DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

COMMISSION PANEL: SUSAN S. BARDEN, CHAIR; H. GENE MCCASKILL; MELODY L. JAMES

SCWCC FILE NO.: 1119380
APPELLATE CASE NO.: 2013-001763

Everett Davis,

CLAIMANT/APPELLANT

V.

Southlake Transport, Inc.,

EMPLOYER, AND

Lumbermen's Underwriting Alliance,

CARRIER, RESPONDENTS.

ON REMAND FROM THE SOUTH CAROLINA COURT OF APPEALS

Filed: April 16th, 2015

This matter comes before the undersigned Appellate Panel on remand from the South Carolina Court of Appeals, *Davis v. Southlake Transport,* Unpublished Opinion No. 2015-UP-026 (January 14, 2015). The Court of Appeals found that Claimant's left knee condition was pre-existing and unrelated to the accident in issue. The Court of Appeals remanded this matter to the Commission for the limited purpose of making more detailed findings of fact citing support for the determination that the Claimant had reached maximum medical improvement.

After re-reviewing the entire record, the Full Commission withdraws its previous findings of fact and respectfully submits the following detailed findings for the Court's consideration:

FINDINGS OF FACT

1. The parties hereto are subject to and bound by the South Carolina Workers' Compensation Commission Act.

2. Claimant's average weekly wage is $897.43, yielding a compensation rate of $598.32. This finding is based upon the stipulation of the parties, and pursuant to the Consent Order signed by Commissioner James, and served May 15, 2012.

3. Claimant was injured in a compensable work-related accident on November 28, 2011, and sustained injuries to his left knee and back. This finding is based upon the stipulation of the parties, and pursuant to the Consent Order signed by Commissioner James, and served May 15, 2012.

4. Defendants accepted the claim as a compensable "injury by accident involving soft tissue injuries" (See Full Commission Appeal Transcript, dated June 18, 2013).

5. Fifteen years prior to the date of the accident, Claimant underwent left knee surgery. Since that date, Claimant continued to have occasional left knee pain, had "old deformities," and had a slight limp. At a physical examination two months prior to the date of the accident in issue, Claimant complained of left knee pain (Defendants' APA #7, page 29; Defendants' APA #9, page 34, as to "residual left knee complaints;" Hearing Transcript, page 8; Claimant's Deposition, pages 11 and 67-68).

6. At his deposition, Claimant denied (three times) having any lingering problems with his left knee after the prior knee surgery, although the medical evidence states otherwise. At the hearing, Claimant also continued to deny prior problems with his left knee (Claimant's Deposition, page 12, lines 9-18, and page 60; Hearing Transcript, pages 24-28; Defendants' APA #7, page 29).

7. As of the date of the hearing before Commissioner Williams, Claimant is 50 years of age (Hearing Transcript, page 6).

8. Claimant is a high school graduate. He attended two years of technical college after which he received a certificate in industrial maintenance. Claimant also obtained a CDL (Hearing Transcript, pages 7-8; Claimant's Deposition, page 14).

9. Claimant's job with Employer was long haul truck driver (Hearing Transcript, pages 8 and 33-34; Claimant's Deposition, pages 28-31 and 66).

10. In the accident in issue, the at-fault driver made an improper lane change, such that the rear of the other driver's Camry hit the front of Claimant's 18-wheeler (Claimant's APA #3, page 9; Claimant's Deposition, 38-41).

11. Towards our conclusion that Claimant has reached maximum medical improvement, we find that the injuries in issue were relatively minor. We base this finding on the following:

(a) Claimant was the driver of an 18-wheeler; the other driver was in a Camry (Claimant's APA #3, page 9);

(b) Claimant was a restrained driver (Claimant's Deposition, page 41);

(c) The 18-wheeler Claimant was driving appears to have sustained very minimal damage: (i) See Defendants' APA, Exhibit #2; and Claimant's APA #4, pages 17-19, in which the parts to repair the truck were $1,659.40 total (including $942 for the bumper, and $255.77 for the bug screen, $157.50 for paint and materials), and the labor was $2,338.20). See also Claimant's Deposition, pages 34-35 and 43-46, in which Claimant testified that as to the damage to the 18-wheeler, the front bumper was bent; (ii) the truck was drivable after the accident, and Claimant in fact drove the truck up to Philadelphia and then down to Florida prior to the repair of the bumper (Claimant's Deposition, pages 43-44 and 47-50);

(d) In the mechanics of the accident, Claimant hit his knee on the dashboard of the truck he was driving; Claimant admittedly did not experience any back pain on the date of the accident, as he testified that he did not feel any back pain for a week or two (Hearing Transcript, pages 11; Claimant's Deposition, pages 40-42 and 62-64);

(e) At the scene of the accident, Claimant did not request any medical care for either body part, and, according to written documentation, denied any injury (Claimant's APA #3, page 9; Claimant's APA #4, page 12; Hearing Transcript, page 18; Claimant's Deposition, pages 42-43 and 47).

(f) Claimant admits that he did not ask Employer for any medical treatment (Hearing Transcript, pages 12 and 33-35; Claimant's Deposition, page 55);

(g) After police completed their accident report at the scene, Claimant continued his route from Maryland (where the accident occurred) to Philadelphia, within approximately one hour after the wreck occurred (Hearing Transcript, page 18; Claimant's Deposition, pages 43-44 and 47-49; Claimant's APA #3, page 9);

(h) Even though Claimant did not have to be in Philadelphia to pick up a load until the next morning ("I wasn't in too big of a rush because I didn't have to be there until the next morning"). Claimant could have—but did not--seek medical care for his knee (Claimant's Deposition, pages 47-48; Hearing Transcript, page 18);

(i) After Claimant left Philadelphia, he drove to Florida, maintaining his weekly route after the accident. Claimant missed no time from work, and continued to perform his regular job duties of driving 11 hours per day. During the week Claimant drove after the accident, his pain was "just a nagging pain" (Hearing Transcript, pages 18-20; Claimant's Deposition, pages 49-50 and 53);

(j) Claimant drove back through South Carolina on his way up from Florida, but did not seek any treatment for his knee or back (Hearing Transcript, pages 19 and 30-31);

(k) Claimant does not take any prescription medication for either his knee or his back. Nor did Dr. Drakeford (Claimant's physician) prescribe any medication for Claimant as a result of the accident in issue (Hearing Transcript, pages 14-15 and 28-30; Claimant's Deposition, pages 62 and 69);

(l) As of the date of the hearing, Claimant currently drives an average of 11 hours per day, 5-7 days a week, and has not missed any time from work because of his injuries (Hearing Transcript, pages 15 and 20-22);

(m) Claimant neither sought nor received treatment for his left knee for a period of one month after the date of the accident, and that was during a previously scheduled physical. Claimant's personal physician described the injury as a "healing nickel size abrasion" and "contusion." An X-ray showed degenerative changes only with no obvious acute osseous abnormality (Claimant's APA #1, pages 1-2; Defendants' APA #7, page 29; Hearing Transcript, pages 20-21; Claimant's Deposition, pages 57-58);

(n) When Claimant did report knee pain--one month after the date of the accident during his annual physical with Dr. Compton--Claimant made no complaint regarding his back. By contrast, Claimant gave sworn testimony that his back problems began approximately a week or two after the accident (Defendants' APA #7, page 29; Claimant's APA #1, page 1; Claimant's Deposition, pages 62-64);

(o) We cannot ignore the fact that not only did Claimant not report any back problem or verbalize any back complaint to Dr. Compton, as referenced in the preceding item, but

Claimant also did not report any back problem or verbalize any back complaint to Dr. Drakeford (Claimant's other physician) during the next sequential medical visit in January 2012—2 months after the date of the accident in issue. As Claimant gave sworn testimony that his back pain "probably [began] a week or two" after the accident—yet did not mention it to either physician in the 2 months after the accident--we find that any back injury sustained was minor, whether directly or from an antalgic gait. Both Dr. Compton's and Dr. Drakeford's records after the accident are devoid of any reference to or complaint regarding the back (Claimant's APA #2, pages 4-6; Claimant's Deposition, pages 62-64; Deposition of Dr. Drakeford, page 5);

(p) Dr. Drakeford termed Claimant's degenerative joint disease in the knee as "severe," and stated that the x-ray finding ("bone [on] bone") looked chronic, *i.e.*, going on for several years and probably not caused by the accident in issue (Deposition of Dr. Drakeford, pages 7-8; Claimant's APA #2, pages 4-6); and

(q) At evaluations Defendants provided to Claimant for his knee and back, Dr. DaSilva (an orthopedic surgeon) did not document any spinal abnormalities. Instead, Dr. DaSilva found Claimant's straight leg raise "negative," found that Claimant's sensation pulses and strength were "normal," and found Claimant's range of motion of the lumbar spine to be "full." Dr. DaSilva did not recommend any further treatment for Claimant's low back. We give this evidence great weight (Defendants' APA #8, including but not limited to page 31).

12. Additionally regarding the back, Dr. LaMotta found that Claimant has lumbar spine arthritis, and that any care for Claimant's back would be "not causally related" to the accident in issue (Defendants' APA #9 in its entirety; Claimant's APA #5, pages 23-26—note: these pages are out of sequential order as submitted to the Commission).

13. As to the left knee, Dr. DaSilva found that Claimant had (a) a loose body "secondary to arthritis," and (b) "severe arthritis" in the left knee, "pre-existing [and] not related to [the] injury." Dr. DaSilva went on to recommend a knee replacement surgery, the need for which he found "unrelated" to the injury in issue (Defendants' APA #8, page 31; Deposition of Dr. DaSilva).

14. As to the left knee, Dr. LaMotta (a) found that Claimant had "residual left knee complaints" since the time of his prior arthroscopy, (b) found that Claimant's "severe arthritis in the left knee is "pre-existing" and "unrelated" to the injury in issue, and (c) recommended a knee replacement (Defendants' APA #8 in its entirety, including but not limited to page 31; Defendants' APA #9, pages 34-36; Claimant's APA #5, pages 20-22).

15. As (a) Dr. DaSilva admits that he does not know objectively whether Claimant's knee is more painful than before--that Dr. DaSilva only knows subjectively what Claimant tells him--and (b) Dr. Drakeford's opinion is based, no fewer than six times, "upon the history that he gave me," "just going on his history," and "assuming he's telling the truth," etc., we must to some extent rely on the issue of credibility (Deposition of Dr. DaSilva, pages 9-10, 16-20, 25, and 28-29 and 33; Deposition of Dr. Drakeford, pages 8-11, 13, 15, 17, and 23).

16. Notwithstanding Claimant's work ethic--we find that he is a hard working individual who is still driving for Employer-- (a) during sworn deposition testimony, Claimant denied filing a claim or having any knowledge of a claim filed against the driver of the Camry until Claimant's attorney admitted affirmatively on the record that such a claim had in fact already been filed on Claimant's behalf (Claimant's Deposition, page 38); (b) at the hearing, Claimant was asked if he had any prior knee treatment. Notwithstanding the prior knee surgery, prior periodic pain, Claimant's admitted prior limp from favoring his left knee after the prior surgery, and the fact that Claimant's surgery had been discussed at Claimant's deposition prior to the hearing, Claimant initially denied having any prior left knee treatment, including but not limited to the surgery Claimant underwent; only after Claimant was asked a leading question regarding the prior surgery did he admit to the prior treatment; Dr. Drakeford is unaware of this testimony, as it occurred after Dr. Drakeford's deposition (Hearing Transcript, page 8, lines 17-19; Hearing Transcript, pages 13-14); (c) at the hearing on cross examination, Claimant was asked twice if he had had any problem with his left knee prior to the accident in issue; notwithstanding the fact that Claimant complained of periodic knee pain just 2 months prior to the accident, Claimant twice testified at the hearing that he had no prior pain or discomfort. Upon repeated questioning, Claimant was noticeably evasive (Hearing Transcript, page 24, lines 11-22; pages 25-28); (d) at his deposition, when Claimant was asked if he had any symptom--even occasional discomfort—prior to the date of the accident, Claimant twice answered "no" (Claimant's Deposition, page 60, lines 8-13; Deposition of Dr. DaSilva, pages 9, 16-19 and 27-29; (e) Claimant testified at his deposition that he could not recall whether or not he told the Trooper at the accident scene that he injured his knee or back; by contrast, Claimant testified adamantly at the hearing ("No, that's not true") months later that he told the State Trooper about hitting his knee on the dash and that it hurt (Claimant's Deposition, page 42; *Cf.* Hearing Transcript, page 17, lines 18-25); (f) Although the Claimant was a restrained driver in the accident, he appears to have told Dr. LaMotta he was

not (Claimant's Deposition, page 41; *Cf.* Defendants' APA #9, under "HPI;" and (g) *See also* Hearing Transcript, page 14, particularly lines 7-13; *Cf.* Hearing Transcript, page 15, particularly lines 12-16.

17. Claimant continues to complain of pain in his left knee; however, based upon the evidence cited herein and as a whole, specifically the reports and testimony of Drs. DaSilva and LaMotta, we find that Claimant's complaints are not causally-related to his work injury. We also find instructive Claimant's sworn deposition testimony given upon being asked about why Claimant did not complain of knee pain immediately or shortly after the accident. When Defendants' counsel asked Claimant what he meant by the statement "I'm used to dealing with pain," Claimant's response did not ring true (Claimant's Deposition, page 49).

18. Claimant's current left knee problems are not causally-related to his work injury. We base this finding on the deposition testimony of Dr. DaSilva.

19. Based on the evidence cited herein and as a whole, we do not find that Claimant has proven that his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally-related to this accident. We base this finding upon Dr. DaSilva's deposition testimony and Dr. LaMotta's medical records.

20. We considered the brief report of Claimant's IME for the back (Dr. Johnson), but do not find it persuasive: (a) Dr. Johnson issued a report without even having Claimant undergo an x-ray; and Dr. Johnson issued his report prior to reviewing the results of an MRI; (b) Dr. Johnson issued no follow-up report after the MRI; and (c) although Claimant told Dr. Johnson that Claimant's back pain began "2 weeks after" the date of the accident, Dr. Johnson admits that neither Dr. Compton's record (one month after the date of the accident) nor Dr. Drakeford's record (two months after the date of the accident) contain any mention of or complaint relating to the back (Claimant's APA #6).

21. Because Dr. LaMotta recommended no further treatment attributable to Claimant's work injury as of August 30, 2012, we find that August 30, 2012, is the date of maximum medical improvement. Dr. DaSilva, in his earlier report of May 2012, found a normal back exam, and made no further recommendation for treatment (Defendants' APA #9, page 36; Defendants' APA #8).

22. As permanency was not requested by Claimant in his Form 50, that issue was not addressed by Commissioner Williams, and is therefore held in abeyance pending further request for hearing by either party.

ORDER

IT IS THEREFORE ORDERED that, in accordance with the remand from the South Carolina Court of Appeals, the above findings of fact are adopted as the findings of fact of the Full Commission.

AND SO IT IS ORDERED!

Commissioner Melody L. James

Commissioner Susan S. Barden

Commissioner H. Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on April 17, 2015