

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

WCC FILE NO. 1108188

Russell Goodwin,

APPELLANT
CLAIMANT,

vs.

Employbridge dba Prologistix,

EMPLOYER,

AND

American Casualty Company of Reading PA,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on February 18, 2014 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed

 MAY 20 , 2014

APPEARANCES:

Appellate Russell Goodwin, Claimant, of Eastover, South
Carolina, appeared Pro Se.

Defendants/RESPONDENTS represented by Justin T.
Williams, Esquire of Willson Jones Carter & Baxley, P.A. in
Columbia, South Carolina.

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SC Court of Appeals

STATEMENT OF THE CASE

The parties were heard by Commissioner Aisha G. Taylor, on June 12, 2013, in Columbia, South Carolina. On July 15, 2013, Commissioner Taylor issued an Order from which Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following Findings of Fact:

1. Claimant was fully advised of his right to obtain counsel both during the pre-hearing conference and at the beginning of the hearing. Claimant advised the undersigned he had tried to obtain counsel on multiple occasions, but was unable to do so. Claimant elected to proceed pro se.
2. Claimant suffered an admitted injury by accident to his neck (back) within the course and scope of his employment with Employbridge dba Pro Drivers.
3. Claimant initially treated conservatively with Dr. LaMotta then surgery was recommended.
4. Defendants sent Claimant for an IME with Dr. Randall Drye who strongly advised against surgery. Dr. Drye placed Claimant at MMI with a 0% impairment rating. (Defendants' APA pp. 60-62).
5. Claimant returned to Dr. LaMotta and opted to proceed with surgery.
6. As a result of the injury to his back, Claimant ultimately underwent an anterior cervical discectomy and instrumented fusion at C6-C7. (Defendants' APA pp. 54-57).
7. On February 22, 2013, Dr. LaMotta completed a Form 14B which placed Claimant at maximum medical improvement as of September 27, 2012 with a 25% impairment rating to the whole person and a 71% impairment to the cervical spine. Dr. LaMotta issued Claimant permanent work restrictions to include no lifting over 50 pounds. Additionally, Dr. LaMotta opined Claimant would not need future medical treatment related to his work-related injury. (Defendants' APA pp.

53).

8. Defendants obtained an Employability Analysis and Labor Market Survey on May 21, 2013 from Jan Westmoreland of The Directions Group, which determined Claimant had sufficient transferrable skills necessary to find employment within his pre-injury earning capacity. This opinion was based on the medical records as well as Claimant's November 1, 2011 deposition testimony due to Claimant's refusal to meet in person to conduct the vocational evaluation. (Defendants' APA pp. 63-71).

9. Claimant testified at the hearing on his own behalf. Claimant was a very poor historian as it related to the condition of his neck injury. Instead the majority of Claimant's testimony focused on unrelated problems with his testicles, pain in his face and ears, headaches, throat problems, as well as concerns about the instrumentation used for his fusion based on internet print-outs concerning Medtronics litigation, which were admitted into evidence due to Claimant's pro se status. As it related to his neck; however, the claimant did testify he felt like the "device" in his neck was moving and that he now has two bulging disks.

10. I find Claimant's additional complaints of pain in other body parts as well as allegations that his instrumentation is moving and he has two bulging disks are unsupported by the medical evidence.

11. I find Claimant is at maximum medical improvement as of September 27, 2012 per Dr. LaMotta's Form 14B. See Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).

12. Based on the evidence as a whole, I find the Claimant has sustained a 38% PPD to his back. This finding is based on the medical evidence and the evidence as a whole, including the Claimant's age, education, background, training, vocational evaluation and permanent work restrictions.

13. Claimant is not entitled to any additional medical treatment as none has been recommended by the authorized treating physician.

14. Claimant has an average weekly wage of \$336.83 yielding a compensation rate of \$224.55.

15. Claimant is awarded a lump sum payment.

16. I find Defendants are entitled to a credit for all temporary total disability benefits paid beyond the date of Dr. LaMotta's Form 14B Physician's statement dated February 22, 2013. I base this finding on the substantial gap between the date of MMI and Dr. LaMotta's Form 14B.

17. Although this matter was set on Defendants' Form 21, I find this hearing addressed all of Claimant's allegations in his Form 50 dated April 24, 2013 and that this Decision and Order represents a final adjudication of the April 22, 2013 Form 21 and the April 24, 2013 Form 50 at the Single Commissioner level.

In addition to the above stated Findings of Fact, the Hearing Commissioner's Decision and Order also set forth the following Conclusions of Law:

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 did sustain an injury to his neck by accident arising out of and in the course and scope of his employment on July 5, 2011.

3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from July 5, 2011 until September 27, 2012, the date on which Claimant reached maximum medical improvement.

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until September 27, 2012, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical

treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 38% permanent partial disability to the neck. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since September 27, 2012.

Within the statutory period, Claimant, proceeding Pro Se, filed Form 30 Request for Commission Review on the case. Claimant did not present his grounds for appeal in the form of questions presented, but instead submitted the following written statement on a Form 59:

I (Claimant) think she (Commissioner Taylor) did not take the time to read my medical report. She did not read the report about the bulging disk until after the surgery. Dr. Drye told Dr. Lamotta that it would create more bulging disk and other problems Dr. Drye is a neurosurgeon. I feel that she did not apply any law, but friendship and political reason. She has overwhelming evidence and facts which I will attach to the paperwork. Read all the evidence start my pay back and get me help as soon as possible. Show evidence of all dr. appointments that was made after the surgery. To the workers comp commission, Dr. Lamotta said that he gave me a percentage on 9-27-12. As you can see the paperwork shows that I was in his office multiple times after that and he also stated that I had 8 more weeks before returning to work and waiting on they MRI. Since then I've had x-rays, MRIs and they all show collapsed disks has been seen by other doctors stating that I need more help but for some reason the commission believes doctor Lamotta but not the other doctors MRIs and x-rays and I want to know if I have all that and Dr. Drye's evidence that stated if I was to have the operation that more damage will cause. Please explain this to me Did the Commissioner tell you that someone stole all of my paperwork out of her files and erased it off the computer, stole my mental health records that I was going to for 8+ years. I told her that the Directional Group gave false information, as you can see there's nothing in there about my mental health condition. There was no investigation on how my paper work became missing. I had to scramble to get my paperwork back in time before my limit was up. I told here that the attorney said that they had the right commissioner in the seat I have other paperwork that show I do have to get surgery on my testicles. I have more evidence from other doctors that are saying my disks in my neck are pressing against my nerves and spinal cord that I will attach to the paperwork. (Signed by Russell Goodwin, Claimant, 10/3/13)

Copies of the above assignments of error were furnished to all parties prior to the oral arguments presented before the Appellate Panel on February 18, 2014.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed all the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the briefs of Appellant and Respondents. The Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Claimant was fully advised of his right to obtain counsel both during the pre-hearing conference and at the beginning of the hearing. Claimant advised the undersigned he had tried to obtain counsel on multiple occasions, but was unable to do so. Claimant elected to proceed Pro Se.
2. Claimant suffered an admitted injury by accident to his neck (back) within the course and scope of his employment with Employbridge dba Pro Drivers.
3. Claimant initially treated conservatively with Dr. LaMotta then surgery was recommended.
4. Defendants sent Claimant for an IME with Dr. Randall Drye who strongly advised against surgery. Dr. Drye placed Claimant at MMI with a 0% impairment rating. (Defendants' APA pp. 60-62).
5. Claimant returned to Dr. LaMotta and opted to proceed with surgery.

6. As a result of the injury to his back, Claimant ultimately underwent an anterior cervical discectomy and instrumented fusion at C6-C7. (Defendants' APA pp. 54-57).

7. On February 22, 2013, Dr. LaMotta completed a Form 14B which placed Claimant at maximum medical improvement as of September 27, 2012 with a 25% impairment rating to the whole person and a 71% impairment to the cervical spine. Dr. LaMotta issued Claimant permanent work restrictions to include no lifting over 50 pounds. Additionally, Dr. LaMotta opined Claimant would not need future medical treatment related to his work-related injury. (Defendants' APA pp. 53).

8. Defendants obtained an Employability Analysis and Labor Market Survey on May 21, 2013 from Jan Westmoreland of The Directions Group, which determined Claimant had sufficient transferrable skills necessary to find employment within his pre-injury earning capacity. This opinion was based on the medical records as well as Claimant's November 1, 2011 deposition testimony due to Claimant's refusal to meet in person to conduct the vocational evaluation. (Defendants' APA pp. 63-71).

9. Claimant testified at the hearing on his own behalf. Claimant was a very poor historian as it related to the condition of his neck injury. Instead the majority of Claimant's testimony focused on unrelated problems with his testicles, pain in his face and ears, headaches, throat problems, as well as concerns about the instrumentation used for his fusion based on internet print-outs concerning Medtronic litigation, which were admitted into evidence due to Claimant's pro se status. As it related to his neck; however, the claimant did testify he felt like the "device" in his neck was moving and that he now has two bulging disks.

10. Claimant's additional complaints of pain in other body parts as well as allegations that his instrumentation is moving and he has two bulging disks are unsupported by the medical evidence.

11. Claimant is at maximum medical improvement as of September 27, 2012 per Dr. LaMotta's Form 14B. See Gadson v. Mikasa Corp., 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).

12. Based on the evidence as a whole, Claimant has sustained a 38% PPD to his back. This finding is based on the medical evidence and the evidence as a whole, including the Claimant's age, education, background, training, vocational evaluation and permanent work restrictions.

13. Claimant is not entitled to any additional medical treatment as none has been recommended by the authorized treating physician.

14. Claimant has an average weekly wage of \$336.83 yielding a compensation rate of \$224.55.

15. Claimant is awarded a lump sum payment.

16. Defendants are entitled to a credit for all temporary total disability benefits paid beyond the date of Dr. LaMotta's Form 14B Physician's statement dated February 22, 2013. I base this finding on the substantial gap between the date of MMI and Dr. LaMotta's Form 14B.

17. Although this matter was set on Defendants' Form 21, Commissioner Taylor addressed all of Claimant's allegations in his Form 50 dated April 24, 2013 and the Decision and Order represented a final adjudication of the April 22, 2013 Form 21 and the April 24, 2013 Form 50 at the Single Commissioner level.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

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 did sustain an injury to his neck by accident arising out of and in the course and scope of his employment on July 5, 2011.

3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from July 5, 2011 until September 27, 2012, the date on which Claimant reached maximum medical improvement.

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until September 27, 2012, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 38% permanent partial disability to the neck. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since September 27, 2012.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined that the order of the Hearing Commissioner is hereby **AFFIRMED IN FULL**. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, as specified above, are hereby **AFFIRMED IN FULL**.

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ORDER

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**.

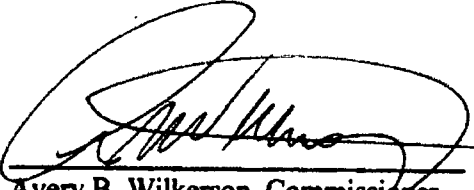
IT IS SO ORDERED

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner
For the Appellate Panel

CONCUR:



Avery B. Wilkerson, Commissioner



Andrea C. Roche, 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 May 20, 2014