

DECISION AND ORDER OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1008356

James Osment,	)
Employee,	)
Claimant,	)
vs.	)
The Timken Company,	)
Employer,	)
and	)
Phoenix Insurance Company,	)
Carrier,	)
Defendants.	)

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**HEARING:** Held in Spartanburg, South Carolina on September 26, 2014.

**APPEARANCES:** Claimant represented by John Hawkins of The Hawkins Law Firm, Spartanburg, South Carolina.

Defendants represented by J. South Lewis, II, Esquire of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

**PURPOSE OF HEARING:** To determine the issues as set forth on the Forms 50/51.

**DECISION AND ORDER:** By Susan S. Barden, Commissioner

**FILED:** November 24, 2014.

## I. APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

### By Claimant:

- APA #1: The Timken Company Medical Records, dated 5/20/10, consisting of page 1.
- APA #2: Records of Peachview Medical Park, dated 5/20/10 – 5/21/10, consisting of page 2.
- APA #3: Timken Company Statement of Physical Condition, dated 5/20/10, consisting of pages 3-13.
- APA #4: Timken Company Physical Exam/Supplemental Doctors Notes, dated 5/24/10-10/28/13, consisting of pages 14-19.
- APA #5: Reports of Upstate Carolina Medical Center, dated 5/25/10 – 6/10/10, consisting of pages 20-27.
- APA #6: Records of Walter Grady, D.O. (Grady Orthopaedics), dated 6/7/10 – 1/20/11, consisting of pages 28-55.
- APA #7: Records of Orthopedic Specialties of Spartanburg, dated 5/2/11 – 8/27/14, consisting of pages 56-131.
- APA #8: Records of Orthopedic Specialties of Spartanburg – Work Statements, dated 9/9/13 – 10/28/13, consisting of pages 132-133.
- APA #9: Questionnaires of Dr. Anthony Sanchez, dated 3/9/14 & 6/16/14, consisting of pages 134-137.
- APA #10: The Timken Company Retirement Election Form, dated 10/21/13, consisting of page 138.
- APA #11: Vocational Report of J. Adger Brown, Jr., MA, CDMS, dated 4/30/14, consisting of pages 139-145.
- APA #12: Deposition Transcript of Dr. Anthony Sanchez, dated 5/23/14, consisting of pages 146-215.
- APA #13: Deposition Transcript of Rick Poston, dated 8/21/14, consisting of pages 216-284.
- APA #14: Deposition Transcript of Raymond Sarratt, dated 8/21/14, consisting of pages 285-317.

**By Defendants:**

APA #15: Records of Carolina Medical Affiliates, dated 9/15/08 – 4/4/14, consisting of pages 318-346.

**Submitted by Claimant at the hearing, without objection:**

APA #16: Deposition Transcript of Barbara Griffin (Travelers), dated 9/24/14, consisting of pages 347-380.

**Exhibits:**

Ex. 1: Letter [from Adjuster] to Dr. Sanchez.

**II. STIPULATIONS**

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. The purpose of the hearing is to determine the issues as set forth in the Forms 50 and 51, and any other issues which may timely come before the Commission;
2. That the date of Claimant's accident was May 20, 2010;
3. That Claimant's average weekly wage was \$1,079.46, with a corresponding compensation rate of \$689.71;
4. Notices were timely and properly served upon all parties of interest;
5. Venue, set in Spartanburg, SC, is proper as agreed by all parties;
6. That the South Carolina Workers' Compensation Commission has jurisdiction over the parties and issues involved;

Without objection, the Commission's file was made a part of the record in this matter with the exception of any self-serving declaration or unstipulated medical reports.

### **III. STATEMENT OF THE CASE**

This claim involves and admitted injury from May 20, 2010. Defendants at all times admitted injury to Claimant's right knee, and provided medical treatment. Claimant filed a Form 50 on July 17, 2014, alleging injury to the "right knee, right leg, back, right hip, [and] right foot." Defendants filed a Form 51 admitting injury only to the right knee, but denying compensable injuries to any other body parts. Defendants further asserted on the Form 51 that Claimant reached MMI.

A hearing was held before the undersigned on September 26, 2014, to address the issues regarding compensability of the denied body parts. At the pre-hearing conference, Claimant alleged that in addition to the injury to his right knee, he also sustained injury to his back and right hip. Specifically, Claimant contends that his back was injured due to an antalgic gait as a result of his right knee injury. Claimant seeks additional medical treatment for his back and right hip, and is not at MMI. Further, Claimant seeks TTD benefits from September 9, 2013 to the present, and continuing. Defendants' position is that Claimant reached MMI for his right knee on August 22, 2012 and that any issues with his back and/or hip are not related to the work injury. Defendants deny entitlement to TTD benefits after the date of MMI. Defendants assert a permanent partial disability award to the leg, pursuant to § 42-9-30, is appropriate.

### **IV. EVIDENCE OF THE CASE**

#### ***MEDICAL EVIDENCE:***

#### **By Claimant:**

**APA #1:** On May 20, 2010, Claimant was treated at Timken medical facility for twisting his right knee while stepping off a train track.

**APA #2:** On May 20, 2010, Claimant went to Peachview Medical Park and reported

“stepped off train onto track twisted right knee some swelling.”

**APA #3:** Multiple Timken “Statement of Physical Condition” forms, from May 20, 2010 through September 10, 2013. All forms reference various work restrictions, as applicable as of the date of each form.

**APA #4:** “Physical Exam Supplemental Doctors Notes” from May 24, 2010 – October 28, 2013. On May 24 and 26, 2010, Claimant reported right knee pain, and was eventually referred to an orthopedist. On June 18, 2010, Claimant reported that Dr. Grady recommended a knee surgery. On January 24, 2011, Claimant reported that another right knee surgery was recommended. On February 3 and March 28, 2011, Claimant was still having right knee pain. On January 4, 2012, it was noted that Claimant was placed on sedentary work restrictions. On January 11, 2012, his swelling was improved due to a change of shoes.

On January 10, 2013, Claimant was noted to have returned to Dr. Morgan, who referred him to Dr. Sanchez. Claimant had an appointment with Dr. Sanchez scheduled for January 11. On January 17, Claimant called to report a rash around his knee; he further reported that his knee “felt tight.” On the 18<sup>th</sup>, Claimant went to the plant nurse and had a severe rash and blisters on the right knee. He was under the care of his primary care physician and taken out of work until the 24<sup>th</sup>.

By February 14, 2013, Claimant was walking with a “steady/upright gait.” He was complaining of limited range of motion, swelling, pain, and tenderness. On April 20, 2013, Claimant told medical that Dr. Sanchez had ordered a bone scan, and that he was having worse pain than the prior week. Claimant was noted to walk with a slight limp. On July 9, 2013, Claimant relayed that Dr. Sanchez recommended a “nerve test.”

On September 9, 2013, Claimant went to medical and left work around 11:00 a.m. to go see Dr. Sanchez. On the 10<sup>th</sup>, Claimant presented a note to be out of work indefinitely.

**APA #5:** Upstate Carolina Medical Center: An MRI of the right knee was conducted on May 25, 2010. The MRI was read to show a “flap type tear of the patella cartilage,” significant thinning of the medial femoral condyle, and a mild medial collateral ligament sprain. Claimant underwent a Right Lower Extremity Venous Study on June 10, 2010, which revealed no evidence of deep venous thrombosis.

**APA #6:** Dr. Walter Grady, DO. Claimant was evaluated on June 7, 2010 for right knee pain. Claimant did not report back or hip pain. Claimant was diagnosed with bursitis and MRI consistent with a tear of the patella cartilage and thinning of the medial femoral condyle. Claimant was referred for a venous Doppler ultrasound to rule out deep vein thrombosis. After the Doppler study, Claimant followed up with Dr. Grady on June 17, 2010, at which time he was recommended for a right knee arthroscopic surgery. On June 17, Claimant denied “backache.” Claimant’s pre-operative visit was July 12, 2010; he denied “backache.”

Claimant underwent a right knee arthroscopic surgery, by Dr. Grady, on July 14, 2010. Post-operatively, Claimant was gradually released to restricted duty work, while he was participating in physical therapy. On September 14, 2010, Claimant reported continued right knee pain. He did not report any pain in his back or hip. Claimant underwent injection on the 14<sup>th</sup>. Claimant underwent a 2<sup>nd</sup> injection on November 19, 2010, and a 3<sup>rd</sup> injection on November 29. By January 20, 2011, Claimant still had right knee pain, and Dr. Grady recommended a right total knee replacement (TKR).

**APA #7:** Dr. Sanchez (Orthopedic Specialties of Spartanburg). Claimant was initially evaluated by Dr. Sanchez on May 2, 2011 for a second opinion relative to continued right knee pain. Dr. Sanchez agreed that Claimant was a candidate for a TKR. Claimant next followed up on September 29, 2011, and expressed a desire to have a TKR. Claimant underwent a right TKR with Dr. Sanchez (at Spartanburg Regional) on October 12, 2011.

In follow up on October 31, 2011, Claimant was advanced to weight bearing as tolerated. He was participating in physical therapy. On November 30, Claimant reported night pain and was instructed to continue with his exercises. He was allowed to perform sedentary work only. On January 17, 2012, Claimant reported improving walking tolerance and that he'd returned to work. On March 5, 2012, Claimant was advised to avoid kneeling, squatting, or crawling, but otherwise to progress activities as tolerated. By April 23, Claimant reported to Dr. Sanchez that he was doing well overall, but that concrete floors aggravated his symptoms. Claimant did not report any back or hip pain/complaints.

Claimant reported to Dr. Sanchez on June 4, 2012 that he had a walking tolerance of  $\frac{1}{4}$  mile, and noticed occasional swelling at work, especially on concrete floors. He was placed on restrictions of no climbing or prolonged walking. On July 11, 2012, Claimant reported slow improvement, a walking tolerance of  $\frac{1}{2}$  mile, and some swelling at the end of the day after walking on concrete floors. Claimant reported no complaints concerning the back or hip. Dr. Sanchez placed Claimant at MMI on August 22, 2012, at which time Claimant reported that he has been on light duty and was able to perform a job in such a capacity. Claimant was given permanent restrictions of no kneeling or crawling. Dr. Sanchez assigned a 50% impairment to the right leg.

Claimant next followed up on November 21, 2012. He reported a walking tolerance of 200 yards, aching at night, and occasional thigh pain. Claimant reported exacerbating symptoms from working on concrete floors. Dr. Sanchez believed that concrete floors were exacerbating Claimant's symptoms. Claimant did not report any back or hip problems on November 21.

On January 11, 2013, Claimant reported "a fair amount of pain in his knee as well as some swelling with radiation of pain into his groin that did seem to migrate posteriorly and into his low back." Dr. Sanchez noted that his pain was "somewhat migratory" and it was difficult to assess the origin of same. On February 20, Claimant's complaints were limited to the knee. A bone scan

revealed no evidence of prosthetic loosening. On April 3, Claimant noted pain medially in the knee. He did not complain of back or hip pain. Dr. Sanchez referred for an EMG/NCV on July 8, 2013. That EMG/NCV, taken August 19, 2013, showed no nerve root compromise or radiculopathy.

Claimant followed up with Dr. Sanchez on September 9, 2013. He reported some cramping sensation in his calf and occasional shooting sensation. Further, Claimant reported a walking tolerance of ¼ mile, with soreness afterwards. Dr. Sanchez opined that his work was exacerbating his symptoms, and wrote Claimant out of work. On October 28, Claimant said his knee was better, but that his low back began to “hurt more recently,” with radiating pain down the right leg. Claimant was referred for a lumbar MRI.

On January 3, 2014, Claimant indicated that he had intermittent pain in the right groin. Dr. Sanchez diagnosed Claimant with right hip arthritis, and referred him for a hip x-ray and hip injection. On March 19, 2014, Claimant reported low back pain with radiation to the foot, and occasional groin pain. He was again recommended to undergo lumbar MRI. Claimant had continued back and right hip pain on May 28, 2014. Dr. Sanchez diagnosed pain secondary to radiculopathy. On August 27, Claimant’s history included medial and lateral knee pain, right hip, and back pain.

**APA #8:** Out of work notes from Dr. Sanchez, dated September 9 and October 28, 2013.

**APA #9:** Medical questionnaires of Dr. Sanchez, dated March 19 and June 16, 2014.

**APA #10:** Retirement Election form, completed by Claimant on October 21, 2013, wherein he elects a retirement date of November 30, 2013.

**APA #11:** Vocational Evaluation of Adger Brown: Opines that Claimant could work in a sedentary capacity, and perhaps even more, but that most employers would not choose someone of his age and skill set over a younger, less physically encumbered applicant.

**APA #12: Deposition of Dr. Anthony Sanchez:**

Dr. Sanchez began treating Claimant on May 2, 2011 for right knee complaints. On the patient medical history form, completed by Claimant, he did not report any prior back or hip complaints. Dr. Sanchez diagnosed Claimant with right knee arthritis and agreed that a TKR was warranted. Claimant made no complaints of back or hip pain at the May 2 visit. Dr. Sanchez performed the TKR on October 12, 2011.

In post-operative follow up, Claimant progressed normally and as expected. On August 22, 2012, Dr. Sanchez deemed Claimant to be at MMI. As of MMI, Claimant had never reported back or hip complaints. Had Claimant made a report of back or hip pain, Dr. Sanchez would have noted in his dictations. Claimant was released with the normal restrictions of no kneeling or crawling. On November 21, 2012, Claimant followed up with Dr. Sanchez and told him that concrete floors were exacerbating his symptoms. Claimant did not report any problems to his back or hip on November 21.

The first time Claimant reported back pain was January 11, 2013. At that time, he described groin pain, migrating into his back. This is not a common symptom associated with TKRs. Rather, such symptoms would likely be more related to a back or hip condition. However, Claimant did not complain of back or hip problems on his April 3 visit.

Claimant underwent a bone scan, which was normal. Further, Dr. Sanchez sent him for an EMG, which also turned out normal. A normal EMG would rule out a constant radiculopathy, but may not necessarily identify an intermittent radiculopathy. Claimant was seen again on September 9, 2013. Dr. Sanchez then wrote him out of work, due to a discussion he had with Claimant regarding what he was doing at work. Dr. Sanchez believed Claimant's symptoms had worsened, and that what he was doing at work, including walking on concrete floors, were not helping matters. Dr. Sanchez acknowledged receiving a letter from Travelers indicating that Timken could

accommodate even sedentary restrictions. Ultimately, Dr. Sanchez testified that Claimant should have been able to do sedentary work. He believed that Claimant's job required him to walk on concrete floors.

Dr. Sanchez believed that an altered gait could have been causing Claimant's developing back pain. However, he never noted an altered gait in his treatment notes/reports. Dr. Sanchez believed that Claimant had never had back problems prior to his work injury. After reviewing records from Dr. McElhanev from 2008 and 2009, Dr. Sanchez testified that Claimant did apparently have prior back problems, as well as a prior "arthritic gait," which is the equivalent of an antalgic gait. Dr. Sanchez acknowledged that his newer back complaints could be a continuation of the pre-injury back complaints documented in Dr. McElhanev's records. Dr. Sanchez could not opine to a reasonable degree of medical certainty that Claimant's hip was aggravated in the work accident.

Dr. Sanchez then testified that even if Claimant did not injure his hip in the work accident, Claimant's hip problems could be aggravated by his altered gait. Dr. Sanchez opined to a reasonable degree of medical certainty that Claimant's back was aggravated by his altered gait.

Dr. Sanchez testified that Claimant may not be at MMI for his right knee, since his symptoms had worsened recently. In addition, Claimant is not at MMI for his back or hip. Claimant can do sedentary work, but not on a full-time 40 hour week basis, due to problems relative to the back from prolonged sitting. However, Dr. Sanchez verified that Claimant could do sedentary work as it relates solely to the knee. Dr. Sanchez also testified that Claimant's hip arthritis developed since the work injury, so the connection is not as strong to the work injury. Dr. Sanchez remained of the opinion that the "constellation of symptoms" after the TKR contributed to Claimant's present back complaints.

**APA #13:** Deposition of Rick Poston, August 21, 2014.

**APA #14:** Deposition of Raymond Sarratt, August 21, 2014.

**APA #16:** Deposition of Bobbie Griffin, September 24, 2014.

By Defendants:

**APA #15:** Carolina Medical Affiliates: On September 15, 2008, Claimant saw Dr. McElhaney with a chief complaint of right back pain. Claimant's history indicated a history of degenerative arthritis in the back, left knee, and cervical spine. Claimant presented with a "mildly arthritic gait." Among other medications, Claimant was prescribed Lortab. On December 28, 2009, Claimant reported to Dr. McElhaney for right lower back pain, which he'd had for about a week. He denied pain with urination, but reported more frequent urination. Claimant's diagnosis was urinary frequency.

On March 19, 2014, Claimant reported "chest pain after lifting wood onto a ATV bed." Claimant was diagnosed with chest pain and referred for a stress test. In the "Existing Problems," over 30 diagnoses are noted; none of them involve the back or hip. Claimant underwent coronary stent placement and heart catheterization on April 4, 2014 (at Spartanburg Regional).

***CLAIMANT'S TESTIMONY:***

Claimant testified at the hearing, and his testimony allowed the undersigned to observe Claimant, and judge his credibility as a witness.

Claimant is 64-years old and holds a diploma from the "Adult School" from Gaffney High School. He also has taken masonry course work at a technical school, and is able to read and write (Tr. at 12-14<sup>1</sup>)

Claimant began working as a doffer at Milliken at the age of 15. Claimant has also worked in the Casting Department at Kohler in Spartanburg. Claimant said he has also worked at

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<sup>1</sup> "Tr. at \_\_\_\_" is referencing page(s) in the Hearing Transcript.

Limestone Manufacturing, where he trained doffers, and ultimately moved to the Maintenance Department. (Tr. at 15-17)

Claimant started at Timken in 1976 as a maintenance mechanic. He earned promotions over the years, working his way up to LMA (Lead Maintenance Associate). (Tr. at 17-18) Claimant has been with Timken a total of 37 years, and last worked there in September 2013. (Tr. at 18)

Claimant described his injury as occurring while he was changing a chip car in the Green Department. When he stepped off a rail car, his right foot slipped, and he twisted his right knee. In addition to pain in his right knee, claimant had immediate onset of pain in his back and his hip. (Tr. at 19-20)

Claimant initially went to Dr. Morgan for treatment. He stayed out of work a couple days, and then returned to work the following week. Claimant was still experiencing swelling, so he went to the plant nurse, and was sent back to Dr. Morgan. Dr. Morgan then referred Claimant to Dr. Grady. Eventually, Dr. Grady did perform an arthroscopic surgery on the right knee. (Tr. at 21-24)

Following the initial surgery, Claimant was still having problems and received some injections in the knee. Those injections “didn’t work.” He then asked for a second opinion, and was sent to Dr. Sanchez. (Tr. at 26) Dr. Sanchez performed a right total knee replacement [in 2011]. Claimant stayed out of work approximately six to eight weeks, and then he returned to work in a light-duty capacity, working in the Shop. (Tr. at 27-28) In January 2013, Claimant’s back and hip began bothering him because he was walking more on cement floors. (Tr. at 29)

Timken cut back on the number of golf carts, from three to two, in the Maintenance Department. As a result, Claimant had to walk more throughout the plant, on its concrete floors. If

a golf cart was unavailable, Claimant was unable to call Raymond Sarratt and ask for an available cart. (Tr. at 30-33)

After his return to work, Claimant's knee would swell when he had to walk "a good distance." Additionally, he had hip and back pain. In September 2013, Claimant was taken out of work by Dr. Sanchez. Claimant was experiencing significant pain in the knee, back and hip, at the end of each day. (Tr. at 34-36) Thus, Dr. Sanchez wrote him out of work; Claimant took the work note to Timken. Claimant received a letter from the adjuster (The Travelers) to Dr. Sanchez indicating that Timken could make sedentary work available for him. Claimant did not take any action upon receiving that letter, and no one from Timken contacted him. (Tr. at 40-41)

Since Claimant has been out of work, and away from the cement floors, his pain has improved. However, he still ices his knee when he gets up in the morning, and/or will take Tylenol. (Tr. at 42-43) Furthermore, Claimant's hip and back still bothers him, and he experiences occasional numbness and tingling in the foot and ankle. His back and hip did not return to its pre-injury status, even after going out of work and getting off the concrete floors. (Tr. at 43-44)

Claimant acknowledged having prior back and hip problems, but mostly in his back. Then, Claimant testified that his prior problems were *only* in his back. He had experienced gait problems in 2008 and 2009, which Claimant attributed to back pain. Claimant also had prior left knee and right knee problems. (Tr. at 44-46)

On cross-examination, Claimant testified that his job as a Lead Maintenance Associate required him to assign jobs, order parts, and work out of an office in the shop. Claimant spent approximately half of his day sitting down. When Claimant was working light-duty, his light-duty assignment was in his normal office.

Claimant acknowledged that there were two golf carts in the Management Department, and at least one of them would be parked right outside his office. Claimant denied that it would be

unusual for both carts in the department to be unavailable at the same time. Furthermore, Claimant testified there were times that he could not reach Raymond Sarratt to tell him about needing a golf cart. However, Claimant had complained to Raymond Sarratt about golf cart unavailability. When questioned as to whether there was a specific time that he approached Raymond Sarratt and told him he was in need of a golf cart at that time, but one was not available, Claimant simply testified that "Raymond and them was aware of that." (Tr. at 50-53)

Regarding the letter from The Travelers adjuster to Dr. Sanchez, Claimant testified that he did not contact Timken after he received the letter. Claimant would have been willing to perform a sedentary job. Nonetheless, Claimant never called Dr. Sanchez about a sedentary job, and never mentioned to him on a follow-up office visit about the possibility of there being sedentary work available at Timken. (Tr. at 54-56)

Claimant testified that he intended to work until age 67, which would occur in November 2016. He acknowledges that he requested previous quotes from Timken Corporate about retirement at age 62. The undersigned Commissioner stopped this line of inquiry concerning retirement, since wage loss was not an issue at the hearing. (Tr. at 56-59)

Claimant told Dr. Grady, after the work injury, that he was having hip and back problems and testified that he would think that Dr. Grady "should have" mentioned those in his treatment notes. (Tr. at 60-61) Claimant clarified that he actually hurt his back ("twisted it") at the time that he fell. Subsequently, walking on the cement floors caused his back to worsen. Claimant testified that the back pain was not the result of a limp or gait issue, but rather specifically from walking on cement floors. (Tr. at 61-62; 65)

Claimant admits to limping when he saw his primary care physician on December 28, 2009. He also was prescribed Lortab at that time for his back pain. Claimant's testimony is that he

was seeing his doctor for a sinus infection, and his doctor asked him about his back pain, and as a result prescribed Lortab. (Tr. at 63-64)

In terms of Claimant's ongoing activities, he testified that he does not do any heavy lifting. (Tr. at 66) Sometimes, Claimant will "crank the lawnmower up and I'll ride it 10 or 15 minutes." (Tr. at 64) When questioned about a March 19, 2014, note from his primary care physician where it referenced him experiencing chest pain after lifting wood, Claimant explained that he "lifted a little ol' -- like a 2x4 piece of wood." Claimant explained that it was a 2' piece of wood, which was laying on the ground, and he stopped the ATV that he was operating to pick it up. Claimant owns 23 acres of property. (Tr. at 67-69)

***TESTIMONY OF RAYMOND SARRATT:***

Raymond Sarratt testified at the hearing, and his testimony allowed the undersigned to observe him, and judge his credibility as a witness.

Raymond Sarratt is the Facilities Manager at the Timken Plant, and Claimant would fall under his supervision. Mr. Sarratt described Claimant as a valuable employee. Claimant did have a strong work ethic, and was not much of a complainer. (Tr. at 84-85) Claimant's job duties as a Lead Maintenance Associate generally consisted of communicating with supervisors, scheduling work, ordering parts, and maintaining supplies in the shop. Claimant actually had an office, with a computer, in the shop. He spent approximately half his time in the office. Claimant generally didn't do any of the actual mechanic work. (Tr. at 76-78)

Mr. Sarratt testified that there was a reduction of golf carts in Claimant's area - - the Maintenance Department. There was a reduction down to two golf carts. Claimant regularly used a golf cart, both before and after, his work injury. Mr. Sarratt recalls that there probably were times

when the golf carts were gone, but Claimant was instructed to wait until one came back (to go do his assignment). The golf carts were never unavailable throughout the entire day. (Tr. at 80-81)

On cross-examination, Mr. Sarratt testified that if Claimant ever walked in excess of his restrictions, it was voluntary. Claimant was instructed to abide by his restrictions. Mr. Sarratt acknowledged that there may have been times when Claimant needed a cart, but one was not available. When asked how many times this would have occurred, Mr. Sarratt testified only once or twice. (Tr. at 86)

A record such as was necessary for a decision was made of the proceeding and after careful consideration and study of all the evidence, the following findings of fact are accordingly made.

#### **V. FINDINGS OF FACT**

##### **IT IS FOUND AS A FACT:**

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Osment as Employee/Claimant and The Timken Company as Employer/Defendant, and Phoenix Insurance Company as Carrier/Defendant.
2. As of the date of the hearing, Claimant is 64 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant).
4. Claimant's employment history includes: (a) doffing; b) casting tubs and other plumbing fixtures for Kohler; (c) making dairy and drug packaging; and, (d) training doffers (testimony of Claimant).
5. Claimant's job with Employer was Lead Maintenance Associate (LMA). This job required Claimant to sit in his office for half the day (performing scheduling, ordering

parts, maintaining supplies), and to check on maintenance mechanics/problems the other half (testimony of Claimant).

6. Claimant injured his right knee in an admitted accident on May 20, 2010.
7. Claimant alleges that he injured his back (affecting his right foot) and right hip through an antalgic gait, aggravating a pre-existing condition (*See* Tr. at 5-7).
8. Claimant was a 37-year employee, a factor which weighs very heavily in his favor. Further, by all descriptions, Claimant was a good and valuable employee. However, these factors are not dispositive in any workers' compensation case (or else, there would be no need for a hearing/review of the medical evidence). In this case, this factor is not persuasive enough to override or overcome other more compelling evidence presented at the hearing (testimony of Claimant; testimony of Sarratt; Depo. of Poston).
9. **As there is no medical record documenting a right hip or back complaint until almost 3 years after the date of the accident, Claimant's theory of the case (*See* Tr. at 5-7) is that he injured his right hip and back through an antalgic gait. By contrast, Claimant testified at the hearing that he immediately injured both his right hip and back when the accident occurred, specifically rejected an antalgic gait theory in his testimony, and that he reported his hip and back injuries to Dr. Grady (with whom Claimant treated through the date of the first surgery). (Tr. at 19-20; 65) **Dr. Grady's records are completely devoid of any complaint or mention of a right hip or back problem, refuting Claimant's testimony at the hearing.** Similarly, Employer's (a) accident report (signed by Claimant) and (b) temporal medical notes are also devoid of any complaint/reference to the hip or back. Finally, temporal records from Peachview Medical Park are likewise devoid of any reference to the hip or back. **I find Claimant's testimony inconsistent with the medical evidence, and with his own vocational report, which states that Claimant "later started having the onset of low back pain as well."** (Claimant's APA #1; Claimant's APA #2; Claimant's APA #3; Claimant's APA #4; Claimant's APA #11, p. 139)**

10. Claimant has **pre-existing back problems which waxed and waned prior to the date of the injury**, and for which Claimant sought and received treatment including pain medication: a) at a visit in 2008 for back pain/“back strain, lumbar” (approximately 2 years prior to the date of the accident in issue), Claimant’s gait is was documented as “arthritic” (which Dr. Sanchez interprets as “antalgic” per his deposition testimony). At the end of 2008, Claimant returned to his family doctor with no complaint of back pain (Defendants’ APA #15, pp. 318-327); (b) In late 2009 -- just 6 months prior to the date of the work accident, Claimant returned to his family doctor with low back pain again (Claimant’s urine testing was normal and he was not prescribed an antibiotic; Claimant was prescribed Flomax for his prostate). **For his back complaints (just 6 months prior to the date of the accident) Claimant was prescribed Meloxicam pain medication with 5 refills** (Defendants’ APA #15, pp. 328-332; Depo. of Dr. Sanchez, pp. 32-33, as contained in Claimant’s APA #12).

11. I find that Claimant’s back condition waxed and waned after the date of the accident as well, and that his alleged hip condition resolved or never occurred: I give the greatest weight in this case--**of all the evidence**--to Claimant’s first family doctor record post-accident (March 2014 -- 4 years after the date of the accident in issue, and **6 months prior to the date of the hearing**) and Claimant’s follow-up visit with his family doctor one week later. **Notwithstanding the family physician’s detailed list of all Claimant’s problems/complaints, nowhere to be found in these records is there any documentation of back or hip pain.** It might be argued that Claimant’s back and hip were not documented/recorded by Claimant’s family doctor because these conditions are workers’ compensation-related (*i.e.*, only non-workers’ compensation conditions were recorded). However, such is not the case: Under “Status of Existing Problems,” Claimant’s work-related right knee pain is in fact recorded along with all his other conditions, including but not limited to cervical disc disease with radiculopathy, groin pain, CTS, rotator cuff syndrome, urinary frequency, hypertension, high cholesterol, and GERD. Noticeably absent from the list of problems are either low back and/or hip pain, as Claimant has inconsistently pled, told Dr. Sanchez, and testified to at the hearing. (Defendants’ APA #15, pp. 333-340)

12. Claimant did in fact complain of groin pain in March 2014 (4 years after the accident--6 months prior to the date of the hearing). However, that complaint was in the **context of lifting wood onto an ATV bed, such that Claimant “thinks he may have a hernia in his groin.”** I cannot find Defendants liable for Claimant’s non-work injuries. Claimant’s testimony that “lifting wood” was actually a small piece of a 2x4 that he bent over to pick up is not believable or credible, based upon Claimant’s demeanor and delivery of this testimony. I also note that the record does not say “bending over to pick up a piece of wood” or words to that effect; instead, the record says “*lifting*.” Claimant is far more active than he has let on to Dr. Sanchez, thereby calling into question the legitimacy of Claimant’s complaints to Dr. Sanchez regarding the hip/back. If Claimant’s statements to Dr. Sanchez (in furtherance of Claimant’s workers’ compensation claim) were dispositive, it would be unnecessary for a commissioner to review all the evidence, or to hold a hearing to determine credibility. (Defendants’ APA #15, p. 333)
13. At Claimant’s follow-up visit to his family doctor later that month (March 2014), **there is no mention of the hip or back.** However, Claimant’s family physician documents **no fewer than 25 conditions/complaints--including Claimant’s work-related right knee**, his unrelated (pre-existing) left knee, and his unrelated cervical spine, CTS, and rotator cuff problems. **Nowhere to be found in this list of problems is either the hip or back.** I give great weight to this record as it is the truest catalogue of Claimant’s post-accident problems.
14. During the last family doctor visit prior to the hearing (5 months prior), Claimant likewise made no complaint of his hip/back (Defendants’ APA #15, pp. 341-342).
15. I could easily believe and find that an antalgic gait from a knee injury would cause or aggravate a hip and/or back injury/problem. However, Claimant’s testimony--no fewer than 3 times throughout the hearing--was that walking on the concrete floors caused his hip and back pain--not that his hip and back conditions were caused/aggravated by an antalgic gait from his knee. (Tr. at 29, 34, 62, 65)

16. Claimant also essentially testified that the situs of his injury is his knee in that he claims his knee pain “shoots up” into his back (i.e., not a separate injury to the hip and back caused by antalgia, but a radicular component). **Claimant appeared to be confused as to how he was supposed to testify and as to how and when the back/hip injuries allegedly occurred.**
17. Even if I interpret Claimant’s testimony to mean that the concrete floors aggravated his knee condition, which in turn aggravated his back/hip, I am still left with the latest family physician records (2014) **which document no back/hip condition of which Claimant complained at the hearing and which Claimant reported to Dr. Sanchez.** The groin pain Claimant did complain of to his family was attributable to the ATV/wood incident; Claimant’s work injury is not mentioned as a causative factor. If the workers’ compensation injury (the right knee) had been omitted from the very lengthy list of maladies compiled by Claimant’s own personal physician, I would not expect the back/hip to appear either. However, as the workers’ compensation-related right knee condition *is* in fact listed, I would expect the hip and back to be listed as well, regardless of its etiology. (*See* Defendants’ APA #15, pp. 333-340)
18. If, as Claimant testified, he did in fact injure his hip and back on the date of the accident (which testimony is not borne out by medical records for **years** after the accident), I find that these conditions resolved/returned to baseline. I base this finding on the records from Claimant’s own family physician, records to which I give the greatest weight as I find that they are the **truest indicator of all of Claimant’s current problems.** If Claimant’s family doctor had listed the back and hip (along with the right knee) as problematic, the result in this case might be vastly different. However, among the conditions Claimant alleges only the right knee is documented (again, *See* Defendants APA #15, pp 333-340).
19. I fully take into account Claimant’s impressive job tenure, but he is not credible, and seemed unsure as to how and when his hip/back were supposedly injured.
20. I also considered Dr. Sanchez’s questionnaire and deposition testimony as to causation

of the alleged body parts, but, there are multiple inconsistencies:

- (a) Dr. Sanchez “flip flops” in a rather significant way, and is equivocal at best; after Defendants’ counsel takes Dr. Sanchez through the documented, prior back complaints—including one record just mere months prior to the date of the accident, Dr. Sanchez inexplicably says that Claimant’s back was exacerbated in that “[Claimant] didn’t have any back symptoms beforehand, and he had it afterward.” This makes his testimony appear outcome determinative for his patient;
  - (b) Very importantly, Dr. Sanchez’s deposition does not reconcile or even address the 2014 family physician records containing extensive lists of Claimant’s current problems—including Claimant’s workers’ compensation knee injury--none of which records include the back or hip; there is no evidence that Dr. Sanchez had access to these records from Claimant’s family physician;
  - (c) Claimant is far more active than he has led Dr. Sanchez to believe, as evidenced by Claimant’s lifting wood and concomitantly complaining of groin and chest pain; there was clearly some exertion involved in this incident (Depo. of Dr. Sanchez in its entirety; Claimant’s APA #8, pp. 134-135; Depo. of Dr. Sanchez in its entirety, including but not limited to pp. 35-42, 44-47, 53, and 55-56, as contained in Claimant’s APA #12).
21. Despite Dr. Sanchez’s testimony that Claimant’s altered gait “could” have resulted in Claimant’s back pain, Dr. Sanchez never cited an altered gait in his treatment notes, and never opined during his treatment that an altered gait was causing Claimant’s back pain. (Depo. of Dr. Sanchez, p. 38) Further, Dr. Sanchez reviewed pre-injury records for the first time at his deposition. He acknowledged Claimant’s records reveal an arthritic/altered gait prior to the work injury, and that his present back pain could be a continuation of the pre-existing back pain and gait issue. (Depo. of Dr. Sanchez, pp. 35-41)
22. Dr. Sanchez’s causation opinion is further undermined by his deposition testimony that he was of the belief that Claimant had no back complaints prior to the work injury. (Depo. of Dr. Sanchez, pp. 9, 27, 30) As detailed herein, the history as understood by

Dr. Sanchez was not accurate.

23. Because of his work-related right knee injury, Claimant underwent two surgeries, the second of which was a total knee replacement surgery in 2011. (Claimant's APA #6, pp. 38-43; Claimant's APA #7, p. 64-67)
24. Although Claimant's knee has never been pain free since the date of the accident, I find that the knee replacement surgery improved Claimant's symptoms after the date of the injury. I base this finding on the record in which Claimant's knee has "done well," but working on concrete floors aggravates him symptoms especially after a full day. Claimant has **no instability**; nor does he have the bone-on-bone pain as he did prior to the TKA. (Claimant's APA #7, e.g., pp. 58-59, 72, 75, 79, 81, and 85)
25. Claimant reached maximum medical improvement on August 22, 2012. On this date, Claimant had no complaints of regarding his back or hip. Claimant's only restrictions on this date were kneeling/crawling. (Claimant's APA #7, p. 90; Depo. of Dr. Sanchez, pp. 13-14, as contained in Claimant's APA #12)
26. The first documented complaint of back pain is January 2013--6 months after Claimant was released at MMI. Claimant reported that he "*had* been doing fairly well" until this particular visit; **for the very first time**, Claimant reported post-surgical "give way" and radiating pain into his low back and groin. However, Dr. Sanchez by contrast noted "*very mild* swelling" of the knee, "*very mild pain*" and "*no instability*." Further, I give great weight to the statement, "As his pain has been somewhat *migratory*, it is difficult to assess the origin of his pain." At the next visit, Claimant reported "global pain." Nonetheless, Dr. Sanchez noted **no effusion and no instability**. Because of Claimant's complaints (including alleged pain into his foot), Dr. Sanchez ultimately ordered an **EMG which was normal**. **Claimant's labs and bone scan were also normal**. **Claimant first reported hip pain in 2014—4 months prior to the date of the hearing**. (Claimant's APA #7, pp. 94, 96, 98, 100, 109, 111, 113, and 126; Depo. of Dr. Sanchez, p. 22, as contained in Claimant's APA #12)

27. Although Claimant told Dr. Sanchez that Claimant was having difficulty performing even office work, Claimant inconsistently testified at the hearing--and his vocational expert states--that Claimant could perform a sedentary job. (Claimant's APA #7, p. 111; testimony of Claimant; Claimant's APA #11, p. 144)
28. The authorized treating physician assigned a 50% impairment rating for the lower extremity attributable to the admitted right knee injury. (Claimant's APA #7, p. 90)
29. Claimant's restrictions limit him to sedentary work only. (Depo. of Dr. Sanchez, pp. 24 and 54, as contained in Claimant's APA #12)
30. As this is a single member injury (the right knee), a wage loss analysis is not appropriate. However, Claimant's vocational report (which I reviewed along with all the other evidence) states that Employer made "a valiant effort" to accommodate Claimant's restrictions. (testimony of Sarratt; Claimant's APA #11, p. 144; *See also* Claimant's APA #4, p. 16)
31. I find Raymond Sarratt to be very credible, a finding I base upon his demeanor and delivery. Regarding the use of the golf cart and the accommodation of Claimant's restrictions, Sarratt's testimony was straightforward and not embellished. (Testimony of Sarratt; observations of the undersigned.)
32. Claimant's testimony was not as credible as Sarratt's.
33. Claimant's back and hip are not compensable body parts. The existence of any causally-related problem is refuted by Claimant's family physician's records of 2014. I also question the timing of the appearance of these body parts, and the inconsistencies in this case. If Claimant's statements to Dr. Sanchez are dispositive, Commission involvement is irrelevant and unnecessary. Further, statements made in furtherance of a workers' compensation claim are **not as persuasive as the full itemized catalogue of Claimant's physical problem as Claimant himself reported to his own personal physician.**

34. I do agree with Claimant that it was incumbent upon Employer to offer employment, and that Claimant's Exhibit #1 did not offer a job or invite Claimant to call the Employer for a job. Claimant testified that he would have taken a strictly sedentary job. (Claimant's Exhibit #1; testimony of Claimant; Depo. of Poston, including but not limited to pp. 59-61, as contained in Claimant's APA #13; Depo. of Sarratt, p. 23, as contained in Claimant's APA #14; Depo. of Griffin, p. 13, as contained in Claimant's APA #15)
35. Permanent partial disability (PPD) to right leg, pursuant to Section 42-9-30(16): 60%. This award is based upon the impairment rating, but primarily on Claimant's restrictions. I have no doubt that it was difficult for Claimant to walk or work on concrete given the condition of his knee. However, I find that Employer accommodated his restrictions, and never required him to work outside imposed restrictions.
36. Claimant's request for temporary total disability benefits (TTD) from September 9, 2013 and continuing is denied. As the South Carolina courts have held, the date of MMI "signals the end of entitlement to temporary total benefits." *Curiel v. Environmental Management Services*, 376 S.C. 23 (2007). I find that Claimant reached MMI as of August 22, 2012. Therefore, no TTD is due beyond that date.
37. Claimant to receive his award in lump sum with *Utica-Mohawk (James v. Anne's)* language.
38. Claimant is entitled to receive lifetime hardware maintenance repair/replacement/removal), yearly office visits/x-rays, and other modalities for the knee as recommended by Dr. Sanchez, including but not limited to a future total knee revision. (Depo. of Dr. Sanchez, p. 52, as contained in Claimant's APA #12)
39. As credit was not requested (and a Form 21 was not filed), that issue is not adjudicated herein.

40. Claimant's average weekly wage is \$1,079.46, yielding a compensation rate of \$689.71.

## **VI. CONCLUSIONS OF LAW**

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant sustained an injury by accident to his right knee. Claimant did not sustain injury to any additional body parts.

3. Under § 42-15-60, Defendants are responsible for all causally-related right knee treatment, until the date of maximum medical improvement, and continuing treatment and maintenance of the total knee replacement per the direction of the authorized physician.

4. Under § 42-9-30(16), Claimant has sustained 60% permanent partial disability to his right leg.

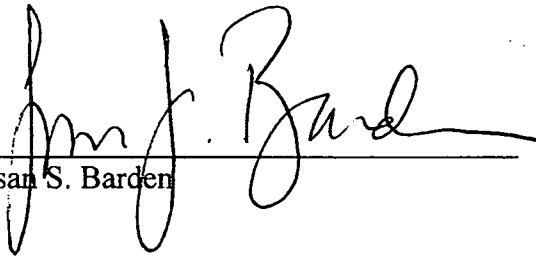
## **VII. ORDER/AWARD**

**IT IS HEREBY ORDERED** that Claimant reached maximum medical improvement on August 22, 2012, and is entitled to permanent partial disability of sixty percent (60%) to the right lower extremity, or 117 weeks, for a lump sum total of Eighty Thousand, Six Hundred Ninety-six and 07/100 Dollars (\$80,696.07).

Claimant's request for additional treatment or benefits to any other body parts, including back and/or hip, is DENIED.

No hearing costs are assessed in this instance.

**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).

November 24, 2014

By: Kristi Love, Administrative Assistant to Commissioner Barden