

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

**COMMISSION PANEL: THE HONORABLE T. SCOTT BECK, CHAIR; THE
HONORABLE AISHA TAYLOR, THE HONORABLE SUSAN S. BARDEN**

SCWCC FILE NO.: 1200195

Terrance Satterwhite,

Claimant,

v.

Palmetto State Transportation,

Employer, and

Cherokee Insurance Company,

Carrier,

Defendants.

Hearing held in Columbia,
South Carolina on August 11, 2014
Per notice timely and properly served upon all Parties of Interest.

Appearances: Terrance Satterwaite, pro se, for
Claimant/Appellant

Peter Leventis Esquire, for Defendants/
Respondents

Filed:

March 2nd, 2015

STATEMENT OF THE CASE

Claimant suffered an admitted work related injury to his low back on January 5, 2012 when Mr. Satterwhite was getting out of his truck and twisted his lower back the wrong way, and the pain continued getting worse until he sought medical care for this issue about two weeks later. Mr. Satterwhite only asserts injury to his lower back, and this is an admitted claim for benefits by the Defendants. The Claimant previously testified that he returned back to work in the first week of February of 2013. The Claimant did not sign a Form 17 to voluntarily terminate benefits until September 12, 2013. The Claimant had been declared at Maximum Medical Improvement by the treating Physician on January 28, 2013, and released to full duty at that time by the treating Physician, Dr. Phillip Hodge.

At the hearing held February 7, 2014 which was heard by Commissioner Avery Wilkerson, the Defendants requested a determination of permanent partial disability for the Claimant's low back based on the ratings of the treating physician. The Employer/Carrier also requested a credit for overpayment of temporary indemnity benefits paid since the Claimant was found to be at MMI by Dr. Hodge, per the reasoning of the Supreme Court in *Curiel v. Environmental Management Services, Inc.*, 665 S.E.2d 482, 376 S.C. 23 (2007) until the date of the signing of the Form 17. Alternatively, the Defendants requested credit overpayment of temporary benefits in the amount of two thirds of the actual wages earned by the Claimant since he returned to full duty without restriction from the treating physician as of the first week of February 2013 until the date the Form 17 was signed in September 12, 2013 under S.C. Code Ann. § 42-9-210.

For his part, the Claimant contended he had not reached MMI for his low back. While he had returned to Dr. Hodge since January 28, 2013, he felt Dr. Hodge did not fully consider his complaints in evaluating him, and only provided follow-up x-rays instead of an MRI. The Claimant requested a second opinion from another qualified specialist, and for an MRI of his lumbar spine.

The instant proceeding was initiated by Employer's Form 30 dated May 9, 2014, in which the Employer requested the Commission Review the Single Commissioner's Findings of Fact and Conclusions of Law.

On April 29, 2014, the single Commissioner issued his Decision and Order containing the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *That all parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act.*
2. *That Claimant, Terrance Satterwhite, was an employee of Palmetto State Transportation on the date of injury, January 5, 2012.*
3. *That Palmetto State Transportation Employer was insured for this date of accident with Cherokee Insurance Company as the Carrier.*
4. *That venue for the hearing is proper and agreed upon by the parties in Greenville, South Carolina.*
5. *That notice of the hearing was timely and properly served upon all parties of interest.*
6. *That notice of the accident was given to the employer in a timely fashion.*
7. *That a claim for benefits was filed with the South Carolina Workers' Compensation Commission within two years of the date of the alleged accident.*
8. *That the Claimant's average weekly wage for this accident is \$1,167.57 and his corresponding compensation rate would be \$725.47, the maximum compensation rate for 2012.*
9. *That Claimant suffered a compensable work related injury to his low back/lumbar spine on January 5, 2012 for which he has received authorized medical treatment from Dr. Phillip Hodge, orthopaedist, in addition to other providers.*
10. *The sequence of events is a key to this case. The Claimant returned to work as of the first week of February 2013, which the undersigned finds was known to the workers' compensation insurance carrier. The Claimant continued to*

- receive checks from the Carrier for temporary indemnity benefits. A Form 21 request for stop payment was first filed on July 17, 2013, but the current Form 21 filing on which the hearing was held, was not filed until November 8, 2013.
11. The Claimant did not return to the doctor in April of 2013 for ongoing complaints to his back, and was to follow-up in one month which was done on May 20, 2013. The May 20, 2013 visit also references following up, in another month, after that. (APA No. 5, p. 31). However, no follow up visit after that is referenced in the record or appears to have taken place.
 12. The Form 14B of the treating physician, Dr. Hodge, is dated January 28, 2013, and rates the Claimant with an impairment of 7% to the lumbar spine, and references to a reasonable degree of certainty the Claimant "will not" need future medical care related to this injury. (APA No. 5 at p.28).
 13. The Form 21 filed on July 17, 2013, for stop payment, was withdrawn because the Claimant subsequently signed a Form 17 to voluntarily stop ongoing temporary indemnity payments.
 14. The functional capacity evaluation (FCE) referenced by Dr. Hodge in his January 28, 2013 narrative report shows in the heavy demand category of work (according to the report of Dr. Hodge), but this FCE was not submitted with the evidence in the record.
 15. Payroll records of the Claimant were submitted by the Defendants for the Claimant's pay history and earnings for the year 2013, which show different pay amounts varying each week. (APANo.9 pp. 68-98).
 16. The Form 17 signed by the Claimant on September 12, 2013 only shows he was paid TTD benefits from January 11, 2012 - June 25, 2013. However, it is not clear when it was offered by the Defendants to the Claimant to be signed.
 17. I would find any credit for overpayment against the final award of permanency would apply as of the date of the filing of the initial Form 21, which was filed on the wrong address on July 11, 2013, and refiled on July 17, 2013. Therefore, I find credit for overpayment towards the ultimate award of permanency would be from July 17, 2013 until the last date of temporary indemnity benefits received by the Claimant. This was unclear as of the date of hearing, but

according to the payment spread sheet subsequently provided by the Defendants at APA No. 11 would be through September 10, 2013. Therefore, credit would run from July 17, 2013 through September 10, 2013, for a credit for overpayment of nine (9) weeks of TTD benefits.

18. The Claimant requests a second opinion for his back as he continues to have some problems. I grant the Claimant a second opinion for his back, and command the Defendants to set this up within 15 days of the service of this Order.
19. Permanency is not appropriate to address at this time, until the Claimant has been evaluated by a neurosurgeon or another orthopaedist.
20. Dr. Hodge only performed follow up x-rays when the Claimant saw him in the spring of 2013, despite the Claimant's request for a follow up MRI at that time. I am ordering the Claimant be provided an MRI both with and without contrast by the Defendants, and that the results of such tests be provided to both doctors, (the second opinion physician, and Dr. Hodge) for their consideration and determination of any disability and/or necessary additional treatment.

CONCLUSIONS OF LAW

1. Under § 42-3-20 and § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, Claimant, Terrance Satterwhite, is a covered employee.
3. Under § 42-1-140, Palmetto State Transportation is a covered employer.
4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of the accident.
5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.
6. Under § 1-23-320(b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.
7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.

8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.
9. Under § 42-1-40, Claimant's average weekly wage was \$1,164.5, and his compensation rate is \$725.47.
10. Under § 42-1-160, the Claimant sustained a compensable injury to his lumbar spine only.
11. Under § 42-15-60, and per the evidence presented in the claim, Claimant has not reached maximum medical improvement at this time, and is in need of an evaluation for a second opinion with an appropriate specialist.
12. That the Claimant has received appropriate medical treatment under § 42-15-60, but is now in need of an MRI both with and without contrast, and the results of such testing shall be provided to the IME physician (referenced in Conclusion of Law No. 11), and to the original treating physician, Dr. Phillip Hodge, for each of them to opine on the Claimant's degree of disability and/or necessary continued treatment.
13. The Claimant was placed at MMI by the treating physician on the 28th of January of 2013, and he did not return to full duty until the first week of February 2013. While the Claimant has continued working full duty and earning wages at the same position with the Defendant Employer from February 2013 through the date of the February 7, 2014 hearing, as well as full TTD benefits until September 10, 2013, I find that under § 42-9-210 and *Curiel v. Environmental Management Services, Inc.*, 655 S.E.2d 482, 376 S.C. 23 (2007) the Defendants are only entitled credit for overpayment of temporary benefits from July 17, 2013 until September 10, 2013 (The Claimant having signed a Form 17 on September 12, 2013).

ORDER AND AWARD of the SINGLE COMMISSIONER

In conjunction with the Findings and Conclusion^S above, the Claimant has not attained maximum medical improvement at this time, and is entitled to a second opinion with an appropriate specialist as well as two separate MRI's to his lumbar spine (one with

contrast and one without contrast). These diagnostic tests will be provided to both the original treating physician and the follow-up physician who provides the second opinion.

The Defendants request for credit for overpayment during the time period that the Claimant was back to work full duty for the Defendant employer, and also receiving full temporary total disability benefits between February 2013 and July 16, 2013 is denied, and shall be provided in accordance with the Findings and Conclusions above for the nine (9) weeks between July 17, 2013 and September 10, 2013.

ISSUES ON APPEAL

Counsel for Defendants filed a Form 30 Request for Commission Review on May 9, 2014. Defendants requested the Commission review the single Commissioner's Decision and Order to address 6 questions of law or fact regarding the Commissioner's findings. The Form 30 is contained within the Commission's file.

DECISION OF THE APPELLATE PANEL

This matter was heard before the above-mentioned South Carolina Workers' Compensation Commission Appellate Panel during the last term of Review. The Appellate Panel considered the matter and **AFFIRMED** the Decision and Order of the single Commissioner.

FULL COMMISSION FINDINGS OF FACT

Based on the foregoing, the Appellate Panel adopts the following findings of fact:

1. That all parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act.
2. That Claimant, Terrance Satterwhite, was an employee of Palmetto State Transportation on the date of injury, January 5, 2012.
3. That Palmetto State Transportation Employer was insured for this date of accident with Cherokee Insurance Company as the Carrier.

4. That venue for the hearing is proper and agreed upon by the parties in Greenville, South Carolina.
5. That notice of the hearing was timely and properly served upon all parties of interest.
6. That notice of the accident was given to the employer in a timely fashion.
7. That a claim for benefits was filed with the South Carolina Workers' Compensation Commission within two years of the date of the alleged accident.
8. That the Claimant's average weekly wage for this accident is \$1,167.57 and his corresponding compensation rate would be \$725.47, the maximum compensation rate for 2012.
9. That Claimant suffered a compensable work related injury to his low/back lumbar spine on January 5, 2012 for which he has received authorized medical treatment from Dr. Phillip Hodge, orthopaedist, in addition to other providers.
10. The sequence of events is a key to this case. The Claimant returned to work as of the first week of February 2013, which the undersigned finds was known to the workers' compensation insurance carrier. The Claimant continued to receive checks from the Carrier for temporary indemnity benefits. A Form 21 request for stop payment was first filed on July 17, 2013, but the current Form 21 filing on which the hearing was held, was not filed until November 8, 2013.
11. The Claimant did not return to the doctor in April of 2013 for ongoing complaints to his back, and was to follow-up in one month which was done on May 20, 2013. The May 20, 2013 visit also references following up, in another month, after that. (APA No. 5, p. 31). However, no follow up visit after that is referenced in the record or appears to have taken place.
12. The Form 14B of the treating physician, Dr. Hodge, is dated January 28, 2013, and rates the Claimant with an impairment of 7% to the lumbar spine, and references to a reasonable degree of certainty the Claimant "will not" need future medical care related to this injury. (APA No. 5 at p.28).

13. The Form 21 filed on July 17, 2013, for stop payment, was withdrawn because the Claimant subsequently signed a Form 17 to voluntarily stop ongoing temporary indemnity payments.
14. The functional capacity evaluation (FCE) referenced by Dr. Hodge in his January 28, 2013 narrative report shows in the heavy demand category of work (according to the report of Dr. Hodge), but this FCE was not submitted with the evidence in the record.
15. Payroll records of the Claimant were submitted by the Defendants for the Claimant's pay history and earnings for the year 2013, which show different pay amounts varying each week. (APA No.9 pp. 68-98).
16. The Form 17 signed by the Claimant on September 12, 2013 only shows he was paid TTD benefits from January 11, 2012 - June 25, 2013. However, it is not clear when it was offered by the Defendants to the Claimant to be signed.
17. We would find any credit for overpayment against the final award of permanency would apply as of the date of the filing of the initial Form 21, which was filed on the wrong address on July 11, 2013, and refiled on July 17, 2013. Therefore, we find credit for overpayment towards the ultimate award of permanency would be from July 17, 2013 until the last date of temporary indemnity benefits received by the Claimant. This was unclear as of the date of hearing, but according to the payment spreadsheet subsequently provided by the Defendants at APA No. 11 would be through September 10, 2013. Therefore, credit would run from July 17, 2013 through September 10, 2013, for a credit for overpayment of nine (9) weeks of TTD benefits.
18. The Claimant requests a second opinion for his back as he continues to have some problems. We grant the Claimant a second opinion for his back, and command the Defendants to set this up within 15 days of the service of this Order.
19. Permanency is not appropriate to address at this time, until the Claimant has been evaluated by a neurosurgeon or another orthopaedist
20. Dr. Hodge only performed follow up x-rays when the Claimant saw him in the spring of 2013, despite the Claimant's request for a follow up MRI at that

time. We are ordering the Claimant be provided an MRI both with and without contrast by the Defendants, and that the results of such tests be provided to both doctors, (the second opinion physician, and Dr. Hodge) for their consideration and determination of any disability and/or necessary additional treatment.

FULL COMMISSION RULINGS OF LAW

Based on the foregoing, the Full Commission adopts the following rulings of law:

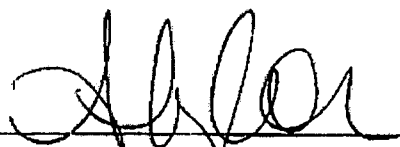
1. Under § 42-3-20 and § 42-3-180, this Commission has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, Claimant, Terrance Satterwhite, is a covered employee.
3. Under § 42-1-140, Palmetto State Transportation is a covered employer.
4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of the accident.
5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.
6. Under § 1-23-320(b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.
7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.
8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.
9. Under § 42-1-40, Claimant's average weekly wage was \$1,164.5, and his compensation rate is \$725.47.
10. Under § 42-1-160, the Claimant sustained a compensable injury to his lumbar spine only.
11. Under § 42-15-60, and per the evidence presented in the claim, Claimant has not reached maximum medical improvement at this time, and is in need of an evaluation for a second opinion with an appropriate specialist.

12. That the Claimant has received appropriate medical treatment under § 42-15-60, but is now in need of an MRI both with and without contrast, and the results of such testing shall be provided to the IME physician (referenced in Conclusion of Law No. 11), and to the original treating physician, Dr. Phillip Hodge, for each of them to opine on the Claimant's degree of disability and/or necessary continued treatment.
13. The Claimant was placed at MMI by the treating physician on the 28th of January of 2013, and he did not return to full duty until the first week of February 2013. While the Claimant has continued working full duty and earning wages at the same position with the Defendant Employer from February 2013 through the date of the February 7, 2014 hearing, as well as full TTD benefits until September 10, 2013, We find that under § 42-9-210 and Curiel v. Environmental Management Services, Inc., 655 S.E.2d 482, 376 S.C. 23 (2007) the Defendants are only entitled credit for overpayment of temporary benefits from July 17, 2013 until September 10, 2013 (The Claimant having signed a Form 17 on September 12, 2013).

ORDER

IT IS THEREFORE ORDERED that the Decision and Order of the single Commissioner is **FULLY AFFIRMED**.

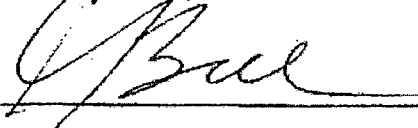
AND SO IT IS ORDERED!



Commissioner Aisha Taylor, Chair



Commissioner Susan S. Barden



Commissioner T. Scott Beck

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).



Claimant's Name: Terrance Satterwhite SSN: 257 - 43 - 7967 Employer's Name: Palmetto State Transportation
Address: 270 Chateau Street Address: 1050 Park West Blvd.
City: Boiling Springs State: SC Zip: 29316 City: Greenville State: SC Zip: 29611
Home Phone: () - Work Phone: () - Insurance Carrier: Cherokee Insurance Company
Preparer's Name: Peter P. Leventis, IV, Esquire Law Firm: McKay Law Firm Preparer's Phone #: (803) 256 - 4645

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 5/9/2014

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Please see attached.

SCWCC

MAY 13 2014

JUDICIAL

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form.

Mediation

Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Terrance Satterwhite, 270 Chateau Street, Boiling Springs, SC 29316 on the 9th day of May 2014, by first class postage XX certified mail personal service.

Peter P. Leventis IV Attorney for Defendants pleventis@mckayfirm.com May 9, 2014
Preparer's Signature Title Email Date

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

CERTIFICATE OF SERVICE

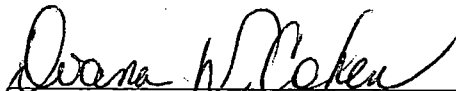
This is to certify that a copy of the foregoing WCC Form 30, Request for Commission Review, has been served upon the following parties by placing a copy of the same in the United States mail, first class postage prepaid, addressed to the following as shown below on the 9 day of May, 2014.

The Honorable Virginia Crocker
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202

The Honorable Avery B. Wilkerson, Jr.
Commissioner
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Terrance Satterwhite
270 Chateau Street
Boiling Springs, SC 29316



Diana W. Cohen, Paralegal
McKay, Cauthen, Settana & Stublely, P.A.
Post Office Box 7817
Columbia, South Carolina 29202-7217

(803) 256-4645

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Terrance Satterwhite,)
Claimant,)
vs.)
Palmetto State Transportation,)
Employer,)
and)
Cherokee Insurance Company,)
Carrier,)
Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION
WCC FILE NO. 1200195
FORM 30 ADDENDUM TO
THE APPEAL OF THE DEFENDANTS

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
THE PRO SE CLAIMANT TERRANCE SATTERWHITE:

An Order was served on April 29, 2014 regarding the disputed issues among the parties from a Form 21 hearing in the above referenced case. The Defendants/Appellants herein appeal the trial Commissioner's findings and conclusions based on the followings six (6) exceptions for judicial review by the full Commission:

1. Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law, that the Defendants were only entitled to nine weeks of credit for overpayment of temporary total disability from July 17, 2013 through September 10, 2013, when the Claimant was deemed at MMI by the treating physician in January of 2013, and returned to work continuously earning wages with the covered Employer as of February 2013 through September 10, 2013 and ongoing; and when such a finding was against the greater weight of the evidence

and/or contrary to South Carolina law? (Wilkerson Order, Finding of Fact No. 17; Wilkerson Order, Conclusion of Law No. 13)

2. Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law, that the Claimant was entitled to a second opinion for his back, when such a finding was against the greater weight of the evidence and/or contrary to South Carolina law? (Wilkerson, Order Finding No. 18)

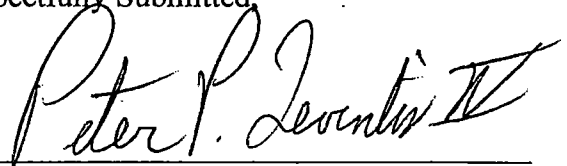
3. Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law, that a determination of permanency was premature in this matter, when such a finding was against the greater weight of the evidence and/or contrary to South Carolina law? (Wilkerson, Order Finding No. 19)

4. Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law, that the Defendants are obligated to provide two separate MRI's to the Claimant's back (with and without contrast), when: such finding is unsupported by any medical evidence, not requested by the treating physician, nor any other physician, *even though* such request was presented to the physician by the Claimant; when the Defendants do not have the ability to provide such a diagnostic procedure, without the referral of a physician; and when such a finding was against the greater weight of the evidence and/or contrary to South Carolina law? (Wilkerson Order, Finding No. 20)

5. Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law, that the Claimant had not attained maximum medical improvement when such a finding was against the greater weight of the evidence and/or contrary to South Carolina law? (Wilkerson Order, Conclusion of Law No. 11)

6. Did the single Commissioner err in finding as an issue of fact, and/or concluding as a matter of law, that the Claimant is entitled to an independent medical evaluation, as well as two separate MRI's of his back, when such a finding was against the greater weight of the evidence and/or contrary to South Carolina law? (Wilkerson Order, Conclusion of Law No. 12)

Respectfully Submitted

A handwritten signature in cursive script that reads "Peter P. Leventis IV". The signature is written in black ink and is positioned above a horizontal line.

Peter P. Leventis, IV
McKay, Cauthen, Settana & Stublely
Post Office Box 7217
Columbia, South Carolina 29202-7217
(803) 256-4645
Attorney for the Defendants

Columbia, South Carolina
May 9, 2014