

SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
WCC # 1211338

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MAR 26 2015

SC Court of Appeals

Keith Case, Employee, Claimant)
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 v.)
)
 J Crawford Logging, Employer)
)
 and)
)
 Palmetto Timber Fund, SIF, Carrier)

FULL COMMISSION ORDER

FULL AFFIRMATION

APPEARANCES:

Claimant: Charlie Hodge, Esq
Employer/Carrier: John W. Rabb, Jr. Esq.

STATEMENT OF THE CASE:

This was an admitted injury to the right lower extremity. The matter originally came before the Single Commissioner on September 19, 2013. A dispute arose regarding the compensability of the spine. The carrier allowed Dr Charles Kanos to evaluate the claimant and authorized a lumbar MRI. The MRI was read as unremarkable. Dr Kanos directed the Claimant to undergo a cervical MRI . The defendants opposed this. A form 21 Stop Payment Request was issued by Defendants based on a Form 14B signed by the treating physician for the leg injury. Claimant's counsel moved and was granted a continuance to take the deposition of Dr Charles Kanos on the causation issue. The request was granted and the record was frozen and the Defendants' request for a credit of TTD was preserved from May 9, 2013 and continuing. The single commissioner retained jurisdiction. The matter was reset and heard on all issues including stop payment of TTD, permanency of the RLE and compensability of the spine as it may relate to the original lower extremity injury. The cervical MRI conducted on 4/17/2014

which would have been excluded by the prior ruling freezing the record was admitted pursuant to the stipulation of both parties.

Claimant asserted the neck is compensable and he is in need of additional medical care. He conceded MMI for the right knee but took the position that permanency is premature until the neck is treated and he is released. The Defendants assert the Claimant is at MMI on May 9, 2013, that the injury is limited to the right leg only, based on the 14B of Dr Folk MD, that the Claimant is entitled to an award of PPD to his right leg, and they seek a credit for overpayment of TTD from May 9, 2013 to the present and specifically deny an injury to the Claimant's spine and rely on the deposition testimony of Dr. Kanos MD.

The Single Commissioner made the following findings of fact:

1. On August 27, 2012, the Claimant sustained bilateral lower extremity injuries in a logging accident within the course and scope of his employment with J Crawford Logging, Inc.
2. Claimant testified he was a pulpwood driver for J Crawford Logging. He was coming down off a trailer on the day in question when a log rolled and he fell between 8-11 feet. He was wearing a hard hat. He fell face forward. He got "a hole" knocked in his left leg and he "slammed on his right knee". (Tr.pg. 11). He testified he hurt from the neck down after the accident. He was bruised from head to toe. (Tr. Pg 14). Currently, the Claimant testified he walks with a crutch. Claimant testified that last night after standing for 2 minutes the right knee starting stinging. He testified he does not drive, but does have a valid CDL with a tanker endorsement.
3. The Claimant was treated by Dr Jason Folk MD. He was diagnosed with patellofemoral pain syndrome, right knee. No surgery was indicated. On April 24, 2013, Dr Folk noted "his right knee has no effusion, he has diminished patellar tendon mobility, but patellar mobility is good. No pain at extremities of motion, stable ligamentous exam, no crepitation through an active range of motion". He was released prn, but there was a referral for lumbar pain. On May 9, 2013, Dr Folk MD executed a Form 14 B assigning a 3% impairment to the right knee and noted the Claimant could return to work with no restrictions and would not need future medical care. I find no evidence of impairment to the left knee.
4. Based on the above medical findings and the testimony of the Claimant as well as my personal observation of both of the Claimant's legs, I find the Claimant is entitled to an award of 10% permanent partial disability to the right lower extremity.
5. The Claimant saw Dr Charles Kanos on May 20, 2013 as a referral for low back pain. A lumbar MRI was recommended. The MRI was read as unremarkable and no treatment was recommended. There were no complaints of neck pain by the Claimant at the May 20, 2013 appointment. In fact, I find nothing in any of the medical records where the Claimant complained of neck pain until his return to Dr Kanos on July 1, 2013, nearly 11 months , post accident. On July 1, 2013, the Claimant was positive for a Hoffman's test which could indicate some compression in the neck. Dr. Kanos

specifically noted this was not present in the May visit. A cervical MRI was recommended.

6. In his deposition, Dr Kanos was unable to provide an opinion to a reasonable degree of medical certainty that the cervical pain was causally related to the accident of 8/27/2012. He was repeatedly asked about this during his deposition but he was unable to provide the necessary causation opinion. Depo. of Kanos, pg 14-15, 17, 19.
7. Based on the deposition of Dr. Kanos, I find the Claimant has failed to carry his burden of proof of proving a compensable injury to his neck.
8. The Claimant reached MMI for his compensable right lower extremity on 5/9/13, and the Defendant's are entitled to stop payment of TTD.
9. Defendant's are entitled to a credit for TTD paid beyond 5/9/13.
10. Based on the 14B from Dr. Folk, the Claimant is not entitled to future medical care for the right lower extremity.

The following Conclusions of Law were made:

CONCLUSIONS OF LAW:

1. Section 42-9-30(16) provides the schedule and period of disability and compensation for PPD to the right lower extremity.
2. The Claimant has the burden of providing facts that would bring his injuries within the workers' compensation law. See Jennings v. Chambers Dev. Co., 335 S.C. 249, 254, 516 S.E.2d 453, 456 (Ct. App. 1999) (stating, "[t]he claimant has the burden of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture, or speculation"). Equally compelling is the evidentiary principle that an award may not rest upon surmise, conjecture, or speculation. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999). Instead, "[an award] must be founded on evidence of sufficient substance to afford a reasonable basis for it." Wynn v. People's Natural Gas Co. of S.C., 238 S.C. 1, 12, 118 S.E.2d 812, 818(1961).
3. Claimant has failed to carry his burden of proving a compensable injury to his neck.

The following Order was issued:

ORDER:

1. Claimant is entitled to 10% PPD to the right lower extremity.
2. Claimant is not entitled to future medical care for the right lower extremity.
3. Defendant's are entitled to stop TTD and are entitled to a credit for TTD paid beyond 5/9/2013.
4. Claimant's request for benefits for his neck is denied.

Based on our review of the entire record and argument of counsel, we hereby make the following:

FINDINGS OF FACT:

1. The Commission has the power to weigh the evidence as presented at the initial hearing and, after careful review in the instant case, the Commission agrees with all of the Finding of Facts and Conclusions of Law stated above and for all of the reasons set forth by the Single Commissioner and accordingly finds that the Decision and Order is Affirmed in Full.

Based upon the foregoing Findings of Fact, it is the determination of the Commission that:

CONCLUSION OF LAW:

1. In an Appellate Review, the Full Commission 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 Commissioner. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 414 S.E.2 162 (1992)

ORDER:

The Order of the Single Commissioner filed in the above entitled matter on August 27, 2014, is hereby affirmed by the Panel and same shall constitute the Decision and Order of the Appellate Panel.

By:

S.C. WORKERS' COMPENSATION COMMISSION



Commissioner Susan Barden



Commissioner Michael Campbell



Commissioner Avery Wilkerson

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 Eugenia Hollmon on March 10, 2015