

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

W.C.C. FILE NO: 1122307

Johnathon Ashley Richardson

EMPLOYEE,
CLAIMANT/RESPONDENT

vs.

Beal Lumber Company, Inc.

EMPLOYER,

and

Palmetto Timber S.I. Fund c/o Walker, Hunter
& Associates, Inc.

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on September 16, 2014 per notices timely
and properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

November 3rd, 2014

APPEARANCES: Claimant/Appellant represented by Samuel M. Price, Jr., Esquire
Defendants/Respondents represented by Elizabeth F. Render, Esquire

STATEMENT OF THE CASE

The Claimant alleges that he sustained a compensable work-related injury to his back on or about February 8, 2011 due to repetitive trauma. However, he later amended his Form 50 to indicate that the date of the injury may have been on April 27, 2012. The Claimant indicates that he was injured due to repetitive lifting, twisting, and pushing lumber. The Claimant alleges he gave notice to the Employer of an injury due to repetitive trauma. Defendants denied this claim in its entirety and contend that the Claimant failed to provide notice and, further, that the Claimant injured his back off the job.

A hearing was held before the Single Commissioner pursuant to the Claimant's Form 50 and Defendants' Form 51. The Single Commissioner issued an Order dated April 28, 2014 in which it was found that the Claimant failed to meet his burden of proof to show that he suffered from a compensable repetitive trauma injury. Further, the Single Commissioner found that the Claimant failed to provide sufficient notice of an alleged repetitive trauma injury.

Within the statutory period, Claimant filed a Form 30 Application for Review setting forth exceptions to the Single Commissioner's ruling. On appeal, Claimant cites the following exceptions:

1. Did the Honorable Commissioner Avery B. Wilkerson, Jr. err in his finding that Claimant's injury was not related to his work?
2. Did the Honorable Commissioner Avery B. Wilkerson, Jr. err in his finding the injury was not a repetitive trauma incident?
3. Did the Honorable Commissioner Avery B. Wilkerson, Jr. err in his finding that no notice was given to the employer?
4. Did the Honorable Commissioner Avery B. Wilkerson, Jr. err in his finding that claimant's testimony was not credible?

In the appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. 42-17-50, review the award, weigh the evidence that was 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 Hearing Commissioner.

On September 16, 2014, oral arguments were presented before the Appellate Panel. Based upon oral arguments, review of the hearing transcript, submitted documentary evidence of record, the Commission's file and the Respondent's Brief *only*¹, the Appellate Panel, by and through its statutory and inherent power, enter into this decision pursuant to S.C. Code Ann. Section 42-17-50. Based upon review of the foregoing, we hereby **AFFIRM WITH AMENDMENTS** the Decision and Order of the Single Commissioner. Accordingly, the Appellate Panel has stated that the following Findings of Fact and Conclusions of Law shall become the law of the case and, therefore, the Decision and Order of the Hearing Commissioner is **AFFIRMED WITH AMENDMENTS**.

FINDINGS OF FACTS AND RULINGS OF LAW

1. The Claimant did not suffer from a compensable repetitive trauma injury on February 8, 2011 or April 27, 2012.
2. At the time of his work injury, the Claimant earned average weekly wages of \$263.04 with a corresponding compensation rate of \$175.37.
3. The Claimant did not give notice to the Employer of an injury by accident due to repetitive trauma on February 8, 2011 or April 27, 2012.

¹ Claimant/Appellant's brief is dismissed and not considered as he failed to comply with a prior Administrative Order dated August 22, 2014 in which the Commission requested he remove any and all references to information which was not in evidence before the Single Commissioner. Claimant's counsel admitted upon oral arguments that he did not comply with the Order.

4. The Claimant's testimony was difficult to follow and he did not answer questions with clarity. The Claimant's testimony was inconsistent and never described an injury by accident or a repetitive trauma incident.

5. The Claimant was not credible in his testimony.

6. The Claimant exaggerated his symptoms.

7. The Claimant's job duties are not repetitive.

8. The Claimant's supervisor, Kenneth Hill, testified that the Claimant did not provide notice of an injury at work.

9. The Claimant's supervisor, Kenneth Hill, testified that the Claimant reported he injured his back off the job while moving logs with his dad.

10. The owner of Beal Lumber, Frank Skipper Beal, testified that the Claimant was not injured on the job.

11. Dr. McLoughlin treated the Claimant on one occasion.

12. Dr. McLoughlin's deposition testimony indicates that the Claimant gave inconsistent dates regarding when his back pain started.

13. Dr. McLoughlin could not state within a reasonable degree of medical certainty that the Claimant's medical condition was caused by his work-related activities.

14. Based on the entire record, testimony of the Claimant, medical reports, video description of the job, and Dr. McLoughlin's deposition testimony, this is not a compensable repetitive trauma claim.

15. Further, Claimant's counsel admitted to disregarding an Administrative Order from the South Carolina Worker' Compensation Commission dated August 11, 2014 in which he was asked to delete any and all references to information which was not in evidence before the

Single Commissioner. Therefore, Claimant's counsel's brief is dismissed and was not considered.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. Section 42-1-172, the Claimant did not suffer from a repetitive trauma injury.
2. Pursuant to S.C. Code Ann. Section 42-15-20, the Claimant did not provide notice to the Employer of a repetitive trauma injury.
3. Pursuant to S.C. Code Ann. Section 42-15-60 and other applicable law, the Claimant is not entitled to medical treatment.
4. Pursuant to S.C. Code Ann. Sections 42-1-120 and 42-9-10, Claimant is not entitled to temporary total disability benefits.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Claimant's claim for an injury due to repetitive trauma is hereby denied in its entirety.

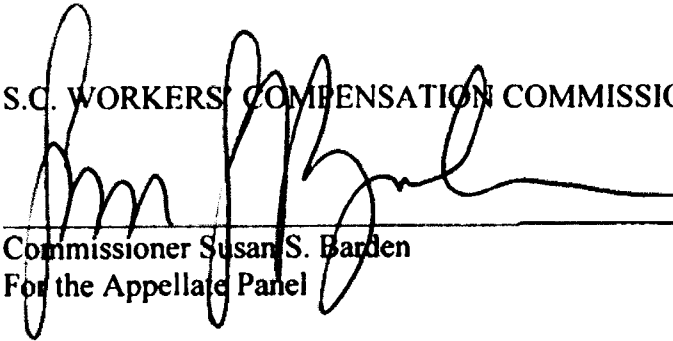
IT IS FURTHER ORDERED that the Claimant is not entitled to causally-related medical treatment.

IT IS FURTHER ORDERED that the Claimant is not entitled to temporary total disability benefits.

IT IS FURTHER ORDERED that Claimant/Appellant's Brief was dismissed and not considered as Claimant's counsel admitted that he failed to remove references to information that was in evidence before the Single Commissioner.


IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION

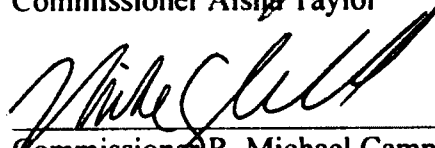


Commissioner Susan S. Barden
For the Appellate Panel

WE CONCUR:



Commissioner Aisha Taylor



Commissioner R. Michael Campbell, II

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 November 3, 2014