

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1206447

William M. Rogers,

CLAIMANT
APPELLANT,

vs.

Lindstrom Metric, LLC,

EMPLOYER,

AND

The Netherlands Insurance Company,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on July 21, 2014, per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
September 4th, 2014

APPEARANCES:

Appellant/Claimant William M. Rogers represented by
Donald E. Kamb, Esquire, of Greenville, South Carolina.

Defendants/Respondents represented by Jason A. Griggs,
Esquire of Willson Jones Carter & Baxley, P.A. of
Greenville, South Carolina.

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SC Court of Appeals

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr., on February 7, 2014, in Greenville, South Carolina. On March 17, 2014, Commissioner Wilkerson issued his Decision and Order, which contained the following Findings of Fact, Conclusions of Law, and Order:

Single Commissioner's Findings of Fact

It is found as 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 William M. Rogers as Employee/Claimant and Lindstrom Metric, LLC, as Employer and The Netherlands Insurance Company as Carrier/Defendants.
2. At the time of the above-described accident Claimant had an average weekly wage of \$450.96 with a corresponding compensation rate of \$300.65.
3. That Claimant was an employee of the above-named Employer on March 15, 2012, and did sustain an injury to his left leg arising out of and in the course of employment. This was an accepted claim with regard to Claimant's left leg and appropriate treatment has been provided. This finding is supported by a preponderance of the evidence.
4. That Claimant had preexisting uncontrolled Diabetes before his work-related injury to his left leg. This finding is based by a preponderance of the evidence.
5. Claimant initially returned to work on March 27, 2012, after one week away from work.
6. Claimant worked for over one year, almost 13 months, but was hospitalized on April 30, 2013. The reason for admission was sepsis likely secondary to cellulitis. Defendants are

responsible for paying the hospital bill resulting from Claimant's admission on April 30, 2013, pursuant to workers' compensation medical fee schedule. This finding is supported by APA #3, pages 85-94.

7. Claimant has multiple past and current medical problems including, Type 2 Diabetes, Hyperlipidemia, Hypertension, Dyslipidemia, Diverticulitis, Pneumonia, Obesity, Sleep Apnea, Cellulitis, chronic kidney disease, and Scoliosis. This finding is supported by Defendants' APAs #5, 6, and 7.

8. Claimant is entitled to TTD benefits from March 19, 2012 to March 26, 2012, and from April 30, 2013 until October 21, 2013. This finding is based on the preponderance of the evidence.

9. Claimant alleged injuries to his immune system, kidneys, skin, and an exacerbation of his preexisting diabetes. I find Claimant has failed to carry his burden of proving compensable injuries to these body parts/systems/conditions, and thus these body parts/systems/conditions are not compensable parts of this claim pursuant to the South Carolina Workers' Compensation Act and Regulations. This finding is supported by a preponderance of the medical evidence.

10. Claimant reached MMI on October 21, 2013. This finding is supported by the testimony of Dr. Lisa Darby, specifically lines 4-10 on page 34 of her deposition, and by the testimony of Dr. James Franklin, specifically lines 3-10 on page 36 of his deposition.

11. This is a single body part claim involving only Claimant's left leg. Any award of permanent disability should be for the left leg only pursuant to S.C. Code Ann. §42-9-30. This finding is supported by the preponderance of the evidence.

12. Dr. Lisa Darby shall be the authorized treating physician for Claimant's left leg injury from this point forward. Claimant is entitled to future medical treatment as directed by Dr.

Darby only. Defendants are not to be responsible for any future medical care that is recommended or ordered by any other doctor.

13. A determination regarding the extent of permanent disability to the Claimant's left leg shall be held in abeyance until further evidence as to impairment/disability is obtained.

Single Commissioner's Conclusions 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 did sustain an injury to his left leg by accident arising out of and in the course of his employment on March 15, 2012. Claimant did not sustain compensable injuries to his immune system, kidneys, skin, or diabetes.

3. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until October 21, 2013, the date on which Claimant reached maximum medical improvement, including the hospital stay from April 30, 2013, and for continuing treatment that will tend to lessen his period of disability at the direction of Dr. Lisa Darby.

4. Under § 42-9-10, Claimant is entitled to TTD benefits from March 19, 2012 to March 26, 2012, and April 30, 2013 until October 21, 2013.

5. Under § 42-9-30, Claimant sustained an injury to his left leg only, and any award for permanent disability should be made pursuant to § 42-9-30.

Single Commissioner's Order

IT IS HEREBY ORDERED that Claimant sustained a compensable injury to his left leg by accident arising out of and in the course of his employment on March 15, 2012.

IT IS FURTHER ORDERED that Claimant is entitled to TTD benefits from March 19, 2012 to March 26, 2012, and from April 30, 2013 until October 21, 2013. Claimant is also entitled to payment of past authorized causally related medical treatment, including the hospital stay from April 30, 2013, and for continuing care at the direction of Dr. Lisa Darby for a period that will tend to lessen his period of disability.

IT IS FURTHER ORDERED that Claimant sustained a compensable injury by accident to his left leg only, and any future award for permanent disability should be made pursuant to § 42-9-30 for the left leg only.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

On March 31, 2014, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on July 21, 2014. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. The Hearing Commissioner erred in failing to limit himself to the issues placed before him by claimant and making findings related to permanency when the issue was not before him; the error being that the evidence overwhelmingly demonstrates that claimant limited the issues before the Commissioner to entitlement to temporary total disability and payment of medical treatment related to his admitted left lower extremity injury and specifically reserved the issue of permanency to a later hearing but the Commissioner made findings related to permanency including but not limited to a finding that claimant is limited to permanent disability compensation for his left leg.
2. The Hearing Commissioner erred in finding claimant is entitled to TTD benefits from March 19, 2012 to March 26, 2012 and from April 30, 2013 until October 21, 2013 and in failing to award continuing TTD benefits; the error being that the evidence overwhelmingly

demonstrates that the period of claimant's temporary disability because of his injury by accident continues and has not ended entitling claimant to continuing TTD benefits.

3. The Hearing Commissioner erred in finding claimant alleged injuries to his immune system, kidneys, skin, and an exacerbations of his pre-existing diabetes and I find claimant has failed to carry his burden of proving compensable injuries to these body parts/systems/conditions and thus these body parts/systems/conditions are not compensable parts of this claim pursuant to the SC Work. Comp. Act and related regulations; the error being that the evidence overwhelmingly demonstrates this issue was not before the Commissioner for determination and as such he should not have reached the issue or made any findings on the issue, or in the alternative, that evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and related regulations.
4. The Hearing Commissioner erred in finding claimant reached MMI on October 21, 2013; the error being that the evidence overwhelmingly demonstrates that claimant has not reached MMI.
5. The Hearing Commissioner erred in finding this as a single body part claim and involving only claimant's left leg and any award of permanent disability should be for the left leg only pursuant to S.C. Code Ann. § 42-9-30; the error being that the evidence overwhelmingly demonstrates that claimant limited the issues before the Commissioner to entitlement to temporary total disability and payment of medical treatment related to his admitted left lower extremity injury and specifically reserved the issue of permanency to a later hearing but the Commissioner made findings related to permanency including but not limited to a finding that claimant is limited to permanent disability compensation for his left leg.
6. The Hearing Commissioner erred in finding this is a single body part claim involving only claimant's left leg and any award of permanent disability should be for the left leg only pursuant to S.C. Code Ann. § 42-9-30; the error being that the evidence overwhelmingly demonstrates this issue was not before the Commissioner for determination and as such he should not have reached the issue or made any findings on the issue, or in the alternative, that the evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and related regulations and as such claimant is not limited to an award of permanent disability for the left leg only under § 42-9-30.
7. The Hearing Commissioner erred in finding that Dr. Lisa Darby shall be the authorized treating physician for claimant's left leg injury from this point forward and claimant is entitled to future medical treatment as directed by Dr. Lisa Darby only and defendants are not responsible for any future medical care that is recommended or ordered by any other doctor; the error being that the evidence overwhelmingly demonstrates that claimant limited the issues before the

Commissioner to entitlement to temporary total disability and payment of medical treatment related to his admitted left lower extremity injury and issues related to other body parts and medical treatment for other body parts, including but not limited to skin, were not before the Commissioner for determination and should not have been reached and/or foreclosed by the Commissioner, or in the alternative, that evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and claimant is entitled to ongoing medical treatment for such conditions.

8. The Hearing Commissioner erred in finding the determination of the extent of permanent disability to the claimant's left leg shall be held in abeyance until further evidence as to impairment/disability is obtained; the error being that the evidence overwhelmingly demonstrates the issue of permanent disability of any body parts/systems/conditions were not before the Commissioner for determination and as such he should not have reached the issue or made any findings on the issue, or in the alternative, that evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and related regulations and as such claimant is not limited to an award of permanent disability for the left leg only under § 42-9-30.
9. The Hearing Commissioner erred in ruling as a matter of law that claimant did not sustain compensable injuries to his immune system, kidneys, skin, and an exacerbation of his pre-existing diabetes; the error being that the evidence overwhelmingly demonstrates this issue was not before the Commissioner for determination and as such he should not have reached the issue or made any findings on the issue, or in the alternative, that evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and related regulations.
10. The Hearing Commissioner erred in ruling as a matter of law that claimant was entitled to medical, surgical, hospital and other authorized treatment until October 21, 2013, the date on which claimant reached maximum medical improvement, including the hospital stay from April 30, 2013, and for continuing treatment that will tend to lessen the period of his disability at the direction of Dr. Lisa Darby; the error being that the evidence overwhelmingly demonstrates that claimant limited the issues before the Commissioner to entitlement to temporary total disability and payment of medical treatment related to his admitted left lower extremity injury and issues related to other body parts and medical treatment for other body parts, including but not limited to skin, were not before the Commissioner for determination and should not have been reached and/or foreclosed by the Commissioner, or in the alternative, that evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and claimant is entitled to ongoing

medical treatment for such conditions.

11. The Hearing Commissioner erred in ruling as a matter of law that claimant sustained an injury to his left leg only, and any award for permanent disability should be made pursuant to § 42-9-30; the error being that the evidence overwhelmingly demonstrates that claimant limited the issues before the Commissioner to entitlement to temporary total disability and payment of medical treatment related to his admitted left lower extremity injury and specifically reserved the issue of permanency to a later hearing but the Commissioner made findings related to permanency including but not limited to a finding that claimant is limited to permanent disability compensation for his left leg.
12. The Hearing Commissioner erred in ruling as a matter of law that claimant sustained an injury to his left leg only, and any award for permanent disability should be made pursuant to § 42-9-30; He [sic] error being that the evidence overwhelmingly demonstrates this issue was not before the Commissioner for determination and as such he should not have reached the issue or made any findings on the issue, or in the alternative, that evidence on the record overwhelmingly shows that claimant did carry his burden to prove compensable injuries to these body parts/systems/conditions, including diabetes under S.C. Code Ann. § 42-9-35 (A)(2), and thus these body parts/systems/conditions are compensable parts of this claim pursuant to the SC Work. Comp. Act and related regulations and as such claimant is not limited to an award of permanent disability for the left leg only under § 42-9-30.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weight the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with, or inconsistent with, those of the Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

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. 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 William M. Rogers as Employee/Claimant and Lindstrom Metric, LLC as Employer and The Netherlands Insurance Company as Carrier/Defendants.

2. At the time of the above-described accident Claimant had an average weekly wage of \$450.96 with a corresponding compensation rate of \$300.65.

3. That Claimant was an employee of the above-named Employer on March 15, 2012, and did sustain an injury to his left leg arising out of and in the course of employment. This was an accepted claim with regard to Claimant's left leg and appropriate treatment has been provided. This finding is supported by a preponderance of the evidence.

4. That Claimant had pre-existing uncontrolled Diabetes before his work-related injury to his left leg. This finding is based on a preponderance of the medical evidence.

5. That Claimant initially returned to work on March 27, 2012, after one week away from work.

6. That Claimant worked for over one year, almost 13 months, but was hospitalized on April 30, 2013. The reason for admissions was sepsis likely secondary to cellulitis. Defendants are responsible for paying the hospital bill resulting from Claimant's admission on April 30, 2013, pursuant to Workers' Compensation Medical Fee Schedule. This finding is supported by A.P.A. #3, pp. 85-94.

7. Claimant has multiple past and current medical problems including, Type 2 Diabetes, Hyperlipidemia, Hypertension, Dyslipidemia, Diverticulitis, Pneumonia, Obesity, Sleep Apnea, Cellulitis, chronic kidney disease, and Scoliosis. This finding is supported by Defendants'

A.P.A.s #5, #6, and #7.

8. Claimant is entitled to TTD benefits from March 19, 2012, to March 26, 2012, and from April 30, 2013, until October 21, 2013. This finding is based on the preponderance of the evidence.

9. Claimant alleged injuries to his immune system, kidneys, skin, and an exacerbation of his pre-existing Diabetes. We find Claimant has failed to carry his burden of proving compensable injuries to these body parts/systems/conditions, and thus these body parts/systems/conditions are not compensable parts of this claim pursuant to the South Carolina Workers' Compensation Act and Regulations. This finding is supported by a preponderance of the medical evidence.

10. Claimant reached MMI on October 21, 2013. This finding is supported by the testimony of Dr. Lisa Darby, specifically lines 4-10 on p. 34 of her deposition, and by the testimony of Dr. James Franklin, specifically lines 3-10 on p. 36 of his deposition.

11. This is a single body part claim involving only Claimant's left leg. Any award of permanent disability should be for the left leg only pursuant to S.C. Code Ann. § 42-9-30. This finding is supported by the preponderance of the evidence.

12. That Dr. Lisa Darby shall be the authorized treating physician for Claimant's left leg injury from this point forward. Claimant is entitled to future medical treatment as directed by Dr. Darby only. Defendants are not responsible for any future medical care that is recommended or ordered by any other doctor.

13. A determination regarding the extent of permanent disability to the claimant's left leg shall be held in abeyance until further evidence as to impairment/disability is attained.

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; 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 left leg by accident arising out of and in the course of his employment on March 15, 2012. Claimant did not sustain compensable injuries to his immune system, kidneys, skin, or Diabetes.
3. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until October 21, 2013, the date on which Claimant reached maximum medical improvement, including the hospital stay from April 30, 2013, and for continuing treatment that will tend to lessen his period of disability at the direction of Dr. Lisa Darby.
4. Under § 42-9-10, Claimant is entitled to TTD benefits from March 19, 2012, to March 26, 2012, and April 30, 2013, until October 21, 2013.
5. Under § 42-9-30, Claimant sustained an injury to his left leg only, and any award for permanent disability should be made pursuant to § 42-9-30.

ORDER

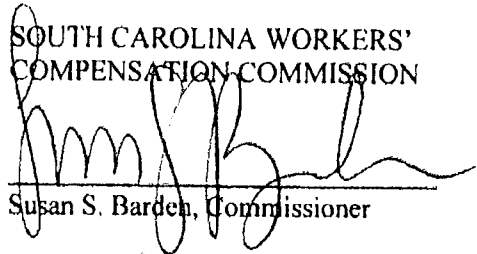
Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS THEREFORE ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on March 17, 2014, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

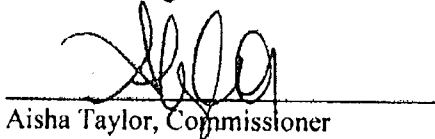
No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Susan S. Barden, Commissioner



Aisha Taylor, Commissioner



Gene McCaskill, 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 September 4, 2014