

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

RECEIVED
NOV 10 2014
SC Court of Appeals

W.C.C. FILE NO: 1204039

William Lee Turner

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

SAIIA Construction

EMPLOYER,

AND

Old Republic General Insurance Corporation
c/o Gallagher Bassett Services, Inc.

CARRIER,
DEFENDANTS/APPELLANTS,

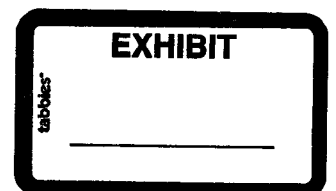
Appellate Panel Review held in Columbia, South Carolina
on August 11, 2014 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

October 10, 2014

APPEARANCES: Claimant/Appellant represented by Preston F. McDaniel, Esquire

Defendants/Respondents represented by Jason W. Lockhart, Esquire



STATEMENT OF THE CASE

The hearing was scheduled pursuant to a Form 50 filed by the Claimant's attorney, in the above-referenced case, on November 25, 2013. The Claimant maintained that he sustained a compensable injury to the head and thoracic spine while in the course and scope of the Claimant's employment with the Defendants on April 19, 2012. The Claimant maintained that he was entitled to additional medical treatment with Dr. Peterson as well as temporary total disability benefits from April 20, 2012 until January 1, 2013. In response, the Defendants maintained that the Claimant could not satisfy his burden of proof, pursuant to §42-1-160 of the Act, on the basis that the Claimant had no memory or recollection of the facts or circumstances surrounding his alleged April 19, 2012 work related accident. In addition, the Defendants maintained that the Claimant's fall on April 19, 2012 was idiopathic in nature and, therefore, not compensable pursuant to the South Carolina Workers' Compensation Act. Furthermore, the Defendants took the position that the Claimant had reached maximum medical improvement and was not in need of additional medical treatment. The Defendants also maintained that the Claimant was physically capable of working, during the period of time that he was requesting payment of temporary total disability benefits and, therefore, the Claimant was not entitled to temporary total disability benefits.

EVIDENCE OF THE CASE

Testimony

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 28 years of age and resides in Lugoff, South Carolina with his wife. With regards to the Claimant's alleged April 19, 2012 work related accident, the Claimant stated that he has no memory of the facts and circumstances surrounding his alleged work related accident. (Hr'g Tr.

44:2-16) The Claimant indicated that, based on his normal work routine, he would have cleaned the dump truck, which he was operating on April 19, 2012, and likely was injured as the result of a fall that occurred while he was attempting to climb up into the cab of the dump truck in order to place his personal belongings in the cab of the dump truck. The Claimant indicated that not only did he have no memory of the alleged date of accident, but that he also had no memory of the Wednesday prior to his work related accident and the Friday following his work related accident. (Hr'g Tr. 44:7-12) The Claimant testified that, prior to his work related accident, he had not experienced any previous problems with dizziness, seizures, or other instability that could have explained the basis for his alleged fall on April 19, 2012. (Hr'g Tr. 29:16-20) The Claimant testified that his initial memory, following his alleged work related accident, was being hospitalized in Columbia, South Carolina. (Hr'g Tr. 44:13-16) The Claimant stated that he sought and received medical treatment for his work related injuries from a variety of physicians, including Dr. Peterson, who is the Claimant's family physician. The Claimant indicated that Dr. Peterson has provided the Claimant with treatment in the form of anti-seizure medication, and that he was most recently examined by Dr. Peterson in January 2014.

The Claimant testified that he was unable to work with the Defendants for approximately eight months due to the injuries sustained in his alleged April 2012 work related accident. More specifically, the Claimant stated that he has been placed out of work by Dr. Peterson due to seizures, which the Claimant developed following his work related accident. The Claimant indicated that he was eventually released to return to work by Dr. Peterson in December 2012, and that he returned to work with the Defendants in January 2013. (Hr'g Tr. 49:19-50:2) The Claimant testified that he returned to work with the Defendants in January 2013 as a heavy equipment operator, and is currently working with the Defendants as a heavy equipment

operator, which is the same position that the Claimant held with the Defendants prior to the date of his April 2012 work related accident. On cross-examination, the Claimant stated that he is currently earning the same wages and essentially working the same hours that he was working prior to his alleged work related accident. (Hr'g Tr. 50:3-11) Most notably, the Claimant testified that he is of the opinion that he is both mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 50:12-52:7)

On cross-examination, the Claimant testified that he has no memory of his alleged work-related accident. (Hr'g Tr. 44:2-6) The Claimant stated that he was not climbing a ladder or standing on top of a truck, on the date of his work related accident, despite medical records indicating that he either fell from a ladder or from the top of a truck. (Hr'g Tr. 44:17-45:5) The Claimant indicated that he was also aware that there were no witnesses to his alleged work related accident, and that both Paul Barnette and David Bolden, whose depositions were submitted to Commissioner Barden for her consideration, did not witness the Claimant's alleged fall. The Claimant indicated that his current job as a heavy equipment operator requires the Claimant to engage in both mental and physical activity, but that the Claimant is capable of performing his job duties and responsibilities as a heavy equipment operator. (Hr'g Tr. 52:1-7) With regards to the Claimant's current back problems, the Claimant initially denied that he sustained a recent injury to the back in September 2013 when he fell from a horse. (Hr'g Tr. 53:24-54:9) Subsequently, the Claimant was presented with a diagnostic report of Dr. Girault, dated September 18, 2013, in which Dr. Girault noted that the Claimant provided her with a history of reinjuring his thoracic spine after falling from a horse. Despite the above-referenced medical record, the Claimant attempted to downplay the significance of the fall from the horse, in that he did not experience a worsening of his back pain as a result of the above-referenced

incident. (Hr'g Tr. 55:5-24) The Claimant stated that during the eight month period of time that he was out of work, following his alleged work related accident, he did engage in both farming activities on his property, including bailing of hay and operating tractors, and that he also engaged in activities relating to the construction of his home during the above-referenced period of time. (Hr'g Tr. 60:23-63:23)

Robert Bennett testified on behalf of the Defendants. Mr. Bennett stated that he is currently employed with the Defendants as a superintendent, and has been the Claimant's direct supervisor since July 2013. (Hr'g Tr. 71:23-72:19) Mr. Bennett indicated that the Claimant is currently employed with the Defendants as a heavy equipment operator, and appears to be mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 73:11-16) Mr. Bennett testified that, since becoming the Claimant's direct supervisor in July 2013, the Claimant has not missed any time from work due to the injuries sustained in his alleged April 2012 work related accident. (Hr'g Tr. 73:17-22)

The depositions of Paul Barnette, David Bolden, and James Speegle were submitted by the Claimant without objection from the Defendants. Mr. Barnette admitted that he could only "speculate" as to how the Claimant's fall occurred, as Mr. Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Mr. Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap. Mr. Bolden testified that he did not witness the accident, and Mr. Bolden specifically admitted that he "never saw [Claimant] on the steps of the truck." Mr. Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pgs. 4-7, 9, and 14). Mr. Speegle testified that he did not witness the Claimant's alleged accident either, and knows of no one who did witness the

Claimant's alleged accident. (Depo. of Speegle, pgs. 5 and 11).

Medical Evidence

Based on a review of the medical records, three days prior to the date of the alleged accident, Claimant sought treatment with Sandhills Medical Foundation-Lugoff, and provided complaints of low back pain that was "sudden and has been occurring in a persistent pattern for 3 days." Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). (See Defendants' APA, pgs. 27-28; Defendants' APA, pg. 30; Claimant's APA, pg. 25). Based on a review of the medical records, Two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room at Palmetto Health Baptist. At the Emergency Room, Claimant provided complaints of low back pain, reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA, pgs. 30-32).

The Claimant underwent an examination with Dr. Scott of The Moore Orthopedic Clinic on October 29, 2012 for his alleged work-related injuries. The Claimant provided Dr. Scott with complaints of high thoracic and low cervical pain. The Claimant informed Dr. Scott that, despite not working with the Defendants at the time of his examination, "he has been doing a lot of work around the house including a lot of farming and building a house and he has not been limited by his back pain." (See Defendants APA., p. 20). Dr. Scott diagnosed the Claimant with "some myofascial pain related to his fall," recommended physical therapy and a trigger point injection, but the Claimant declined the trigger point injection. Dr. Scott stated that he was "comfortable with [the Claimant] returning to work but [the Claimant] is going to be held out according to his other doctor's recommendations for his seizures which is very appropriate." (See Defendants APA., p. 20).

The Claimant has continued to seek and receive medical treatment from his family physician, Dr. Peterson, for his alleged work-related injuries. The Claimant has been examined by Dr. Peterson on multiple occasions, since the date of his work-related accident, and has provided Dr. Peterson with complaints of thoracic back pain primarily. (See Defendants APA., p. 2-10). Most notably, the Claimant has not provided complaints to Dr. Peterson regarding seizure activity, and the Claimant's last seizure occurred approximately six to seven months prior to his returning to work with the Defendants in January 2013. (See Defendants APA., p. 2-3). The Claimant was most recently examined by Dr. Peterson approximately four months ago, and did provide Dr. Peterson with complaints regarding back pain and problems. (See Defendants APA., p. 9-10). Claimant received treatment from Dr. Peterson in the form of prescription medication, but testified, in his deposition, that he is not currently utilizing prescription medication for his back pain and problems and last utilized prescription medication approximately three months ago. (Claimant's 2012 Depo. pg. 18:21-19:14)

The Claimant was provided with a referral by Dr. Peterson by Dr. Girault for additional medical treatment in light of the Claimant's complaints of back pain and problems. The Claimant was initially examined by Dr. Girault in September 2013, and provided Dr. Girault with a history of his alleged April 2012 work-related accident as well as complaints of pain in the thoracic spine. (See Defendants APA., p. 11). Most notably, the Claimant also informed Dr. Girault that he injured his back, prior to September 2013, when he jumped off of a moving horse. (See Defendants APA., p. 12, 14). Dr. Girault recommended that the Claimant undergo injections into the thoracic spine, but that the Claimant chose not to undergo the injections that were recommended by Dr. Girault. (See Defendants APA., p. 13; Claimant's 2012 Deposition, pg. 24:6-17). Claimant has not returned to Dr. Girault for additional medical treatment since

being examined in October 2013. (See Defendants APA., p. 16-18).

FINDINGS OF FACTS AND RULINGS OF LAW

FINDINGS OF FACT

Based upon the testimony and exhibits submitted before the Single Commissioner, the undersigned Appellate Panel adopts the findings of fact as made by the Single Commissioner in their entirety. They are as follows:

1. The parties are subject to and bound by the South Carolina Workers' Compensation Act.
2. Claimant's average weekly wage is Six Hundred Eighty Four Dollars (\$684.18) and 18/100 with a corresponding compensation rate of Four Hundred Fifty Six Dollars (\$456.14) and 14/100.
3. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants on April 19, 2012.
4. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant alleges that he injured his head, brain, and thoracic spine in a work-related accident on April 19, 2012.
5. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant is 28 years of age (medical evidence establishing Claimant's date of birth as 11/29/85; Claimant's 2012 Depo. p. 5).

6. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant is a high school graduate (Defendants' APA #2, p. 9; Claimant's 2012 Deposition, page 9).
7. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant's job with Employer was heavy equipment operator (testimony of Claimant; Claimant's 2012 Depo. pp. 10 & 21).
8. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, in the alleged accident in issue, Claimant was found injured and lying next to Employer's truck. We base this Finding of Fact on the testimony of Barnette and Bolden. (Defendants APA, p. 1)
9. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find Claimant admits that he remembers nothing about (a) the day prior to the date of the alleged accident, (b) the day of the alleged accident, including "*absolutely no memory of it or what might have precipitated the fall;*" or (c) the day after the date of the alleged accident (Hr'g Tr. 44:2-16; Claimant's APA #2, p. 25; Claimant's 2012 Deposition, pp. 25-26, 29, & 31-32).
10. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find the alleged accident was unwitnessed.

11. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that no witness claims to have seen the Claimant's alleged accident.
12. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, three days prior to the date of the alleged accident, Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). We base this Finding of Fact on Defendants' APA #8, pp. 27-28; Defendants' APA #9, p. 30; & Claimant's APA #2, p. 25).
13. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room. At the Emergency Room, Claimant reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA #9, pp. 30-32).
14. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the temporal medical records are of no real utility: (a) one record from the date of the alleged accident erroneously states that Claimant fell off a *ladder*, and Claimant does not contend that he fell off a ladder (Claimant's APA #1, p. 1; Defendants' APA #10, p. 33; Claimant's 2012 Deposition, pp. 28-29); and (b) another record from the date of the accident states that Claimant fell of the back of a truck, when Claimant in fact contends that he must have fallen from the steps of the cab (Claimant's APA #1, p. 20;

Defendants' APA #10, p. 35).

15. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that co-worker Barnette admits he can only "speculate" as to how the fall occurred, as Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap.
16. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that if Barnette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different (evidence in its entirety, including but not limited to Depo. of Barnette, pp. 8, 13-17, 21-22, 24-25, & 28).
17. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that co-worker/friend Bolden did not witness the accident, and Bolden specifically admits he "never saw [Claimant] on the steps of the truck." Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pp. 4-7, 9, & 14).
18. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Supervisor Speegle did not witness the accident either, and knows of no one who did (Depo. of Speegle, pp. 5 & 11).
19. Based on the substantial evidence including the medical records submitted, the testimony

of the representatives of the Defendants, and the Claimant's testimony, we do not find persuasive the opinion of Dr. Peterson (Claimant's family doctor): the portion of Claimant's counsel's letter prefacing the request for the causation opinion assumes that Claimant "fell from the cab of" Employer's truck. Further, Dr. Peterson's opinion only states that Claimant's head injuries were "caused by the fall on April 19, 2012." There is no dispute that Claimant injured his head in the fall, but the dispute is whether Claimant fell from a standing position or from the steps of the cab (Defendants' APA #2, p. 6; Claimant's APA #3, p. 37; Claimant's 2012 Deposition, pp. 12-13 & 39).

20. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, six months after the date of the alleged accident, Claimant was not limited by back pain, such that he was able to engage in "a lot of farming and building a [log] house" (Defendants' APA #5, page 21; Hr'g Tr. 60:23-63:23; *see also* Claimant's 2014 Deposition, pages 6-7 and 33-34).
21. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Claimant sustained an intervening accident in August 2013 (1 year and 4 months after the date of the alleged accident), for which Claimant sought medical treatment. Medical evidence from Claimant's treating physician at this visit states that Claimant was doing well after the alleged fall at work until Claimant "fell off a horse." (Defendants' APA #3, page 12)
22. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that

Claimant was impeached at the hearing testimony with his initial deposition testimony that he had sustained no accidents since the date of the alleged work accident. Claimant's explanation of the horse incident ("it didn't hurt or anything like that") is not persuasive given the fact that Claimant sought treatment for the after the fall off the horse (53:24-55:24; Defendants' APA #3, pp. 12-14, 16, & 18; Claimant's 2014 Depo., pp. 18 & 21).

23. In his theory of the case, Claimant contends that circumstantial evidence (the fact that Claimant was on Employer's premises; the presence of Claimant's book bag in the cab; Claimant's testimony that he always climbed the steps to place his book bag in the cab; the fact that Claimant must have fallen from a position higher than the floor to sustain the injuries he sustained, and the fact that Claimant's truck had recently been washed--or that Claimant's shoe caught on the step(s) of the cab) is sufficient to prove that Claimant fell from the steps of the cab of the truck and suffered work-related injuries.
24. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, even if the undersigned presumes that Claimant was in fact injured through his employment, I am confronted with the following: (a) there is no known cause of the fall in the instant case, (b) Claimant had been taking prescription medication (including Neurontin and Ultram) for back pain in the few days preceding the date of the accident, (c) Claimant sought treatment at the ER two days before the date of the accident for stomach/dehydration issues, and while there Claimant's family questioned the side effects of the medications he had been taking; (d) no one saw Claimant on the steps of the truck, and in fact one witness saw Claimant place a cooler into the truck from a standing position on the ground—not the steps; (e) although not dispositive, Claimant's friend and

co-worker said the steps were not cleaned with soap; only a pressure washer; and (f) very importantly, **Claimant gave sworn testimony at his deposition that two witnesses observed Claimant on the steps just before he fell, which is refuted (or at least inconsistent with) the testimony of Barnette and Bolden.** Claimant's sworn testimony in this regard (as cited in this finding) greatly damages his credibility (e.g., Claimant's 2012 Deposition, pp. 26 & 29-34: "*I was told...I was climbing up in the truck to put something in there or do something... And then they said that they seen me up—they seen me up on the truck. Then they said after they turned around, they seen me laying on the ground*" is not supported by the testimony of any witness; nor is Claimant's testimony—"*they told me, they—they turned around and they seen me climb up in the truck, and they said they turned back around, and as soon as they turned back around again, they said they seen me laying on the ground*"--supported by the testimony of any other witness (Claimant's 2012 Depo., p. 26:18-24; Depo. of Barnette in its entirety; Depo. of Bolden in its entirety).

25. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et. seq., that:

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.

2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).
4. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.
5. Workers' Compensation awards 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. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App.1997) *rev'd on other grounds*.
6. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "'injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must 'arise out of' the employment and simultaneously co-exist 'in the course of' the employment." Kinsey v. Champion Am. Serv. Center, 268

S.C. 177, 182, 232 S.E.2d 720, 722 (1977).

7. The burden of proof is upon the claimant to establish that the accident arose out of employment. “Whether the employee’s injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of law.” Doe v. South Carolina State Hospital, 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).
8. Pursuant to South Carolina Code Ann. §42-1-160, and based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, the Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants.
9. The Appellant relies on the Supreme Court’s opinion in Packer v. Corbett Canning Co., 238 S.C. 431, 120 S.E.2d 398 to establish that the Claimant suffered from a compensable work related accident due to the unexplained death or injury presumption. Respondents maintain that the Appellant’s reliance on Packer is misplaced. In Packer, the decedent was found on a wet concrete floor alongside an electrical cord after an electrical storm. Expert testimony revealed that the decedent was not electrocuted and further showed that had scars from a recent heart attack. Though the Court cited the natural presumption as found in Owens to indicate that the decedent was found where the performance of his duties required him to be, the Court also stated that the presumption may not be availed to establish the incident of accident. Id. at 438. The Court found that even though the decedent was found on the job, there was no accident which caused his death.
10. Much like the Packer case, the Claimant, in the present case, was found on the ground

and there were no witnesses to the accident. However, a presumption cannot be applied to establish that an accident arose out of his employment. The Appellant has the burden of proving facts that will bring his injury within the workers' compensation law and such an award must not be based on surmise, conjecture or speculation. Jennings v. Chambers Dev. Co., 335 S.C. 249, 254, 516 S.E.2d 453, 456 (Ct. App. 1999). Therefore, without satisfying his burden of proving that both an injury that arose out of his employment and an injury occurred in the course of his employment, the Appellant did not sustain a compensable injury pursuant to South Carolina Code Ann. §42-1-160.

11. Pursuant to South Carolina Code Ann. §42-9-10 and based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant's incapacity for work was total due the Claimant's alleged work-related accident.
12. Pursuant to South Carolina Code Ann. §42-15-60 and based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, Defendants are not responsible for the provision of treatment nor the payment of medical bills arising out of the Claimant's alleged work-related accident.
13. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that Owens v. Oceans Forest Club does not serve to render the claim at issue compensable. In Owens, the claimant (a game warden hired to patrol Employer's premises to prevent poaching and trespassers generally) was found dead on the ground of Employer's

premises, but the specific cause of death in Owens was a bullet wound through the head (*i.e.*, the bullet clearly caused the death and obvious fall to the ground). The Owens court found the claim compensable based upon circumstantial evidence because (a) the claimant was on Employer's property during the claimant's hours of employment, (b) the cause of death was a known gunshot wound, and (c) of the nature of the work duties. The question before the court was whether the death in Owens was the result of a suicide or a trespasser.

14. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the present case is distinguishable from Owens due to the fact that, in the present case and unlike in Owens, the cause of the Claimant's injury (*i.e.* his alleged fall) is unknown. (See Testimony of Claimant; Claimant's APA #2, page 25; Claimant's 2012 Deposition, pages 25-26, 29, and 31-32).
15. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.
16. Based on the substantial evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

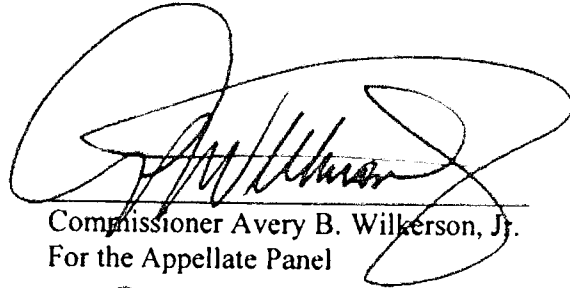
ORDER

IT IS HEREBY ORDERED, that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED** in its entirety.

IT IS HEREBY ORDERED that Claimant has failed to meet his burden of proving a compensable injury by accident within the course and scope of his employment.

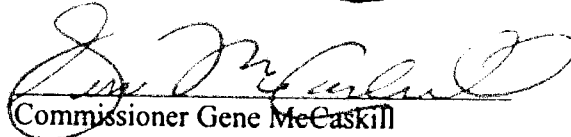
IT IS FURTHER ORDERED that Claimant's claim for all benefits available under the Act is **DENIED**.

AND IT IS SO ORDERED.

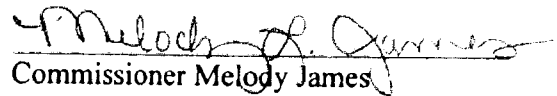


Commissioner Avery B. Wilkerson, Jr.
For the Appellate Panel

WE CONCUR:



Commissioner Gene McCaskill



Commissioner Melody James

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 October 10, 2014

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1204039

WILLIAM LEE TURNER,

Employee,

Claimant,

vs.

SAIIA CONSTRUCTION,

Employer,

AND

OLD REPUBLIC GENERAL INSURANCE
CORPORATION c/o GALLAGHER
BASSETT SERVICES, INC.,

Carrier,

Defendants.

DECISION AND ORDER

DATE OF HEARING: Hearing held in Columbia, South Carolina on February 4, 2014.

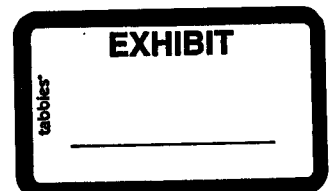
APPEARANCES: Claimant appeared and represented by John K. Koon, Esquire and Stephen H. Cook, Esquire of Koon and Cook, P.A. of Columbia, South Carolina.

Defendants represented by Jason W. Lockhart, Esquire of McAngus Goudelock & Courie, L.L.C. of Columbia, South Carolina.

PURPOSE OF THE HEARING: To determine all issues as set forth in Forms 50 and 51.

COMMISSIONER: Commissioner Susan S. Barden

FILED: April 14, 2014



3. Peterson and Plante Internal Medicine Associates, dated 04/30/12-04/15/13, pages 27-37.
4. Deposition of Paul Barnette
5. Deposition of David Bolden
6. Deposition of James Speegle

STATEMENT OF THE CASE

The hearing was scheduled pursuant to a Form 50 filed by the Claimant's attorney, in the above-referenced case, on November 25, 2013. The Claimant maintained that he sustained a compensable injury to the head and thoracic spine while in the course and scope of the Claimant's employment with the Defendants on April 19, 2012. The Claimant maintained that he was entitled to additional medical treatment with Dr. Peterson as well as temporary total disability benefits from April 20, 2012 until January 1, 2013. In response, the Defendants maintained that the Claimant could not satisfy his burden of proof, pursuant to §42-1-160 of the Act, on the basis that the Claimant had no memory or recollection of the facts or circumstances surrounding his alleged April 19, 2012 work related accident. In addition, the Defendants maintained that the Claimant's fall on April 19, 2012 was idiopathic in nature and, therefore, not compensable pursuant to the South Carolina Workers' Compensation Act. Furthermore, the Defendants took the position that the Claimant had reached maximum medical improvement and was not in need of additional medical treatment. The Defendants also maintained that the Claimant was physically capable of working, during the period of time that he was requesting payment of temporary total disability benefits and, therefore, the Claimant was not entitled to temporary total disability benefits.

EVIDENCE OF THE CASE

Testimony

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 28 years of age and resides in Lugoff, South Carolina with his wife. With regard to the Claimant's alleged April 19, 2012 work related accident, the Claimant stated that he has no memory of the facts and circumstances surrounding his alleged work related accident. (Hr'g Tr. 44:2-16) The Claimant indicated that, based on his normal work routine, he would have cleaned the dump truck, which he was operating on April 19, 2012, and likely was injured as the result of a fall that occurred while he was attempting to climb up into the cab of the dump truck in order to place his personal belongings in the cab of the dump truck. The Claimant indicated that not only did he have no memory of the alleged date of accident, but that he also had no memory of the Wednesday prior to his work related accident and the Friday following his work related accident. (Hr'g Tr. 44:7-12) The Claimant testified that, prior to his work related accident, he had not experienced any previous problems with dizziness, seizures, or other instability that could have explained the basis for his alleged fall on April 19, 2012. (Hr'g Tr. 29:16-20) The Claimant testified that his initial memory, following his alleged work related accident, was being hospitalized in Columbia, South Carolina. (Hr'g Tr. 44:13-16) The Claimant stated that he sought and received medical treatment for his work related injuries from a variety of physicians, including Dr. Peterson, who is the Claimant's family physician. The Claimant indicated that Dr. Peterson has provided the Claimant with treatment in the form of anti-seizure medication, and that he was most recently examined by Dr. Peterson in January 2014.

The Claimant testified that he was unable to work with the Defendants for approximately eight months due to the injuries sustained in his alleged April 2012 work related accident. More specifically, the Claimant stated that he has been placed out of work by Dr. Peterson due to seizures, which the Claimant developed following his work-related accident. The Claimant

indicated that he was eventually released to return to work by Dr. Peterson in December 2012, and that he returned to work with the Defendants in January 2013. (Hr'g Tr. 49:19-50:2) The Claimant testified that he returned to work with the Defendants in January 2013 as a heavy equipment operator, and is currently working with the Defendants as a heavy equipment operator, the same position that the Claimant held with the Defendants prior to the date of his April 2012 work related accident. On cross-examination, the Claimant stated that he is currently earning the same wages and essentially working the same hours that he was working prior to his alleged work related accident. (Hr'g Tr. 50:3-11) Most notably, the Claimant testified that he is of the opinion that he is both mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 50:12-52:7)

On cross-examination, the Claimant testified that he has no memory of his alleged work-related accident. (Hr'g Tr. 44:2-6) The Claimant stated that he was not climbing a ladder or standing on top of a truck, on the date of his work related accident, despite medical records indicating that he either fell from a ladder or from the top of a truck. (Hr'g Tr. 44:17-45:5) The Claimant indicated that he was also aware that there were no witnesses to his alleged work related accident, and that both Paul Barnette and David Bolden, whose depositions were submitted to Commissioner Barden for her consideration, did not witness the Claimant's alleged fall. The Claimant indicated that his current job as a heavy equipment operator requires the Claimant to engage in both mental and physical activity, but that the Claimant is capable of performing his job duties and responsibilities as a heavy equipment operator. (Hr'g Tr. 52:1-7) With regard to the Claimant's current back problems, the Claimant initially denied that he sustained a recent injury to the back in September 2013 when he fell from a horse. (Hr'g Tr. 53:24-54:9) Subsequently, the Claimant was presented with a diagnostic report of Dr. Girault,

dated September 18, 2013, in which Dr. Girault noted that the Claimant provided her with a history of reinjuring his thoracic spine after falling from a horse. Despite the above-referenced medical record, the Claimant attempted to downplay the significance of the fall from the horse, in that he did not experience a worsening of his back pain as a result of the above-referenced incident. (Hr'g Tr. 55:5-24) The Claimant stated that during the eight-month period of time that he was out of work, following his alleged work-related accident, he did engage in both farming activities on his property, including bailing of hay and operating tractors, and that he also engaged in activities relating to the construction of his home during the above-referenced period of time. (Hr'g Tr. 60:23-63:23)

Robert Bennett testified on behalf of the Defendants. Mr. Bennett stated that he is currently employed with the Defendants as a superintendent, and has been the Claimant's direct supervisor since July 2013. (Hr'g Tr. 71:23-72:19) Mr. Bennett indicated that the Claimant is currently employed with the Defendants as a heavy equipment operator, and appears to be mentally and physically capable of performing his job duties and responsibilities with the Defendants. (Hr'g Tr. 73:11-16) Mr. Bennett testified that, since becoming the Claimant's direct supervisor in July 2013, the Claimant has not missed any time from work due to the injuries sustained in his alleged April 2012 work related accident. (Hr'g Tr. 73:17-22)

The depositions of Paul Barnette, David Bolden, and James Speegle were submitted by the Claimant without objection from the Defendants. Mr. Barnette admitted that he could only "speculate" as to how the Claimant's fall occurred, as Mr. Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Mr. Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap. Mr. Bolden testified that he did not witness the accident, and Mr. Bolden specifically

admitted that he “never saw [Claimant] on the steps of the truck.” Mr. Bolden did, however, see Claimant “standing on the ground” and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pgs. 4-7, 9, and 14). Mr. Speegle testified that he did not witness the Claimant’s alleged accident either, and knows of no one who did witness the Claimant’s alleged accident. (Depo. of Speegle, pgs. 5 and 11).

Medical Evidence

Based on a review of the medical records, three days prior to the date of the alleged accident, Claimant sought treatment with Sandhills Medical Foundation-Lugoff, and provided complaints of low back pain that was “sudden and has been occurring in a persistent pattern for 3 days.” Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). (See Defendants’ APA, pgs. 27-28; Defendants’ APA, pg. 30; Claimant’s APA, pg. 25). Based on a review of the medical records, two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room at Palmetto Health Baptist. At the Emergency Room, Claimant provided complaints of low back pain, reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants’ APA, pgs. 30-32).

The Claimant underwent an examination with Dr. Scott of The Moore Orthopedic Clinic on October 29, 2012 for his alleged work-related injuries. The Claimant provided Dr. Scott with complaints of high thoracic and low cervical pain. The Claimant informed Dr. Scott that, despite not working with the Defendants at the time of his examination, “he has been doing a lot of work around the house including a lot of farming and building a house and he has not been limited by his back pain.” (See Defendants APA., p. 20). Dr. Scott diagnosed the Claimant with “some myofascial pain related to his fall,” recommended physical therapy and a trigger point injection,

but the Claimant declined the trigger point injection. Dr. Scott stated that he was “comfortable with [the Claimant] returning to work but [the Claimant] is going to be held out according to his other doctor’s recommendations for his seizures which is very appropriate.” (See Defendants APA., p. 20).

The Claimant has continued to seek and receive medical treatment from his family physician, Dr. Peterson, for his alleged work-related injuries. The Claimant has been examined by Dr. Peterson on multiple occasions, since the date of his work-related accident, and has provided Dr. Peterson with complaints of thoracic back pain primarily. (See Defendants APA., p. 2-10). Most notably, the Claimant has not provided complaints to Dr. Peterson regarding seizure activity, and the Claimant’s last seizure occurred approximately six to seven months prior to his returning to work with the Defendants in January 2013. (See Defendants APA., p. 2-3). The Claimant was most recently examined by Dr. Peterson approximately four months ago, and did provide Dr. Peterson with complaints regarding back pain and problems. (See Defendants APA., p. 9-10). Claimant received treatment from Dr. Peterson in the form of prescription medication, but testified in his deposition that he is not currently utilizing prescription medication for his back pain and problems, and last utilized prescription medication approximately three months ago. (Claimant’s 2012 Depo. pg. 18:21-19:14)

The Claimant was provided with a referral by Dr. Peterson by Dr. Girault for additional medical treatment in light of the Claimant’s complaints of back pain and problems. The Claimant was initially examined by Dr. Girault in September 2013, and provided Dr. Girault with a history of his alleged April 2012 work-related accident as well as complaints of pain in the thoracic spine. (See Defendants APA., p. 11). Most notably, the Claimant also informed Dr. Girault that he injured his back, prior to September 2013, when he jumped off of a moving horse.

(See Defendants APA., p. 12, 14). Dr. Girault recommended that the Claimant undergo injections into the thoracic spine, but that the Claimant chose not to undergo the injections that were recommended by Dr. Girault. (See Defendants APA., p. 13; Claimant's 2012 Deposition, pg. 24:6-17). Claimant has not returned to Dr. Girault for additional medical treatment since being examined in October 2013. (See Defendants APA., p. 16-18).

FINDINGS OF FACT

Based upon the testimony and exhibits submitted, the undersigned Commissioner makes the following findings of facts:

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is Six Hundred Eighty Four Dollars (\$684.18) and 18/100 with a corresponding compensation rate of Four Hundred Fifty Six Dollars (\$456.14) and 14/100.
3. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants on April 19, 2012.
4. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant alleges that he injured his head, brain, and thoracic spine in a work-related accident on April 19, 2012.
5. Based on the entirety of the evidence including the medical records submitted, the

testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant is 28 years of age (medical evidence establishing Claimant's date of birth as 11/29/85; Claimant's 2012 Depo. p. 5).

6. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant is a high school graduate (Defendants' APA #2, p. 9; Claimant's 2012 Deposition, page 9).
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant's job with Employer was heavy equipment operator (testimony of Claimant; Claimant's 2012 Depo. pp. 10 & 21).
8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, in the alleged accident in issue, Claimant was found injured and lying next to Employer's truck. I base this Finding of Fact on the testimony of Barnette and Bolden. (Defendants APA, p. 1)
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find Claimant admits that he remembers nothing about (a) the day prior to the date of the alleged accident, (b) the day of the alleged accident, including "*absolutely no memory of it or what might have precipitated the fall;*" or (c) the day after the date of the alleged accident (Hr'g Tr. 44:2-16; Claimant's APA #2, p. 25; Claimant's 2012 Deposition, pp. 25-26, 29, & 31-32).

10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find the alleged accident was unwitnessed.
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that no witness claims to have seen the Claimant's alleged accident.
12. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, three days prior to the date of the alleged accident, Claimant was prescribed 90 capsules of Neurontin (to be taken three times daily) and 60 tablets of Ultram (to be taken two times daily). I base this Finding of Fact on Defendants' APA #8, pp. 27-28; Defendants' APA #9, p. 30; & Claimant's APA #2, p. 25).
13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, two days prior to the date of the alleged accident, Claimant sought treatment in the Emergency Room. At the Emergency Room, Claimant reported that he had vomited one time the day before, and had had diarrhea earlier in the week (Defendants' APA #9, pp. 30-32).
14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the temporal medical records are of no real utility: (a) one record from the date of the alleged accident erroneously states that Claimant fell off a *ladder*, and Claimant does not contend that he fell off a ladder (Claimant's APA #1, p. 1; Defendants' APA #10, p.

33; Claimant's 2012 Deposition, pp. 28-29); and (b) another record from the date of the accident states that Claimant fell of the back of a truck, when Claimant in fact contends that he must have fallen from the steps of the cab (Claimant's APA #1, p. 20; Defendants' APA #10, p. 35).

15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that co-worker Barnette admits he can only "speculate" as to how the fall occurred, as Barnette did not (a) see Claimant fall or (b) testify that he saw Claimant on the cab steps immediately prior to the fall. Further, Barnette testified that most of the truck cleaning is done by a high pressure hose, rather than with soap.

16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that if Barnette had seen Claimant on the steps of the cab just prior to the alleged accident, then the result in this case might be vastly different (evidence in its entirety, including but not limited to Depo. of Barnette, pp. 8, 13-17, 21-22, 24-25, & 28).

17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that co-worker/friend Bolden did not witness the accident, and Bolden specifically admits he "never saw [Claimant] on the steps of the truck." Bolden did, however, see Claimant "standing on the ground" and placing a cooler in the truck sometime before the time of the alleged accident (Depo. of Bolden, pp. 4-7, 9, & 14).

18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find

that Supervisor Speegle did not witness the accident either, and knows of no one who did (Depo. of Speegle, pp. 5 & 11).

19. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, the undersigned does not find persuasive the opinion of Dr. Peterson (Claimant's family doctor): the portion of Claimant's counsel's letter prefacing the request for the causation opinion assumes that Claimant "fell from the cab of" Employer's truck. Further, Dr. Peterson's opinion only states that Claimant's head injuries were "caused by the fall on April 19, 2012." There is no dispute that Claimant injured his head in the fall, but the dispute is whether Claimant fell from a standing position or from the steps of the cab (Defendants' APA #2, p. 6; Claimant's APA #3, p. 37; Claimant's 2012 Deposition, pp. 12-13 & 39).
20. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, six months after the date of the alleged accident, Claimant was not limited by back pain, such that he was able to engage in "a lot of farming and building a [log] house" (Defendants' APA #5, page 21; Hr'g Tr. 60:23-63:23; *see also* Claimant's 2014 Deposition, pages 6-7 and 33-34).
21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that Claimant sustained an intervening accident in August 2013 (1 year and 4 months after the date of the alleged accident), for which Claimant sought medical treatment. Medical evidence from Claimant's treating physician at this visit states that Claimant was

doing well after the alleged fall at work until Claimant “fell off a horse.” (Defendants’ APA #3, page 12)

22. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, I find that Claimant was impeached at the hearing testimony with his initial deposition testimony that he had sustained no accidents since the date of the alleged work accident. Claimant’s explanation of the horse incident (“it didn’t hurt or anything like that”) is not persuasive given the fact that Claimant sought treatment for the after the fall off the horse (53:24-55:24; Defendants’ APA #3, pp. 12-14, 16, & 18; Claimant’s 2014 Depo., pp. 18 & 21).
23. In his theory of the case, Claimant contends that circumstantial evidence (the fact that Claimant was on Employer’s premises; the presence of Claimant’s book bag in the cab; Claimant’s testimony that he always climbed the steps to place his book bag in the cab; the fact that Claimant must have fallen from a position higher than the floor to sustain the injuries he sustained, and the fact that Claimant’s truck had recently been washed--or that Claimant’s shoe caught on the step(s) of the cab) is sufficient to prove that Claimant fell from the steps of the cab of the truck and suffered work-related injuries.
24. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, I find that, even if the undersigned presumes that Claimant was in fact injured through his employment, I am confronted with the following: (a) there is no known cause of the fall in the instant case, (b) Claimant had been taking prescription medication (including Neurontin and Ultram) for back pain in the few days preceding the date of the accident,

(c) Claimant sought treatment at the ER two days before the date of the accident for stomach/dehydration issues, and while there Claimant's family questioned the side effects of the medications he had been taking; (d) no one saw Claimant on the steps of the truck, and in fact one witness saw Claimant place a cooler into the truck from a standing position on the ground—not the steps; (e) although not dispositive, Claimant's friend and co-worker said the steps were not cleaned with soap; only a pressure washer; and (f) very importantly, **Claimant gave sworn testimony at his deposition that two witnesses observed Claimant on the steps just before he fell, which is refuted (or at least inconsistent with) the testimony of Barnette and Bolden.** Claimant's sworn testimony in this regard (as cited in this finding) greatly damages his credibility (*e.g.*, Claimant's 2012 Deposition, pp. 26 & 29-34: *"I was told...I was climbing up in the truck to put something in there or do something... And then they said that they seen me up—they seen me up on the truck. Then they said after they turned around, they seen me laying on the ground"* is not supported by the testimony of any witness; nor is Claimant's testimony—*"they told me, they—they turned around and they seen me climb up in the truck, and they said they turned back around, and as soon as they turned back around again, they said they seen me laying on the ground"*--supported by the testimony of any other witness (Claimant's 2012 Depo., p. 26:18-24; Depo. of Barnette in its entirety; Depo. of Bolden in its entirety).

25. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in 42-1-10 S.C. Code of Laws, et. seq., that:

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Workers' Compensation awards 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. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App.1997) *rev'd on other grounds*.
4. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "'injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must 'arise out of' the employment and simultaneously co-exist 'in the course of' the employment." Kinsey v. Champion Am. Serv. Center, 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).
5. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of

law.” Doe v. South Carolina State Hospital, 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).

6. Pursuant to South Carolina Code Ann. §42-1-160, and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, the Claimant failed to carry his burden of proving that he sustained a compensable injury by accident within the course and scope of his employment with the Defendants.
7. Pursuant to South Carolina Code Ann. §42-9-10 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, Claimant is not entitled to any temporary total disability benefits for the period of time during which the Claimant’s incapacity for work was total due the Claimant’s alleged work-related accident.
8. Pursuant to South Carolina Code Ann. §42-15-60 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, Defendants are not responsible for the provision of treatment nor the payment of medical bills arising out of the Claimant’s alleged work-related accident.
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant’s testimony, I find that Owens v. Oceans Forest Club does not serve to render the claim at issue compensable. In Owens, the claimant (a game warden hired to patrol Employer’s premises to prevent poaching and trespassers generally) was found dead on the ground of Employer’s premises, but the specific cause of death in Owens was a bullet wound

through the head (*i.e.*, the bullet clearly caused the death and obvious fall to the ground). The Owens court found the claim compensable based upon circumstantial evidence because (a) the claimant was on Employer's property during the claimant's hours of employment, (b) the cause of death was a known gunshot wound, and (c) of the nature of the work duties. The question before the court was whether the death in Owens was the result of a suicide or a trespasser.

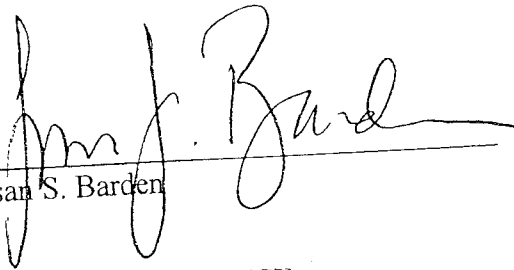
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the present case is distinguishable from Owens due to the fact that, in the present case and unlike in Owens, the cause of the Claimant's injury (*i.e.* his alleged fall) is unknown. (See Testimony of Claimant; Claimant's APA #2, page 25; Claimant's 2012 Deposition, pages 25-26, 29, and 31-32).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant did not meet his burden of proof, and his request for benefits under the Act is denied.

ORDER

IT IS HEREBY ORDERED that Claimant has failed to meet his burden of proving a compensable injury by accident within the course and scope of his employment.

IT IS FURTHER ORDERED that Claimant's claim for all benefits available under the Act is DENIED.

AND IT IS SO ORDERED.


Susan S. Barden

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).
April 14, 2014

By: Kristi Love, Administrative Assistant to Commissioner Barden