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SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LAURENS )  
 )  
 Michael D. Ficklin, )  
 )  
 Employee, )  
 Claimant, )  
 )  
 v. )  
 )  
 Security Forces, Inc., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 Sentry Insurance Company, )  
 )  
 Carrier, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 Civil Action Nos. : 2011-CP-30-0273  
 : 2011-CP-30-0284  
 WCC File No. : 0320293

CIRCUIT COURT ORDER

LAURENS COUNTY  
COURT OF COMMON PLEAS

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LYNN W. LANCASTER

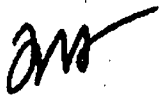
STATEMENT OF THE CASE

The above referenced matters came before this Court by way of cross-appeals from the Order of the Full Commission Appellate Panel dated February 18, 2011. This Court finds that the Full Commission Appellate Panel's decision with regard to the date of maximum medical improvement is reversed and the case remanded to the South Carolina Workers' Compensation (SCWCC) Full Commission Appellate Panel to determine a proper date of maximum medical improvement (MMI) and make a determination on the issue of credit awarded by overpayment of TTD benefits. The remainder of the Full Commission Appellate Panel's decision is affirmed in its entirety.

This claim involves an admitted work-related injury to the back occurring on January 29, 2005, when the claimant slipped on ice while working as a security guard. In addition to the

back injury, the claimant alleged he sustained injuries to his right upper extremity, right lower extremity, left hip, right hip, and psychological overlay, all of which the defendants denied. A Hearing was thereafter held to determine issues as raised on the Forms 50, 51, and 21 filed by the parties. The Hearing Commissioner ultimately awarded compensation for permanent partial disability to the back, as well as ongoing medical care pursuant to Dodge v. Bruccoli, Clark, Layman, Inc., 514 S.E.2d 593 (S.C. Ct. App. 1999). The Hearing Commissioner, however, did not make a specific finding as to the date of MMI, and awarded defendants a credit for overpayment of TTD from the date the defendants filed the Form 21 on February 8, 2008. An appeal was made to the Full Commission by both parties. Per Decision and Order filed February 18, 2011, the Full Commission affirmed the Decision and Order in its entirety. The parties timely appealed to this Court.

The claimant's position can be summarized as follows: the Full Commission erred in allowing video surveillance into the record over claimant's objection; in denying the compensability of claimant's alleged psychological injury; in awarding less than permanent and total disability; in failing to make sufficient findings of fact concerning the date of MMI, the extent of claimant's loss of earning capacity, and extent of loss of use of body parts affected other than the claimant's back. The claimant asserted he should be entitled to lump-sum payment of benefits or lifetime allocation of his award, and that the Full Commission awarded too much credit to the defendants for overpayment of TTD. The defendants, on the other hand, maintained the Commission's determination as to credit for overpaid TTD should be affirmed with the exception that MMI should have been found as of March 16, 2007, as determined by Dr. Kanos, the authorized treating neurosurgeon; and therefore, that they were not awarded enough credit for over paid TTD.



After reviewing the Orders of the Full Commission and the Hearing Commissioner, the oral arguments made by counsel for both parties, as well as the entire transcript of record, including the surveillance footage in question, and the briefs submitted by each party, this Court concludes the Appellate Panel's decision should be remanded for a determination of MMI. Further, the issue of credit is reversed and remanded for a determination of whether and from what date the defendants are entitled to credit for any overpayment of TTD. The remainder of the Panel's decision is affirmed in its entirety, as it is supported by substantial evidence in the record.

#### STANDARD OF REVIEW

Decisions of the Workers' Compensation Commission may be reversed, modified or set aside if unsupported by reliable, probative or substantial evidence on the whole record. Ellis v. Spartan Mills, 276 S.C. 216, 218, 277 S.E.2d 590, 591 (1981); S. C. Code Ann. §1-23-380(A)(6)(e). "Substantial evidence is 'not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action.'" Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002) (quoting Miller v. State Roofing Co., 312 S.C. 452, 454, 441 S.E.2d 323, 324-25 (1994)); Broughton v. South of the Border, 336 S.C. 488, 495, 520 S.E.2d 634, 637 (Ct. App. 1999). Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (Ct. App. 2005).



### LAW/ANALYSIS

The term "maximum medical improvement" means a person has reached such a plateau that, in the physician's opinion, no further medical care or treatment will lessen the period of impairment. Bass v. Kenco Group, 366 S.C. 74, 564 S.E.2d 354 (Ct. App. 2002). "MMI is a factual determination left to the discretion of the [Appellate] Panel." Gadson v. Mikasa Corp., 368 S.C. 214, 224, 628 S.E.2d 262, 268 (Ct. App. 2006).

As the Commission stated in its Order, they "cannot just invent an MMI date." The Commission cites §42-9-210 as authority for setting the date of MMI on February 8, 2008, the date of the filing of the defendants' Form 21. This Court, however, reads this section as citing discretionary authority for *if* the Commission can deduct payments made by an employer when they are not due and payable rather than deciding *when* an exact date to deduct payments shall be set. This was an error of law. Therefore, this case shall be remanded for the Commission to determine the date of MMI supported by the law and evidence. The issue of credit is remanded for a determination of whether and from what date the defendants are entitled to credit for any overpayment of TTD.

As to all other issues, this Court finds the record contains sufficient or substantial evidence to support the Commission's ruling. In particular, the Court finds the admission of the video surveillance in question was not an error of law, as the admission of evidence is a matter generally within the sound discretion of the Hearing Commissioner. This Court cannot find evidence of bad faith in the defendants' request to reschedule the original Hearing to depose Dr. Tollison and Dr. Satterthwaite. The Court finds the remainder of the Commission's ruling is based upon a combination of medical opinions supported by substantial evidence in the record and on the observations of the claimant and his inconsistencies throughout the process.

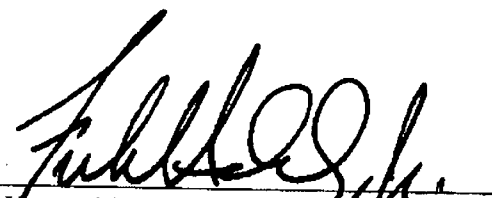
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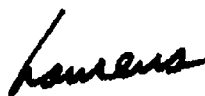
CONCLUSION

Based upon the foregoing, and the case law and statutes cited herein, this Court remands the Appellate Panel's decision for a determination of MMI consistent with the law and evidence. The issue of credit is remanded for a determination of whether and from what date the defendants are entitled to credit for any overpayment of TTD. The remainder of the Full Commission Panel's decision shall be affirmed in its entirety as it is supported by the substantial evidence in the record.

**IT IS THEREFORE, ORDERED** that the Decision and Order of the SCWCC dated February 18, 2011, is hereby **AFFIRMED IN PART, REVERSED IN PART AND REMANDED** to the Commission to determine the specific date of MMI and the date to which the defendants are entitled to an award for overpayment of TTD benefits, if any at all.

**AND IT IS SO ORDERED.**

  
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The Honorable Frank R. Addy, Jr.

  
Greenwood, South Carolina  
June 6, 2014