ORIGINAL

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

CASE No. 2012-CP-32-02093
CASE No. 2012-CP-32-02111

Ricky D. Kneece,

Employee

Claimant/Appellant,

vs.

Kneece Farms,

Employer,

and

Legion in Liquidation and the South Carolina Property and Casualty Insurance Guaranty Association,

Carrier,

Defendants/Respondents.

RECEIVED
SC Court of Appeals

ORDER DENYING DEFENDANT'S RULE 59(e) MOTION TO ALTER OR AMEND JUDGMENT

FILED
2013 APR 25 A 10:06
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

The Defendant/Respondents have moved for an order, pursuant to Rule 59(e) SCRCP, to alter or amend the Court's order, dated July 18, 2013, in this Workers' Compensation appeal. The Court, sitting in an appellate capacity, applied the standard of review and the law applicable to the issues on appeal in its order. Moreover, the Court addressed all issues raised by Defendants/Respondents in connection with this appeal. Accordingly, the Defendants/Respondents' Motion to Alter or Amend the Court's order is DENIED.

The matter before the Court involves cross-appeals from an order of the Workers' Compensation Commission, dated April 19, 2012. In its April 19, 2012 order, the full Commission reversed the Hearing Commissioner's order of April 29, 2011, which found and

concluded that the Claimant/Appellant was totally and permanently disabled under the Workers' Compensation Act and awarded Claimant/Appellant benefits to include those required by S.C. Code Ann. § 42-9-10(C) due to his physical brain damage. The Defendants/Respondents appealed the Hearing Commissioner's order to the full Workers' Compensation Commission. However, the full Commission reversed only that provision of the Hearing Commissioner's order which found that the Claimant/Appellant had suffered brain damage and ordered that Claimant/Appellant be awarded benefits under S.C. Code Ann. Reg. § 67-1101. The full Commission affirmed the Hearing Commissioner's order in all other respects. The Claimant/Appellant appealed the full Commission's order finding that the Claimant/Appellant did not suffer brain damage to the Circuit Court, seeking to overturn the finding and restore the benefits granted under S.C. Code Ann. § 42-9-10(C). The Defendants/Respondents appealed the provisions of the full Commission's order affirming the award of all other benefits under the Act.

In reversing the full Commission's April 9, 2012 order, the Court held that the full Commission erred in finding and concluding that the Claimant/Appellant did not suffer physical brain damage. The Court further concluded that on this record, the Claimant/Appellant was totally and permanently disabled with physical brain damage and entitled to benefits under S.C. Code Ann. § 42-9-10(C), and remanded the matter back to the Workers' Compensation Commission for the entry of an order awarding Claimant/Appellant benefits under S.C. Code Ann. § 42-9-10(C). The Court concluded that the Defendants/Respondents' appeal was without merit and denied relief.

In its Order dated July 18, 2013, the Court fully considered the evidence, law, and arguments and, based on the record, reversed the full Commission. Consequently, the Defendants/Respondents' Rule 59(e) Motion to Alter or Amend the Judgment is denied.

RULE 59(E) STANDARD

Rule 59(e) SCRCP provides for a Motion to Alter or Amend the Court's judgment to preserve the record for appeal. *Pelican Building Centers v. Dutton*, 311 S.C. 56, 427 S.E.2d 673 (1993). The motion provides the Circuit Court with an opportunity to rule properly after it has considered all relevant facts, law, and arguments. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000). A party cannot use Rule 59(e) to present the court with an issue the party could have raised prior to the judgment but did not. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

DISCUSSION

The Defendants/Respondents argue that this Court misapplied the standard of review. As set out below, this Court, sitting in its appellate capacity, applied the proper standard of review to the issues on appeal.

The Administrative Procedures Act (APA) "governs appellate review of a final decision from an administrative agency." *Hill v. Eagle Motor Lines*, 373 S.C. 422, 427, 645 S.E.2d 424, 428 (2007); *see* S.C. Code Ann. §§ 1-23-310, et seq. Under the APA, this Court "may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact." S.C. Code Ann. § 1-23-380(A)(5); *Shealy v. Aiken Cnty.*, 341 S.C. 448, 455, 535 S.E.2d 442 (2000). However, the full Commission's factual findings may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. *Houston v. Deloach & Deloach*, 378 S.C. 543, 663 S.E.2d 85 (Ct. App. 2008). Moreover, the full Commission's findings must be based on the reliable, probative,

and substantial evidence on the whole record and must not be arbitrary or capricious. S.C. Code § 1-23-380(A)(5)(e)(f).

Applying the recent decisions of the Supreme Court in *Sparks v. Palmetto Hardwood, Inc. and Palmetto Timber S.I. Fund*, 406 S.C. 124, 126, 750 S.E.2d 61, 62 (2013), reh'g denied (Aug. 8, 2013) and *Crisp v. SouthCo., Inc.*, 401 S.C. 627, 631, 738 S.E.2d 835, 837 (2013), the Court concludes that the Claimant/Appellant had suffered physical brain damage compensable under S.C. Code § 42-9-10(C). To be compensable under S.C. Code § 42-9-10(C), "the physical brain damage must be severe." Citing *Crisp v. SouthCo.*, the Court concludes that for physical brain damage to be severe, a worker with severe physical brain damage must be unable to return to suitable gainful employment. Further, the holding in *Crisp* is consistent with existing case law, which provides that total disability does not require complete abject helplessness but rather is an inability to perform services other than those that are so limited in quality, dependability, or quantity that no reasonably stable job market exists for them. *McCollum v. Singer Co.*, 300 S.C. 103, 386 S.E.2d 471 (Ct. App. 1989); *Wigfall v. Tideland Utilities, Inc.*, 354 S.C. 100, 580 S.E.2d 100 (2003); *Stephenson v. Rice Services, Inc.*, 323 S.C. 113, 473 S.E.2d 699 (1996); *Lyles v. Quantum Chemical Co.*, 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993). The Court's order on July 18, 2013, sets out and applies the law applicable to the Claimant/Applicant's claim involving physical brain damage.

The Court recognizes that the full Commission's factual findings would normally be upheld on appeal unless their findings are based upon surmise, conjecture, or speculation. The record below was devoid of any reliable, probative, and substantial evidence to support the Appellant Panel's finding that:

> [t]he Commissioners find a claimant who can drive a 'complicated' computer-operated tractor for fifty (50) hours per week has not sustained physical brain injury. The claimant has sustained an injury pursuant to Regulation 67-1101.

The reliable, probative, and substantial evidence on the whole record supports the Court's order. The Claimant/Appellant's treating physicians found that the Claimant/Appellant's physical brain damage was severe and permanent. The Claimant/Appellant's family physician, Dr. Carl White, diagnosed the Claimant/Appellant to have suffered a "dead zone in his brain" as identified by an MRI. The authorized treating psychologists treating the Claimant found him to have suffered from a traumatic brain injury. None of the evidence from Claimant's treating physicians or psychologists provided a medical foundation for the Commission's finding. The Defendants/Respondents argue here, as they argued below, that their consulting physician, who admittedly did not perform extensive psychological testing, concluded that the Claimant/Appellant's head injury was mild to moderate. However, the Defendants/Respondents' evidence is contradicted by that of Dr. Tora Brawley, their own clinical psychologist. Dr. Brawley, the Defendants/Respondents' witness, concluded that as recently as January of 2011, the Claimant continued to suffer from several vegetative symptoms, chronic pain and stressors, and that the Claimant suffers from a residual brain dysfunction as a result of his accident. Lastly, Commissioner Michelle Childs in her 2005 order on this factual issue relied upon the evidence of Dr. Lenwood Smith, Claimant/Appellant's treating neurologist, that the Claimant/Appellant's brain injury was both permanent and severe and found that the Claimant/Appellant had suffered a brain injury which she described as a closed-head injury giving rise to neuro-cognitive deficits. She ordered the Defendants/Respondents to treat the Claimant/Appellant for his brain injuries. Commissioner Child's order constitutes the law of this case.

Moreover, there is no credible evidence of record that the Claimant/Appellant operated a complicated tractor. The undisputed evidence of record reflects that the Claimant/Appellant's

family has purchased a tractor which is equipped with GPS and computer-operated equipment which accommodates the Claimant/Appellant's limitations by automatically operating the tractor and its equipment allowing the Claimant/Appellant to plow, plant and fertilize. The Claimant/Appellant drives the tractor but cannot program or operate the equipment. As the record reflects, the Claimant/Appellant is only required to "mash" a button to start the equipment. A family member must program the equipment and accompany the Claimant/Appellant to the field to assist him in the event the equipment fails, and the Claimant/Appellant's family accommodates his mistakes.

The Court concludes that the medical evidence supports only the finding that the Claimant/Appellant suffered physical brain damage. Further, the Court concludes that the Claimant/Appellant's physical brain damage was so severe as to prohibit him from returning to work or finding suitable gainful employment. In support of its holding, the Court, relies on *Wigfall v. Tideland Utilities, Inc., supra*, setting out the manner in which a claimant may prove total disability under § 42-9-10. The Court held that a Claimant may demonstrate total disability in one of three ways under § 42-9-10. First, a Claimant may be presumptively totally disabled. As such, a Claimant must show a physical injury enumerated in § 42-9-10. Second, a Claimant may establish total disability under § 42-9-20 by showing an injury, which is not a § 42-9-30 schedule injury, caused sufficient loss of earning capacity to render him totally disabled. *Coleman v. Quality Concrete Prod.'s, Inc.*, 245 SC, 625, 142 S.E.2d 43 (1965). Third, the Claimant may establish total disability through multiple physical injuries. Under this scenario a Claimant who has a §42-9-30 schedule injury must show an additional injury. *Singleton, supra; see also McCollum v. Singer Co.*, 300 SC. 103, 386 S.E.2d 471 (Ct. App. 1989).

The record herein reflects that in addition to physical brain damage, the Claimant/Appellant suffered extensive injuries to his left upper and lower extremities, head and face. After two surgeries to Claimant/Appellant's left arm and elbow, Dr. Michael Green assigned 17% impairment to Claimant/Appellant's upper left extremity. After two surgeries to Claimant's left knee, Dr. James O'Leary assigned a 10% impairment rating to the Claimant/Appellant's lower left extremity. The Claimant/Appellant's permanent and severe physical brain injury has caused him memory loss, depression, irritability, chronic daily headaches, mood swings, loss of sleep and dizziness. The Claimant/Appellant's mental and emotional deficits cause him difficulties in coping with everyday life. After his psychological testing, Dr. Randolph Waid assigned a 22% whole person impairment to the Claimant/Appellant for his injuries and Dr. Larry Bergmann assigned an 11% impairment to the Claimant for the injuries for which he and Dr. Roger Deal treated the Claimant/Appellant.

The Claimant/Appellant's permanent and severe physical brain damage interferes with his abilities to operate farm equipment safely and reliably operate the family farm. The Claimant/Appellant now functions in the low average IQ range and has no formal education beyond high school. Farming is all the Claimant/Appellant knows. The Claimant/Appellant's family has purchased farming equipment which accommodates the Claimant/Appellant's disabilities. The Claimant/Appellant's family has hired farm hands to assist the Claimant/Appellant with his chores. The Claimant/Appellant's father has eliminated his income from the farm to free up funds with which to pay the Claimant/Appellant. The Claimant/Appellant's son has gone to work on the farm and performs much of the Claimant/Appellant's responsibilities. The family has managed its farming practices to maximize the farm's income while permitting the Claimant/Appellant the opportunity to work on the farm.

The Claimant/Appellant can no longer manage the farm's financial affairs and, without his wife, Claimant/Appellant would need a legal guardian to manage his affairs. Vocational expert Dr. William Stewart opined that "[i]n an open competitive labor market [the Claimant/Appellant] would find himself occasionally disabled and unable to work gainfully."

The Court holds that the Claimant/Appellant suffered a complete loss of earning capacity. Based on the authority in *Wigfall v. Tidelands Utilities, Inc., supra*, the Court holds that the Claimant/Appellant's loss of earning capacity resulting from his permanent and severe physical brain damage is totally and permanently disabling. Moreover, the Court holds that the Claimant/Appellant's schedule injuries in combination with each other and the Claimant/Appellant's non-schedule injuries are likewise totally disabling. *Wigfall v. Tidelands Utilities, Inc., supra.*

The full Commission affirmed the holding of the Hearing Commissioner that the Claimant/Appellant suffered a loss of earning capacity notwithstanding the financial support offered him by his family farm. In challenging the full Commission's finding, the Defendants/Respondents argue that South Carolina law does not recognize the doctrine of sheltered or benevolent employment. However, the Court concluded that in order to be entitled to total and permanent disability benefits, the Claimant/Appellant must be unable to perform services other than those that are so limited in quality, dependability, and quantity that a reasonable and stable market for them does not exist. Total disability under the Workers' Compensation Act does not require complete abject helplessness. Our courts have held that the mere fact of employment is not necessarily evidence of earning capacity. *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 584 S.E.2d 390 (Ct. App. 2003); *McCollum v. Singer Co.* and *Stephenson v. Rice Services, Inc., supra.*

The Court upheld the full Commission in holding that the sheltered or benevolent employment doctrine as articulated by the Commission is merely an extension of long-standing South Carolina law. See *Nelson v. Yellow Cab Co.*, 348 S.C. 589, 564 S.E.2d 110 (2002). Citing *Peoples v. Cone Mills Corp.*, 316 N.C. 426, 342 S.E.2d 798 (1986); *McCollum v. Singer Co., supra.*

Dr. Stewart, who concluded that the Claimant/Appellant suffered a total loss of earning capacity, recognized Claimant/Appellant's benevolent employment on his family farm. The Claimant/Appellant's wife testified that the Claimant/Appellant was unemployable and that Delano R. Kneece and Son, Inc. would not employ a stranger with the Claimant/Appellant's disabilities. The undisputed testimony of record reflects that those accounts paid to the Claimant/Appellant by the family farm are not intended to represent wages earned and the amount is not calculated on the basis of services performed by the Claimant/Appellant on behalf of the family farm. In addition, the Claimant/Appellant's wife testified that the Claimant/Appellant's physical brain damage would make him unable to compete in an open job market and that the family farm would not hire a farm hand with the Claimant/Appellant's disabilities and that no farming operation would go to the cost and expense of providing work accommodations for a farm hand such as the Claimant/Appellant. Accordingly, the Court affirms the full Commission on the issue of sheltered or benevolent employment.

The Defendants/Respondents argue that the Court erred in holding that the totally and permanently disabled Claimant/Appellant was entitled to weekly disability payments for life. The Defendants/Respondents argue that the Commission could only order weekly lifetime disability payments prospectively. The Defendants/Respondents' arguments fly in the face of the plain language of the statute. S.C. Code Ann. § 42-9-10(C) reads as follows:

> Notwithstanding the five-hundred-week limitation prescribed in this section or elsewhere in this title, any person determined to be totally and permanently disabled who as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage is not subject to the five-hundred-week limitation and shall receive benefits for life.

Statutes must be given their plain meaning. *Clark v. Aiken Cnty. Gov't*, 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005); *Gay v. Ariail*, 381 S.C. 341, 673 S.E.2d 418 (2009). Here, the statute means what it says. The Claimant/Appellant is not subject to any limitations but is entitled to lifetime weekly benefits from the date of his compensable injury and the Court so held.

The Defendants/Respondents argue that the Court erred in affirming the full Commission's award for Claimant/Appellant's medical treatment. The Defendants/Respondents argue that because certain of the Claimant/Appellant's medical providers which the full Commission authorized to treat the Claimant/Appellant were not selected by the Defendants/Respondents, the full Commission erred in ordering the Defendants/Respondents to pay for the Claimant/Appellant's past and future medical treatment and mileage. The Defendants/Respondents do not contend that the Claimant/Appellant did not benefit from the treatment of these providers. Rather the Defendants complain about having to pay for the treatment. The full Commission, when it deems is necessary, and in the Claimant/Appellant's interest, may override the employer's choice of medical providers and order a change in the medical or hospital services provided and order payment of those medical services. *Clark v. Aiken Cnty. Gov't*, 366 S.C. 102, 620 S.E.2d 99 (Ct. App. 2005). The Court affirmed the full Commission in that regard.

Moreover, the Defendants/Respondents argue that the full Commission erred in failing to hold these medical costs to be barred by the equitable doctrine of laches. Throughout the life of the claim, the Claimant/Appellant sought and the Defendants/Respondents provided medical benefits under the Workers' Compensation Act. The Defendants/Respondents can claim no

prejudice arising from the length of time of the claim. The Defendants/Respondents' partial compliance with the Act disproves any such prejudice as is required by the doctrine of laches. *Muir v. C.R. Baird, Inc.*, 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999). Here, the Defendants/Respondents well knew that the Claimant/Appellant suffered permanent and severe physical brain damage and was undergoing for treatment for his injuries from Dr. Bergmann and Dr. Deal. Indeed, the Defendants/Respondents were paying for part of Claimant/Appellant's medical treatment for his injuries. There was no delay in prosecuting the claim nor were the Defendants/Respondents prejudiced. The Court held that the doctrine of laches does not apply.

Accordingly, the Court affirmed the full Commission awarded of medical benefits to the Claimant/Appellant.

CONCLUSION

Based on the foregoing, the Court holds that the Defendants/Respondents' Rule 59(e) Motion to Alter or Amend Judgment be DENIED. The Court applied the standard of review and the applicable substantive law to the issues on appeal. Having done so, the Court holds that based on the evidence of record, viewed as a whole, the Claimant/Appellant is totally and permanently disabled with physical brain damage and entitled to an award of benefits under S.C. Code Ann. § 42-9-10(C). The Court's reversal of the full Commission on this issue was in all respects consistent with the reliable, probative, and substantial evidence based on the whole record. In addition, the Court affirms the full Commission order in all respects raised by the Defendants/Respondents' appeal.

THEREFORE, IT IS ORDERED that the Defendants/Respondents' Motion to Reconsider pursuant to Rule 59(e) is **DENIED**, and the prior ruling is reaffirmed in toto.

The Honorable R. Knox McMahon
Presiding Judge,
Sixth Judicial Circuit

Lexington, South Carolina
April 24, 2014

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3202093

Ricky D Kneece	**Kneece Farms** **South Carolina Property and Casualty Insurance Guaranty Asso** **Virginia Crocker** **(Judicial Director)**	**Legion in Liquidation South Carolina Workers Compensation Commission**
PLAINTIFF(S)		**DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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: _____

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.**

4/30/2014

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **1st of May 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Scott A. Elliott 1508 Lady St. Columbia, SC 29201

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ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.