claimant only requested a finding of compensability with regard to his neck during oral argument, we affirm the single Commissioner's finding that the head is not a compensable body part.
6. What further bolsters Claimant's credibility is the fact that although Claimant's knee was clearly injured, Claimant readily admitted to providers that his knee injury had resolved.
7. Claimant is to receive an evaluation and appropriate treatment for his neck with a specialist until he reaches maximum medical improvement.

FULL COMMISSION RULINGS OF LAW

Following a Hearing before the above-mentioned appellate panel of the Workers' Compensation Commission, the Full Commission makes the following Rulings of Law:

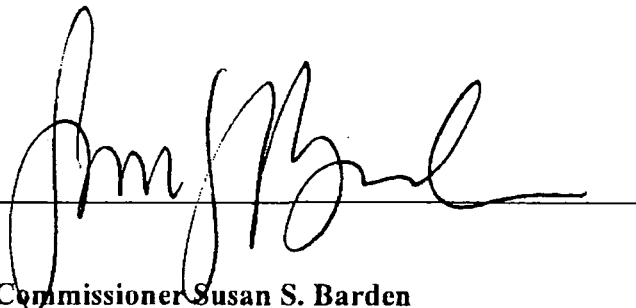
1. Claimant sustained a compensable injury by accident to his neck arising out of and in the course of his employment on July 4th, 2012, pursuant to § 42-1-160.

2. The Appellate Panel reverses Ruling of Law number 2, and finds that under § 42-1-160, Claimant suffered an injury to his back and neck as a result of his injury on July 4th, 2012.
3. The Appellate Panel reverses Ruling of Law number 3 and finds that under § 42-1-160, Claimant suffered an injury to his cervical spine. The Panel affirms the finding that Claimant did not sustain an injury by accident to his head.
4. The Appellate Panel reverses Ruling of Law number 4, and finds Claimant is entitled to medical treatment provided by Defendants for his neck under § 42-15-60. The Panel affirms the finding that Claimant is not entitled to medical treatment for his head.

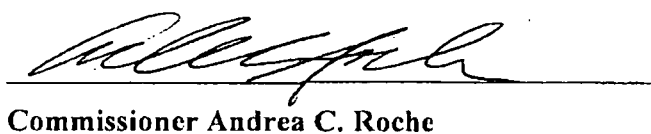
ORDER

IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner is Affirmed in Part and Reversed in Part. It is Ordered that the portions of the Decision and Order finding Claimant did not sustain a compensable injury by accident arising out of and in the course of his employment with Defendants to his neck are hereby Reversed. It is Ordered that Claimant sustained an injury by accident arising out of and in the course of his employment to his neck on July 4th, 2012 and is entitled to causally related medical treatment until he reaches maximum medical improvement. All other portions of the Decision and Order of the Single Commissioner are hereby Affirmed.

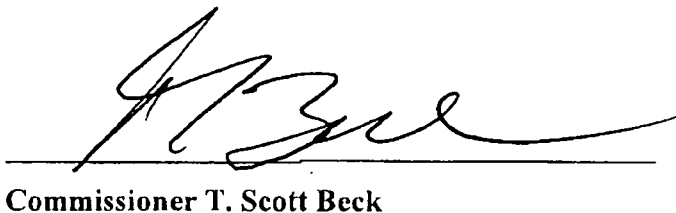
AFFIRMED IN PART AND REVERSED IN PART.



Commissioner Susan S. Barden



Commissioner Andrea C. Roche



Commissioner T. Scott Beck

Columbia, South Carolina

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 10 day of January, 2004
By Valerie D Deller
Administrative Assistant to the Commissioner