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SC Court of Appeals

APPELLATE PANEL

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1008356

JAMES OSMENT,

CLAIMANT - APPELLANT,

-vs-

THE TIMKEN COMPANY AND
PHOENIX INSURANCE COMPANY,

DEFENDANTS - RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on February 25, 2015 per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed *April 1, 2015*

APPEARANCES:

Claimant - Appellant represented by Logan Rollins, Esquire of The Hawkins Law Firm of Spartanburg, South Carolina.

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

STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden, on September 26, 2014, in Spartanburg, South Carolina. On November 24, 2014, Commissioner Barden issued her Decision and Order, which included the following Findings of Fact, Conclusions of Law, and Order/Award:

Single Commissioner's Findings of Fact:

It is found as 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, 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--are all listed. **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 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, the result in this case might be vastly different. (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.

Single Commissioner's 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.

Single Commissioner's <u>Order/Award</u>:

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.

On December 3, 2014, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties, prior to oral argument presented to the Appellate Panel on February 25, 2015. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. By appeal, Claimant submitted the following grounds for review:

1. Whether the Hearing Commissioner erred in Finding of Fact No. 9, in which she states that Claimant rejected an antalgic gait theory [as a cause for the injury to his hip and back] in his testimony when such a finding is against a preponderance of the evidence.
2. Whether the Hearing Commissioner erred in Finding of Fact No. 9 in which she states that Claimant's testimony [is] inconsistent with the medical evidence, and with his own vocational report when such a finding is against a preponderance of the evidence.
3. Whether the Hearing Commissioner erred in Finding of Fact No. 11 in which she states that Claimant's "alleged hip condition resolved or never occurred" when such a finding is against a preponderance of the evidence.
4. Whether the Hearing Commissioner erred in Finding of Fact No. 13 in which she states that there is no mention of hip or back problems in Claimant's visit to his family doctor in March 2014 and finds this record as "the truest catalogue of Claimant's post-accident problems" when such a finding is against a preponderance of the evidence.
5. Whether the Hearing Commissioner erred in Finding of Fact No. 15 in which she discounts the lay testimony of Claimant that his hip and back pains are coming from walking on concrete floors as such a finding is against a preponderance of the evidence.

6. Whether the Hearing Commissioner erred in Finding of Fact No. 16 in which she states that Claimant's back and hip pains are radicular in nature and not separate injuries caused by antalgia as such a finding is against a preponderance of the evidence.
7. Whether the Hearing Commissioner erred in Finding of Fact No. 17 in which she discounts Claimant's complaints of hip and back pains simply because no mention is made of these problems in records of Claimant's family physician as such a finding is against a preponderance of the evidence.
8. Whether the Hearing Commissioner erred in Finding of Fact No. 18 in which she states that Claimant's hip and back conditions resolved/returned to baseline as such finding is against a preponderance of the evidence.
9. Whether the Hearing Commissioner erred in Finding of Fact No. 19 concerning Claimant's credibility as such a Finding is not consistent with Claimant's testimony, demeanor, age, work history and such other and further factors as may be reasonably necessary to determine witness credibility.
10. Whether the Hearing Commissioner erred in Finding of Fact No. 21 in which she states there are multiple inconsistencies in Dr. Sanchez's opinions and deposition testimony when such findings are against a preponderance of the evidence.
11. Whether the Hearing Commissioner erred in Finding of Fact No. 22 in finding that Dr. Sanchez's causation opinion is undermined by his deposition testimony when such finding is against a preponderance of the evidence.
12. Whether the Hearing Commissioner erred in Finding of Fact No. 27 in finding that Claimant inconsistently testified at the hearing regarding office/sedentary work when such a finding is against a preponderance of the evidence.
13. Whether the Hearing Commissioner erred in Finding of Fact No. 32 in finding that Claimant's testimony was not as credible as Raymond Sarratt's when such finding is against a preponderance of the evidence.
14. Whether the Hearing Commissioner erred in Finding of Fact No. 33 in finding the back and hip are not compensable body parts, when such finding is against a preponderance of the evidence.
15. Whether the Hearing Commissioner erred in Finding of Fact No. 35 in finding that Claimant only has 60% permanent partial disability to the right leg when such finding is against a preponderance of the evidence.
16. Whether the Hearing Commissioner erred in Finding of Fact No. 36 in stating that Claimant's request for Temporary Total Disability benefits (TTD) from September 9, 2013 and continuing is denied, when such a finding is against a preponderance of the evidence.
17. Whether the Hearing Commissioner erred in Conclusion of Law No. 2 in which she found that Claimant did not sustain injury to any body parts other than the right knee when such conclusion is against a preponderance of the evidence.
18. Whether the Hearing Commissioner erred in Conclusion of Law No. 4 in finding that Claimant had sustained only a 60% permanent partial disability to his right leg when such a conclusion is against a preponderance of the evidence.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as 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 Single Commissioner. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS 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. **We 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, 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. We 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. We 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)

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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--are all listed. **Nowhere to be found in this list of problems is either the hip or back**. We give great weight to this record as it is the truest catalogue of Claimant's 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. We 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 we interpret Claimant's testimony to mean that the concrete floors aggravated his knee condition, which in turn aggravated his back/hip, we are 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, one would not expect the back/hip to appear either. However, as the workers' compensation-related right knee condition *is* in fact listed, we 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), we find that these conditions resolved/returned to baseline. We base this finding on the records from Claimant's own family physician, records to which we give the greatest weight as we 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, the result in this case might be vastly different. (again, *See* Defendants APA #15, pp 333-340)

19. We 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. We 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, we find that the knee replacement surgery improved Claimant's symptoms after the date of the injury. We 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, we 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 we 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. We find Raymond Sarratt to be very credible, a finding based upon the Hearing Commissioner's observations of 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 Hearing Commissioner.)

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. We 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. We 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. We have no doubt that it was difficult for Claimant to walk or work on concrete given the condition of his knee. However, we 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). We 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.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

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.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner, filed in the above-captioned matter on November 24, 2014, is hereby affirmed by the Appellate Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER 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).

IT IS FURTHER ORDERED 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.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

BY: _____
Melody L. James, Commissioner

FULL
AFFIRMATION

CONCUR:

_____
Gene McCaskill, Commissioner

_____
Aisha G. Taylor, Commissioner

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 April 1, 2015