

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1319471

Daniel Davis,
Employee,

Claimant,

ABC Amusements, Inc.,
Employer,

AND

WC Uninsured Employers Fund,
Carrier,

Defendants.

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SEP 23 2015

SC Court of Appeals

ORDER OF THE COMMISSIONER

STIPULATIONS

Hearing: Held in Columbia, South Carolina on February 12, 2015.

Appearances: Claimant represented by John R. Moorman., Esquire, of the Bryan Law Firm.
Defendant, ABC Amusements, Inc., represented by George Miars, Esquire
and Defendant, WC Uninsured Employers Fund represented by Amy Cofield,
Esquire, of Cofield Law Firm.

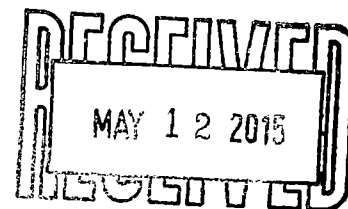
Purpose of Hearing: To determine the issues as set forth on Form 50, and any other issues which may have timely come before the Commissioner

Decision and Order: T. Scott Beck, Chairman, South Carolina Workers' Compensation Commission, Commissioner

Filed: May 12, 2015

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing was to determine the issues as set forth in the Form 50, and any other issues which may have timely come before the Commission.



2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Lexington County, is proper as agreed upon by all parties.
4. Claimant's average weekly wage and compensation rate are \$320.00, \$213.34, respectively.

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury to his right leg (knee) occurring on October 2, 2013 while in the employ of Defendant Employer and, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of this case.

APA SUBMISSIONS

The following documents were submitted without objection pursuant to the Administrative Procedures Act:

Claimant's Submissions

APA #	NAME OF PROVIDER/OTHER	DATE(S) OF RECORD	PAGE #
1	Baptist Easley Hospital	10/02/13-10/07/13	01-42
2	Dr. David Boyer, Upstate Bone and Joint	10/14/13	43-44
3	Dr. David Woodbury, Lakeside Orthopaedic Center	03/12/14-08/12/14	45-57
4	Clarendon Health System	03/18/14-03/27/14	58-139
5	Palmetto Imaging, MRI of right knee	02/17/14	140-145
A	Letter from SCWCC dated 12/4/13	12/4/13	

Defendants' Submissions

APA #	NAME OF PROVIDER/OTHER	DATE(S) OF RECORD	PAGE #
A	Deposition of Daniel Davis <i>Pollack v. Southern Wine & Spirits of America</i>		

STATEMENT OF THE CASE

Claimant claims that he sustained an injury to his right leg (knee) on October 2, 2013 when he stepped out of his work truck and into a hole in the ground. Claimant alleges injuries to his right leg.

Defendants deny that the injury occurred as claimed by the Claimant and deny that he is entitled to any relief under the South Carolina Workers' Compensation Act.

EVIDENCE OF THE CASE

Claimant originally treated at Baptist Easley Hospital beginning on October 2, 2013, where he complained of right knee and leg pain that was caused from stepping out of his work truck and into a hole in the ground. (Claimant's APA p.2) At Baptist Easley Hospital, Claimant had pain and swelling in his right knee as well as restrictions in the range of motion of his right knee. (Claimant's APA p.9) An x-ray of Claimant's right knee revealed no fractures. (Claimant's APA p.15) At discharge, Claimant's right knee was placed in an ace bandage, Claimant was given crutches and was excused from work until October 7, 2013. (Claimant's APA pp. 10-11) Additionally, Claimant was referred to Dr. Boyer at Upstate Bone and Joint due to the extent of his injury. (Claimant's APA p.9) On October 7, 2013, Claimant returned to Baptist Easley Hospital with continued pain, swelling, and inability to bear weight on his right knee. (Claimant's APA p.23) Due to these continued complaints, Claimant was excused from work by the emergency department at Baptist Easley Hospital until October 9, 2013. (Claimant's APA p.33) Claimant returned to work on October 10, 2013 and was wearing an ace bandage on his right knee and using crutches. While at work on October 14, 2013, Claimant was stuck in traffic on the way to an event and was late to the event. Claimant had been late on two prior occasions and due to being late on a third occasion, Claimant was terminated from his employment with the Defendant, ABC Amusements, Inc., on October 14, 2013. Claimant testified that his termination by Defendant, ABC Amusements, Inc., under these circumstances was justified. On October 14, 2013, Claimant saw Dr. Boyer. (Claimant's APA p.43) Due to Claimant's complaints, Dr. Boyer recommended an MRI of Claimant's right knee and placed Claimant in a knee

brace. (Claimant's APA p.44) However, the Defendant denied Claimant's claim and did not approve the MRI of Claimant's right knee.

Eventually, Claimant received an MRI on his right knee at his own expense at Palmetto Imaging in Florence, South Carolina on February 17, 2014. (Claimant's APA p.140) The MRI revealed a bucket handle tear of Claimant's lateral meniscus and derangement of the posterior horn of the medial meniscus. (Claimant's APA p.45) Following the MRI of Claimant's right knee, Claimant was treated by Dr. David M. Woodbury at Lakeside Orthopaedic in Manning, South Carolina for the injury to his right knee. On March 27, 2014, Dr. Woodbury performed a right knee arthroscopy on Claimant's right knee. (Claimant's APA p.62-64) Prior to surgery, Claimant's movement was restricted significantly by the injury. Claimant testified that the employment that he was performing when injured and throughout his working life was primarily manual labor and physical in nature. Following surgery, Claimant was given work restrictions by Dr. Woodbury and was unable to work from the date of surgery until August 12, 2014. On August 12, 2014, Dr. Woodbury placed Claimant at maximum medical improvement, released Claimant to full work duty without restrictions, and assigned Claimant a 1% permanent impairment rating to the whole person. (Claimant's APA p.56)

FINDINGS OF FACT

Based on the evidentiary submissions, I hereby find as follows:

1. Claimant, Daniel Davis, was an employee of ABC Amusements, Inc.
2. The venue is proper in the County of Lexington.
3. The notice of Hearing was timely and properly served upon all parties of interest.
4. The claim was timely filed with the S.C. Worker's Compensation Commission.
5. The Claimant's average weekly wage is \$320.00, yielding a compensation rate of \$213.34.

6. The Claimant suffered a compensable injury to his right leg (knee) on October 2, 2013 while stepping out of his work truck and into a hole in the ground. This injury occurred in the course and scope of his employment with the Employer. Although Defendants called two co-employees who spoke of the Claimant wearing a brace on his leg and although the Claimant admitted that he had worn a brace at times, the Claimant was by all accounts was performing all of the required duties of his employment up until the day he stepped into the hole while working and went to the Baptist Easley Hospital seeking treatment for a work injury.
7. Claimant received causally related medical treatment from Baptist Easley Hospital, Upstate Bone and Joint, Lakeside Orthopaedic Center, Clarendon Health System, and Palmetto Imaging for his right leg and right knee and was found to have reached maximum medical improvement (MMI) for his right knee and right leg pain per Dr. Woodbury on August 12, 2014. Dr. Woodbury also opined that the Claimant had a 1% permanent impairment rating to the whole person.

CONCLUSIONS OF LAW

Accordingly, as provided in Section 42-17-40 of the South Carolina Code of Laws Annotated, it is the determination of this Commissioner that:

1. Claimant has satisfied his burden of proving a compensable injury to his right leg (knee).
2. Defendant is responsible for all causally related medical expenses for Claimant, as listed above. He should be reimbursed for causally related medical expenses for which he was required to pay. This will include the MRI and payments to Lakeside Orthopaedic Center advanced by counsel on behalf Claimant while treatment was denied by Defendant pursuant to Section 42-15-60 of the Code of Laws of South

Carolina. Additionally, Employer is liable for all past medical payments made by Claimant.

3. Claimant reached maximum medical improvement on August 12, 2014 and is entitled to 5% permanent partial disability to his right leg based upon the 1% permanent impairment of the whole person given by Dr. David M. Woodbury. According to Table 17-3 of the American Medical Association Guides to the Evaluation of Permanent Impairment (5th Ed.), page 527, a 1% whole person impairment converts to a 2-3% lower extremity impairment. This disability results in an award of Two Thousand and Eighty and 00/100's (\$2,080.00) Dollars. This amount shall be paid as provided in Section 42-9-230 of the Code of Laws of South Carolina.
4. Claimant made no request for future medical care. He may, however, be entitled to a review of this award based upon a change of condition, as provided in Section 42-17-90 of the Code of Laws of South Carolina.
5. Claimant's request for temporary total disability compensation (TTD) is denied because of Claimant's termination for cause. Claimant acknowledged that his termination was justified, but he asks for TTD for at least the period from the date of surgery (March 27, 2014) to the date of MMI (August 12, 2014). I conclude that his termination for cause mandates a denial of all TTD.
6. The sum of Two Thousand and Eighty and 00/100's (\$2,080.00) Dollars is to be allocated as follows: a) \$693.33 as attorney's fees pursuant to a written contract between Claimant/Employee and attorney; b) \$344.98 for costs and litigation expenses pursuant to the same contract; and c) \$1,041.69 payable to Claimant.

7. Defendant, ABC Amusements, Inc., is responsible for all benefits, but was not insured at the time of this accident. If Defendant, ABC Amusements, Inc., fails to abide by this Order and make the payments specified above, the South Carolina Uninsured Employer's Fund is responsible for such payments, with the Fund maintaining all subrogation rights and other rights against Defendant, ABC Amusements, Inc., as are provided by law.

ORDER AND AWARD

IT IS THEREFORE ORDERED:

1. That the Defendants shall pay to the Claimant the sum of Two Thousand and Eighty and 00/100's (\$2,080.00) Dollars as permanent partial disability within the time specified by law, said amount to be paid as more specifically stated in the text of this order;
2. That the Claimant is denied TTD; and
3. That the Defendants shall pay the medical expenses as stated in the text of this order within the time specified by law; and

IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

May 12, 2015

By: Shawn DeBruhl, Administrative Assistant to Commissioner Beck