

APPELLATE PANEL  
DECISION AND ORDER OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO.: 1120132

**CARL F. KOBS,**  
EMPLOYEE,  
CLAIMANT/RESPONDENT,

vs.

**DADE PAPER,**  
EMPLOYER,

and

**TWIN CITY FIRE INSURANCE COMPANY**  
**c/o GALLAGHER BASSETT SERVICES INC.,**  
CARRIER,

DEFENDANTS/APPELLANTS.

APPELLATE HEARING:

Held in Columbia, South Carolina on March 18, 2014

APPEARANCES:

Ryan T. LeBlanc, Esquire, on behalf of the  
Employee/Respondent.

Benjamin T. Cruse, Esquire, on behalf of the  
Employer - Carrier/ Appellants.

PURPOSE OF HEARING:

To determine issues as set forth on Appellants' Form  
30.

FILED:

June 5, 2014

**STATEMENT OF THE CASE**

The parties were heard by Commissioner Gene McCaskill on July 30, 2013 in Columbia, South Carolina. On October 16, 2013, he issued the following Order:

**IT IS HEREBY ORDERED** that the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment with Defendants on September 12, 2011, involving injury to his left shoulder and cervical spine.

**IT IS FURTHER ORDERED** that Claimant is entitled to additional medical care and treatment of the left shoulder and neck with a neurologist of the Defendants' choosing.

**IT IS FURTHER ORDERED** that all other issues, including Claimant's correct average weekly wage and corresponding compensation rate are held in abeyance for future resolution or hearing.

Within the statutory period, counsel for the Defendants, Erin Hantske, Esquire, and Benjamin Cruse, Esquire, filed a Form 30 Request for Commission Review in the case setting forth his reasons and copies of which were furnished to all interested parties prior to the scheduled oral argument on October 25, 2013. All proffered testimony has been taken. As such, together with documentary evidence, this has been delivered to the individual members of the Full Commission and has been under study in consideration.

By appeal Defendant respectfully submits the following:

1. Did the Hearing Commissioner err in Finding of Fact that Dr. James K. Aymond evaluated Claimant on June 28, 2013 and "cannot explain the Claimant's neck pain" when such finding is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

2. Did the Hearing Commissioner err in Finding of Fact that Dr. Aymond recommends that the Claimant undergo an evaluation by a neurologist or physical medical rehabilitation

specialist when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

3. Did the Hearing Commissioner err in Finding of Fact that the Claimant has met his burden of proof as to the compensability of the neck when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

4. Did the Hearing Commissioner err in Finding of Fact that Claimant is entitled to medical care and treatment of the neck with a neurologist of Defendants' choosing when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

5. Did the Hearing Commissioner err in Conclusion of Law No. 1 that pursuant to S.C. Code Ann §42-1-160, the Claimant sustained a compensable work related accident arising out of and in the course and scope of his employment with the Defendants on September 12, 2011, involving compensable injuries to the left shoulder and cervical spine when such conclusion is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

6. Did the Hearing Commissioner err in Conclusion of Law No. 2 that pursuant to S.C. Code Ann §42-15-60, Claimant is entitled to ongoing medical treatment for his admitted left shoulder injury as well as medical care and treatment for the neck injury with a neurologist of the Defendants' choosing when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

7. Did the Hearing Commissioner err in Ordering that the Claimant suffered a compensable injury by accident arising out of and in the course and scope of his employment

with Defendants on September 12, 2011, involving injury to his left shoulder and cervical spine when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

8. Did the Hearing Commissioner err in Ordering that Claimant is entitled to additional medical care and treatment of the left shoulder and neck with a neurologist of the Defendants' choosing when such is against the greater weight and preponderance of the substantial evidence in the record and is based upon erroneous legal conclusions?

The Single Commissioner made the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

After due consideration of the testimony presented, APA submissions, medical evidence, and additional documentation in the record, the undersigned Commissioner makes the following Findings of Fact as required under § 42-17-40, South Carolina Code of Laws, 1976, as Amended:

1 . The Claimant suffered an injury by accident arising out of and within the course and scope of his employment on September 12, 2011. This finding is based upon the respective pleadings and medical record as a whole.

2. As a result of Claimant's admitted injury by accident arising out of and in the course and scope of his employment on September 12, 2011, the Defendants have admitted injury to the left shoulder and have provided medical care and treatment for that injury. This finding is based upon pleadings of the parties and the medical record as a whole, as well as Claimant's hearing testimony.

3. The only question at bar in this hearing is as to the compensability of Claimant's alleged neck injury. This finding is based upon the pleadings of the parties.

4. While the Claimant received causally-related medical treatment from the time of his work-related accident going forward, the first complaint as to the neck is not until July 20, 2012. This finding is based upon the medical record as a whole, specifically, the medical records from Dr. James Spearman dated July 16, 2012. (Claimant's APA p. 45).

5. A review of the medical records in evidence shows that Claimant suffers from degenerative disc disease in his cervical spine. This finding is based upon the medical record as a whole, specifically medical records from Dr. Spearman dated September 12, 2011. (Claimant's APA p. 22).

6. Dr. James D. Spearman, a board certified orthopaedic surgeon, who is the authorized treating physician, writes in a medical note on January 14, 2013, "The patient has a problem with pain in his shoulder, radiating down his arm. He also has decreased range of motion in his cervical spine. He has tingling occasionally into the hands." He goes on to say, "It appears that the patient had a pre-existing cervical condition, which has been exacerbated and is involved with his left shoulder." This finding is based upon medical records from Dr. James Spearman dated January 14, 2013, Claimant's APA p. 52.

7. The Defendants arranged for the Claimant to see Dr. James K. Aymond for an IME on June 28, 2013. Dr. Aymond is also a board certified orthopaedist. He is not a neurologist. Dr. Aymond cannot explain the Claimant's neck pain. Dr. Aymond recommends that the Claimant undergo an evaluation by a neurologist or physical medicine rehabilitation specialist. This finding is based upon the medical records of Dr. Aymond dated June 28, 2013. (Defendants APA pgs. 8-10).

8. Based upon the evidence as a whole, and giving great weight to the opinion of the authorized treating physician, the undersigned finds the Claimant has met his burden of proof as to the compensability of the neck.

9. As such, the undersigned finds the Claimant is entitled to medical care and treatment of the neck with a neurologist of the Defendants' choosing.

10. All other issues, including Claimant's correct average weekly wage and corresponding compensation rate are held in abeyance for future resolution or hearing.

### **CONCLUSIONS OF LAW**

Accordingly, as provided in the S.C. Workers' Compensation Act, the undersigned Commissioner makes the following conclusions of law:

1. Pursuant to S.C. Code Ann. Section 42-1-160, the Claimant sustained a compensable work related accident arising out and in the course and scope of his employment with the Defendants on September 12, 2011, involving compensable injuries to his left shoulder and cervical spine.

2. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is entitled to ongoing medical treatment for his admitted left shoulder injury as well as medical care and treatment for the neck injury with a neurologist of the Defendants' choosing.

### **STATEMENT OF THE CASE**

On October 25, 2013, the Defendant filed a Form 30, Request for Commission Review, appealing eight specific findings by the Single Commissioner. The basis of their appeal is whether the Single Commissioner erred in finding that the Claimant sustained a compensable injury to his neck. On March 18, the Full Commission heard the Defendant's appeal.

## **FINDINGS OF FACT**

After due consideration of the testimony presented, APA submissions, medical evidence, and additional documentation in the record, the undersigned Commissioners make the following Findings of Fact as required under § 42-17-40, South Carolina Code of Laws, 1976, as Amended:

1 . The Claimant suffered an injury by accident arising out of and within the course and scope of his employment on September 12, 2011. This finding is based upon the respective pleadings and medical record as a whole.

2. As a result of Claimant's admitted injury by accident arising out of and in the course and scope of his employment on September 12, 2011, the Defendants have admitted injury to the left shoulder and have provided medical care and treatment for that injury. This finding is based upon pleadings of the parties and the medical record as a whole, as well as Claimant's hearing testimony.

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3. The only question at bar in this hearing is as to the compensability of Claimant's alleged neck injury. This finding is based upon the pleadings of the parties.

4. While the Claimant received causally-related medical treatment from the time of his work-related accident going forward, the first complaint as to the neck is not until July 20, 2012. This finding is based upon the medical record as a whole, specifically, the medical records from Dr. James Spearman dated July 16, 2012. (Claimant's APA p. 45).

5. A review of the medical records in evidence shows that Claimant suffers from degenerative disc disease in his cervical spine. This finding is based upon the medical record as a whole, specifically medical records from Dr. Spearman dated September 12, 2011. (Claimant's APA p. 22).

6. Dr. James D. Spearman, a board certified orthopaedic surgeon, who is the authorized treating physician, writes in a medical note on January 14, 2013, "The patient has a problem with pain in his shoulder, radiating down his arm. He also has decreased range of motion in his cervical spine. He has tingling occasionally into the hands." He goes on to say, "It appears that the patient had a pre-existing cervical condition, which has been exacerbated and is involved with his left shoulder." This finding is based upon medical records from Dr. James Spearman dated January 14, 2013, Claimant's APA p. 52.

7. The Defendants arranged for the Claimant to see Dr. James K. Aymond for an IME on June 28, 2013. Dr. Aymond is also a board certified orthopaedist. He is not a neurologist. Dr. Aymond cannot explain the Claimant's neck pain. Dr. Aymond recommends that the Claimant undergo an evaluation by a neurologist or physical medicine rehabilitation specialist. This finding is based upon the medical records of Dr. Aymond dated June 28, 2013. (Defendants APA pgs. 8-10).

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8. Based upon the evidence as a whole, and giving great weight to the opinion of the authorized treating physician, the undersigned finds the Claimant has met his burden of proof as to the compensability of the neck.

9. As such, the undersigned finds the Claimant is entitled to medical care and treatment of the neck with a neurologist of the Defendants' choosing.

10. All other issues, including Claimant's correct average weekly wage and corresponding compensation rate are held in abeyance for future resolution or hearing.

#### **CONCLUSIONS OF LAW**

Accordingly, as provided in the S.C. Workers' Compensation Act, the undersigned Commissioners make the following conclusions of law:

1. Pursuant to S.C. Code Ann. Section 42-1-160, the Claimant sustained a compensable work related accident arising out and in the course and scope of his employment with the Defendants on September 12, 2011, involving compensable injuries to his left shoulder and cervical spine.

2. Pursuant to S.C. Code Ann. Section 42-15-60, Claimant is entitled to ongoing medical treatment for his admitted left shoulder injury as well as medical care and treatment for the neck injury with a neurologist of the Defendants' choosing.

**ORDER**

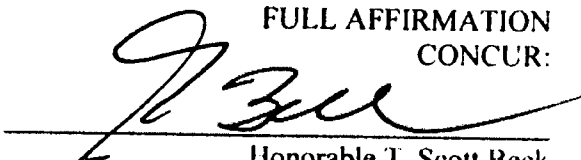
**IT IS THEREFORE ORDERED** the South Carolina Workers' Compensation Full Commission Appellate Panel finds a Full Affirmation of the Single Commissioner's Decision and Order and thus, the Single Commissioner's Order on October 16, 2013 shall constitute the Decision and Order of the Appellate Panel.


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**AND IT IS SO ORDERED!**

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

  
Honorable Melody L. James  
Chairman Commissioner

FULL AFFIRMATION  
CONCUR:  
  
Honorable T. Scott Beck  
Commissioner



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Honorable Aisha Taylor  
Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Kim Falls on June 5, 2014***