

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

James Dent,)
)
 Claimant,)
)
vs.)
)
East Richland County Public Service)
District,)
)
 Employer/Defendant,)
)
and,)
)
State Accident Fund,)
)
 Carrier/Defendant)
_____)
_____)

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SC Court of Appeals

ORDER

W.C.C. FILE NO.: 1205879

Appellate Panel Review held in Columbia, South Carolina on May 18, 2015 per notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed:

July 10th, 2015

APPEARANCES:

Claimant was represented by Matthew C. Robertson, Esquire, of Columbia, SC.

Defendants were represented by Page P. Snyder, Esquire, of Columbia, South Carolina

STATEMENT OF THE CASE

This claim went before the Single Commissioner pursuant to a Form 50 filed by the claimant, James Dent, on September 20, 2013. Therein, Mr. Dent alleged injuries by accident to the back, right leg and left leg, occurring on May 1, 2012 arising out of and within the course of his employment with East Richland County Public Service. Claimant alleged he was permanently and totally disabled as a result of his May 1, 2012 accident when he injured his low back while moving a manhole cover. Claimant claims that he has sustained an injury causing radicular pain to both of his legs. The defendants admitted the compensability of the accident to the lumbar spine only and denied that the claimant sustained permanent and total disability.

The claim was heard by the Single Commissioner on February 7, 2014 in Columbia, South Carolina. The Single Commissioner issued her initial Decision and Order on April 14, 2014, making the following findings of facts, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).

4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).
 5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
 6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
 7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
 8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also Defendants' APA, page 11*).
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9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
 10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
 11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
 12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).

13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating (Defendants' APA, page 1).
15. Claimant does not drive because of a fear of fainting – he admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. I find that as far as permanency is concerned, Claimant's right leg is only minimally affected: (a) there is no impairment rating in evidence as far as the leg is concerned – even from Claimant's IME; (b) Claimant's IME admits that, "*I'm not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity*" [emphasis added]; (c) pain diagrams in evidence do not always feature the leg or legs; nor are the diagrams always consistent with statements made to providers and with Claimant's testimony at the hearing; (d) Claimant's leg does not prevent him from driving; and (e) Claimant's straight leg raise is negative (evidence in its entirety, including but not limited to Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 14 and 16).
17. Claimant ambulates with a cane that no authorized physician has prescribed. Notwithstanding Claimant's testimony to the contrary, I find that Claimant's use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
18. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant's APA #2, pages 22 and 24).
19. I find that Claimant's restrictions of "sedentary" to "limited light" are based primarily (if not essentially) upon Claimant's aerobic capacity. I base this finding on Claimant's APA #2, page 25, and on other evidence as well.
20. I considered the opinion of Claimant's one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest's opinion that "*the lung cancer is not playing any role*" in Claimant's inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very

same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant's APA #4, including, but not limited to pages 36-37; Claimant's APA #5, page 38).

21. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
22. I considered Claimant's vocational report. However, I find that this is a "one body part" (*i.e. Singleton*) case for the reasons set forth *supra* (Claimant's APA #5).
23. Although the undersigned greatly sympathizes with Claimant, I find that Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
24. Defendants may stop payment of temporary benefits.
25. PPD pursuant to Section 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident.
26. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
27. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).
28. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.

29. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

In her initial Order and Decision dated April 14, 2014, the Single Commissioner made Conclusions of Law as follows:

1. Pursuant to Section 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to Section 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.

3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to Sections 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to Section 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to Section 42-9-30(21) of the South Carolina Code of Laws for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Bruccoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his exceptions. The matter was briefed by both parties, copies of which were furnished to all interested parties prior to oral arguments which were presented before the Appellate Panel on September 15, 2014. All proffered testimony had been taken and all documentary evidence submitted to the individual members of the Appellate Panel and has since been under study and consideration.

On November 21, 2014, the Appellate Panel issued an Order of Remand of the Single Commissioner's initial Decision and Order. The Appellate Panel specifically wanted the Single Commissioner to consider Colonna v. Marlboro Park Hospital and Beckman v. Sysco Columbia, LLC in connection with the Single Commissioner's finding ~~that this is a one body part case pursuant to Singleton.~~

As a result of the Order of Remand, the Single Commissioner reconsidered this matter and issued a subsequent Order and Decision on February 24, 2015 making the following findings of facts, repeated herein verbatim:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
4. Claimant's prior employment involves work (a) delivering furniture; (b) installing glass, and (c) installing vending machines. These jobs are all considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).

5. Claimant's job with Employer was Sewer Line Maintenance Foreman, a job which involved laying pipe, digging up sewer lines, and lifting manhole covers (testimony of Claimant; Claimant's APA #5, pages 40-41).
6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
7. Claimant was treated conservatively for his back injury. I base this finding on the medical evidence in its entirety.
8. One month after the date of the accident, Claimant's pain radiation was better. I give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
9. Physical therapy records state (twice) that Claimant's back pain is "intermittent." "Constant" is a choice that was not checked (Claimant's APA #2, pages 10 and 12).
10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).

11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
12. I do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
13. Claimant reached maximum medical improvement on May 8, 2013 (Defendants' APA, page 1).
14. The authorized treating physician assigned a 10% impairment rating and released Claimant to medium work. I give greater weight to the medium duty restrictions imposed by the authorized treating physician than I give to any other evidence regarding restrictions (Defendants' APA, page 1).

15. Claimant does not drive for the reason that he fears he might faint. Claimant admitted at the hearing that he has no trouble using foot pedals (testimony of Claimant).
16. There is no impairment rating in evidence as far as either leg is concerned – even from Claimant’s IME who admits that, “*I’m not finding any definite weakness or definite neurological deficit involving the right lower extremity nor the left lower extremity*” (evidence in its entirety, including but not limited to Claimant’s APA #2, pages 10, 12, 15 and 24; Claimant’s APA #4, page 35; Defendants’ APA, pages 14 and 16).
17. Claimant’s complaints involving his legs are not always consistent, a finding I base on the pain diagrams in evidence (e.g., Claimant’s APA #2, pages 10, 15, and 24).
18. Claimant’s legs do not prevent him from driving (testimony of Claimant).
19. Claimant’s straight leg test is negative. (Defendants’ APA, pages 14 and 16).
20. Claimant ambulates with a cane that no authorized physician has prescribed. ~~Notwithstanding Claimant’s testimony to the contrary, I find that Claimant’s~~ use of a cane is attributable to his weakened condition from cancer, radiation and chemotherapy (medical evidence in its entirety; observations of the undersigned).
21. Claimant was not a candidate for work hardening because of (a) shortness of breath; and (b) a subjective complaint of increase in back pain (Claimant’s APA #2, pages 22 and 24).
22. I find that the restrictions of “sedentary” to “limited light” as recommended by a physical therapy are based primarily (if not essentially) upon Claimant’s aerobic capacity. I base this finding on Claimant’s APA #2, page 25, and on other evidence as well. I give greater weight to the medium duty restrictions as imposed by the authorized treating physician (Defendants’ APA, page 1).
23. I considered the opinion of Claimant’s one-time IME. However, in this case, I give greater weight to the opinion of the authorized treating physician as to restrictions attributable to the work injury. Dr. Forrest’s opinion that “*the lung cancer is not playing any role*” in Claimant’s inability to work [emphasis added] is not persuasive, and is refuted by the following: (a) during the very same timeframe Claimant saw his IME, Claimant reported that his cancer had metastasized to the lymph nodes and an adrenal gland; and (b) the first reason Claimant gave to PT personnel for deciding to retire is lung cancer (Claimant’s APA #4, including, but not limited to pages 36-37; Claimant’s APA #5, page 38).

24. Claimant's IME's 21% impairment rating is not persuasive given the facts that Claimant was treated conservatively, and did not undergo surgery (Claimant's APA #4, page 37).
25. I considered Claimant's vocational report, but I give greater weight to the authorized treating physician's recommendation of medium duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. I note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." Claimant's vocational expert "parrot" Dr. Forrest's inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).
26. Although the undersigned greatly sympathizes with Claimant, I find that ~~Claimant's disability stems primarily from his cancer condition, including but~~ not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
27. Defendants may stop payment of temporary benefits.
28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. I base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity. (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).
29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.

The Single Commissioner made the following Conclusions of Law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Brucoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

Within the statutory period, the claimant filed an Application for Review in the case setting forth his exceptions. The matter was briefed by both parties, copies of which were furnished to all interested parties prior to oral arguments which were presented

before the Appellate Panel on May 18, 2015. All proffered testimony had been taken and all documentary evidence submitted to the individual members of the Appellate Panel and has since been under study and consideration.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1976, as amended), review the award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefor, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. The matter was heard by the Appellate Panel on May 18, 2015.

Matthew Robertson, for the Claimant and Page P. Snyder, for the Defendants appeared at the scheduled hearing to present oral arguments on behalf of the parties. ~~Having heard oral arguments on behalf of the parties, considered their briefs and viewed~~ the records as a whole, the Appellate Panel hereby finds a Full Affirmation of the Single Commissioner's Decision and Order dated February 24, 2015.

DECISION AND ORDER

The Appellate Panel hereby makes the following findings of fact:

1. Claimant injured his back in an admitted accident on May 1, 2012. He alleges that the injury also affect his legs (primarily his right), a claim that is supported by the greater weight of the evidence as far as the right leg is concerned (Claimant's IME report, as contained in Claimant's APA #4, pages 34-35, which correlates with Claimant's initial testimony at the hearing that it is his right leg which is affected)/ Claimant's IME report is devoid of any mention to the left leg, other than the fact that there is no deficit (Claimant's APA #4 in its entirety).
2. Claimant is 58 years of age (testimony of Claimant).
3. Claimant is a high school graduate (testimony of Claimant; Claimant's APA #5, page 39).
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considered heavy or very heavy (testimony of Claimant; Claimant's APA #5, pages 39-40).

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 6. Claimant was a 27-year employee. This factor does weigh in Claimant's favor, but it is not dispositive (testimony of Claimant).
 7. Claimant was treated conservatively for his back injury. We base this finding on the medical evidence in its entirety.
 8. One month after the date of the accident, Claimant's pain radiation was better. We give these treatment records great weight (Claimant's APA #1, page 4; *See also* Defendants' APA, page 11).
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10. After the date of the accident, Claimant was diagnosed with lung cancer (Defendants' APA, page 9).
 11. Prior to reaching maximum medical improvement for the work injury, Claimant had already determined that he was not planning to return to work because of lung cancer (listed first) and his back injury (Claimant's APA #2, pages 22 and 24).
 12. We do find it inconsistent that Claimant would complain of "8," pain on "average" (meaning his pain goes even higher), but tell Dr. Gunter that he would "not consider" surgery if offered; Claimant also told physical therapy personnel (to whom Claimant complained of "9" pain) that he "does not want" to have surgery. Even though Claimant testified that his cancer is in remission, Claimant has not expressed an interest in undergoing surgery (Claimant's APA #2, pages 10 and 15; Claimant's APA #3, page 28; Defendants' APA, page 2; testimony of Claimant).
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25. We considered Claimant's vocational report, but we give greater weight to the authorized treating physician's recommendation of medium duty work along with the 10% impairment rating. As Claimant is a high school graduate and capable of performing medium duty work as far as his back injury is concerned, he is not permanently and totally disabled from a workers' compensation standpoint. We note that Claimant has great difficulty because of the radiation and chemotherapy he has undergone in treatment of his cancer; for instance, Claimant's wife told the vocational expert that Claimant's memory is affected such that he "asks the same questions over and over like a child." Claimant's vocational expert "parrot" Dr. Forrest's inaccurate statement that Claimant's cancer plays no role in Claimant's inability to return to work. Claimant relies upon the use of a cane that no workers' compensation physician prescribed (e.g. Defendants' APA, page 1; Claimant's APA #5, pages 38-39 and 62, and testimony of Claimant).
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26. ~~Although the undersigned greatly sympathizes with Claimant, we find that~~ Claimant's disability stems primarily from his cancer condition, including but not limited to the effects of the chemotherapy and radiation Claimant has undergone. In determining permanency, the undersigned must parse the (a) back condition from (b) cancer and its residuals.
27. Defendants may stop payment of temporary benefits.
28. PPD pursuant to S.C. Code § 42-9-30(21): 35%. We base this award on Claimant's restrictions as imposed by the authorized treating physician ("Medium") *vis a vis* the fact that Claimant was able to perform heavy or very heavy work prior to the date of accident. This award encompasses any subjective radiculopathy, although (a) Claimant's pain diagrams do not always feature leg pain, (b) there is no rating in evidence for the leg, and (c) Claimant's expert cannot find any weakness or neurological deficit with regard to either lower extremity (Claimant's APA #2, pages 10, 12, 15 and 24; Claimant's APA #4, page 35; Defendants' APA, pages 1, 14 and 16).
29. Defendants are to receive credit for overpayment from the date of maximum medical improvement, May 8, 2013. Defendants continued to pay Claimant through March 12, 2014. This results in a credit for overpayment for 44.1249 weeks.
30. As to future medicals, Claimant is entitled to physician visits and pain management/medications (Claimant's APA #3, page 28; Defendants' APA, page 1).

31. Claimant's average weekly wage is \$910.09, yielding a compensation rate of \$610.75.
32. Claimant is entitled to the payment of this permanent partial disability award in a lump sum and Utica Mohawk language. Defendants express no opinion, nor do they give any advice, on the allocation of settlement proceeds.


The Appellate Panel hereby makes the following conclusions of law:

1. Pursuant to S.C. Code § 42-3-180 of the South Carolina Code of Laws, the South Carolina Workers' Compensation Commission has jurisdiction of this proceeding to determine the issues brought before it and venue in the County of Richland is proper pursuant to S.C. Code § 42-17-20.
2. The Claimant, James Dent, sustained an injury by accident on May 1, 2012, which arose out of and in the course of his employment pursuant to Section 42-1-160.
3. ~~That the Claimant was an employee and East Richland County Public Services was the employer pursuant to S.C. Code §§ 42-1-130 and 42-1-140, respectively.~~
4. That notice was properly given pursuant to Section 42-15-20.
5. That pursuant to S.C. Code § 42-1-40, the Claimant's average weekly wage was \$910.09, making his compensation rate \$610.75 applicable in this matter.
6. That Claimant is entitled to compensation pursuant to S.C. Code § 42-9-30(21) for the disability suffered to his back.
7. That Claimant is entitled to further medical treatment in the form of physician visits and pain management/medications for his low back as it will tend to lessen his disability pursuant to Dodge v. Brucoli Clark Laymen, Inc., 334 S.C. 574 (S.C. Ct App. 1999).
8. That Defendants' are entitled to credit for overpayment of temporary total compensation back to the date of maximum medical improvement on May 8, 2013.

IT IS, THEREFORE, ORDERED the Order of the hearing Single Commissioner dated February 24, 2015 is AFFIRMED IN FULL.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Gene McCaskill, Commissioner


Melody L. James, Commissioner


Mike Campbell, 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 July 10, 2015