

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE FULL COMMISSION
Of the South Carolina Workers' Compensation Commission

T. Scott Beck, Workers' Compensation Commissioner

WCC File No.: 1211338
Appellate Case No.: 2015-000693

Keith Case,

Employee, Appellant,

v.

J. Crawford Logging, Inc.

Employer,

And

Palmetto Timber Fund

Carrier,
Respondents

REPLY BRIEF OF APPELLANT

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Dated: 7/29, 2015
Spartanburg, South Carolina

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(B) ARGUMENT

THE SINGLE COMMISSIONER/FULL COMMISSION APPEARS TO HAVE REVIEWED THE EVIDENCE BLINDLY FROM ONLY ONE SIDE OF THE CASE.

Respondents are correct in pointing out the applicable law in the case.

Specifically “substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case...” Liberty Mutual Insurance Company v. S.C. Second Injury Fund, 636 S.C. 612, 619, 611 S.E. 2d 297, 300 (Ct. App. 2005).

A reading of Respondent’s position would imply Mr. Case’s cervical spine injury should be denied because he did not complain of neck pain. The following exchange took place between Appellant’s Counsel and Dr. Charles Kanos, the neurosurgeon:

Question: Doctor, if a person has a cord injury in the cervical spine, do they necessary have pain or symptoms that are associated with, like, a disc type thing?

Answer: I don’t quite understand the question.

Question: In other words - -

Answer: If a person has a cord injury. I got that part

Question: Cord injury.

Answer: Yea, cord injury. What do you - -

Question: Does it necessarily mean that the person has pain?

Answer: No.

Question: In fact, neuropathic pain, or excuse me. An injury to the cord can result in kind of these wild reflexes that the person not have the pain that’s typically associated with a neck injury?

Answer: That’s possible, yes. That’s possible.

Question: So, the cervical MRI is going to tell you the story. If he's got a cord injury or if he's got some kind of significant disc injury ---

Answer: That's right. I don't know if he's going to have a cord injury.

Question: Okay.

Answer: What I want to do is explain his hyperflexia that I saw on July 1, 2013. (Deposition of Charles Kaños p. 20, lines 3-25; p. 21, line 1).

It is important to remember this deposition testimony was taken before the claimant's cervical MRI. That MRI showed loss of disc height and signal and a posterior disc-osteophyte complex effacing the anterior thecal sac and impinging the cord creating stenosis at C4-5. At C5-6 it was also noted to be moderate loss of disc height and signal. There was also a 1-2mm posterior disc-osteophyte complex effacing the anterior thecal sac and impinging upon the cord (See MRI dated 4/17/14).

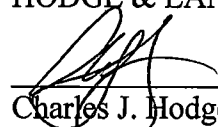
The law requires that evidence be viewed as a whole and not viewed blindly from only one side of the case (Liberty Mutual, supra). The respondents seem to be arguing the appellant should have diagnosed himself. Of course this is not the law in our state.

(C) CONCLUSION

The evidence when viewed as a whole supports a finding of compensability for Mr. Case's neck injury. The decision of the Full Commission should be reversed with findings of compensability for Mr. Case's cervical spine condition relating to his injury on August 27, 2012.

Respectfully Submitted by:

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PROOF OF SERVICE OF INITIAL BRIEF

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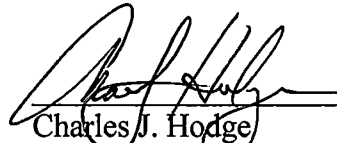
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Reply Brief on J. Crawford Logging, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on July 29, 2015, addressed to his attorney of record, John W. Rabb, Jr., Post Office Box 1481, Columbia, South Carolina 29202 and the South Carolina Workers' Compensation Commission, PO Box 1715, Columbia, South Carolina 29202.

July 29, 2015

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