

APPELLATE PANEL DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0824526

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SC Court of Appeals

Robert L. Harrison

EMPLOYEE,  
CLAIMANT/APPELLANT

VS.

Owen Steel Company, Inc.

EMPLOYER,

AND

Old Republic Insurance Company c/o  
Gallagher Bassett Services, Inc.

CARRIER,  
DEFENDANTS/ RESPONDENTS,

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Appellate Panel Review held in  
Columbia, South Carolina, on May 18, 2015.

Appellate Panel Decision and Order Filed:

September 8, 2015

APPEARANCES: Claimant/Appellant represented by Frank A. Barton, Esquire

Defendants/Respondents represented by Jason W. Lockhart, Esquire

## STATEMENT OF THE CASE

A hearing was scheduled pursuant to the Decision and Order of the Full Commission Panel, who remanded the above-referenced case to the jurisdictional commissioner for a hearing. More specifically, the Full Commission remanded the case to the jurisdictional commissioner with instructions that the jurisdictional commissioner address the possible assertion of the equitable defense of Laches as well as the Claimant's intervening accidents and/or the Claimant's entitlement to permanent partial disability (PPD) benefits. The Claimant maintained that the Claimant sustained a compensable injury to the back while in the course and scope of the Claimant's employment with the Defendants on September 17, 2008. The Claimant took the position the Claimant was entitled to an award of PPD benefits to the back, pursuant to Section 42-9-30 of the Act on the basis that the Claimant's authorized treating physician, Dr. Holbrook, determined that the Claimant reached maximum medical improvement (MMI) on July 21, 2010, and assigned a 25% impairment rating to the whole person.

In response, while the Defendants admitted that the Claimant sustained a compensable injury to the back on September 17, 2008, the Defendants maintained that the Claimant was not entitled to an award of PPD benefits pursuant to Section 42-9-30. More specifically, the Defendants maintained that the equitable defense of Laches barred the Claimant's receipt of PPD benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 2008, work-related accident and, therefore, any award of PPD benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.

A Hearing in this matter was scheduled before Commissioner McCaskill on August 1, 2014. At the conclusion of the Hearing, Commissioner McCaskill issued a Decision and Order making the following findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Pursuant to Section 42-17-20, this hearing was set on remand of the Full Commission.
3. Claimant average weekly wage is Seven Hundred Ninety-One and 75/100 (\$791.75) Dollars with a corresponding compensation rate of Five Hundred Twenty-Seven and 86/100 (\$527.86) Dollars.
4. The Claimant is alleging that he sustained injuries by accident arising out of and within the course and scope of his employment on September 17, 2008. The Claimant is alleging injuries to the back/neck/cervical spine, right shoulder, left shoulder and any/all other areas of the body directly/indirectly affected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom.
5. The Defendants maintained that the equitable defense of Laches barred the Claimant's receipt of permanent partial disability benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident and, therefore, any award of permanent partial disability benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.
6. The Defendants argue that this claim is barred by the Doctrine of Laches and, subsequently, a determination as to the Claimant's entitlement to permanent partial disability is barred in that to make such a determination would require speculation on the part of the undersigned Commissioner, which the Act says the undersigned Commissioner cannot do. The Claimant argues that the Doctrine of Laches does not apply.
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant settled a

workers compensation claim on September 8, 2011 arising out of an October 4, 2010 date of accident, which occurred while the Claimant was employed with the Defendants. (See Defendants' APA, p. 46).

8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was in a motorcycle accident on April 4, 2010, and complained of pain in his left shoulder. (See Defendants' APA, p. 63-65).
9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant had suffered an injury at home in late February 2012, while lifting his daughter, and complained of neck and back pain. (See Defendants' APA, p. 47, 73-79).
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was involved in a motor vehicle accident on March 8, 2014, and complained of pain from the top of his neck to the top of his right buttock. (See Defendants' APA, p. 50-54).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, the Claimant's testimony, and the Commission file, I find that, while the Claimant alleges that he suffered a work-related injury on September 17, 2008 and it is an active file, the first request for a hearing was filed by the Claimant on May 15, 2013.
12. The threshold matter is whether or not this claim is barred by the Doctrine of Laches. The Defendants argue that this claim is barred by the Doctrine of Laches and a determination as to the Claimant's entitlement to permanent partial disability benefits is barred in that to make such a determination would require speculation on my part, which the Act says I cannot do. The Claimant argues that the Doctrine of Laches does not apply.
13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that, in the present case, the Claimant alleges an accident occurred on September 17, 2008. Since the date of this accident, the Claimant has settled another case via a Form 16A and been awarded benefits pursuant to the

Act. (See Defendants' APA, p. 46).

14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has also been in at least three other accidents, subsequent to the September 17, 2008 accident, and those accidents gave rise to complaints of pain/injury to some the body parts pled in this case. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79).
15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that the Claimant has indeed slept on his rights and to now go back for a possible determination compensability and disability after at least three intervening accidents over the past six years would be both speculative and prejudicial to the Defendants.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then. (Hr'g Tr. 14:22-16:9).
17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, I find that the claim is barred by the Doctrine of Laches.
18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.
19. Claimant sustained a work-related injury to the exact same part of his body in 2010 that he injured in September 2008. Claimant reinjured his neck in either September 2010 or October 2010. In addition, Claimant re-injured the same part of his body in February 2012 when he lifted his child off of the ground after the child had fallen off a porch. (See Defendants' APA, p. 46, 47, 50-54, 63-65,

73-79). To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would have required speculation on the part of the undersigned Commissioner.

20. Based on the entirety of the evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.
21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant's request for permanent partial disability benefits is denied.

#### CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in 42-1-10 S.C. Code of Laws, et. seq., that:

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Pursuant to South Carolina Code Ann. §42-1-40 and §42-1-100, Claimant's average weekly wage is Two Hundred Eighty Four Dollars (\$284.85) and 85/100 with a corresponding compensation rate of One Hundred Eighty Nine Dollars (\$189.91) and 91/100.
4. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter. 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co.. 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.
5. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "'injury' and 'personal injury' shall mean only injury by accident arising out

of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must 'arise out of the employment and simultaneously co-exist 'in the course of the employment.'" Kinsey v. Champion Am. Serv. Center. 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).

6. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is primarily one of law." Doe v. South Carolina State Hospital. 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).
7. The question of Laches is largely a factual one, so each case must be judged on its own merits. Mid-State Trust. II v. Wright. 323 S.C. 303, 307, 474 S.E.2d 421, 423-24 (1996).
8. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard. Inc.. 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999) (citations omitted). Under the Doctrine of Laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity steps in and refuses to enforce those rights. Id. at 296, 519 S.E.2d at 599. The party asserting Laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Id. at 297, 519 S.E.2d at 599.
9. Our appellate courts have recognized the applicability of the Doctrine of Laches in a workers' compensation claim. See Muir. 336 S.C. at 296-97, 519 S.E.2d at 598-99 (affirming the commissioner's finding that the claim was not barred by the Doctrine of Laches because claimant did not act unreasonably in pursuing the claim); McMillan v. Midlands Human Res.. 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991) (quoting the commissioner's finding that "[a] claimant must prosecute his claim in a timely fashion or it may be barred by the Doctrine of Laches," although the commissioner's authority to dismiss the case for failure to prosecute was not disputed on appeal).
10. In the present case, despite the shared responsibility in requesting a hearing set forth in Halks, the Defendants nonetheless demonstrated that the Claimant was negligent in pursuing his claim and had the opportunity to act sooner. Based on the entirety of the evidence including the medical records submitted, the testimony of

the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then.

11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, I find that the claim is barred by the Doctrine of Laches.
12. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. See Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) (Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.
13. To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioner prohibited by the South Carolina Workers Compensation Act. See Tiller, 334 S.C. 333, 513 S.E.2d 843 (1999).
14. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant has not met his burden of proving by preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.
15. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, I find that the Claimant's request for

permanent partial disability benefits is denied.

Following the Decision and Order, Claimant filed a Form 30 and asserted several exceptions to the Decision and Order. According to the Claimant's Appellate Brief, these exceptions were consolidated as follows:

1. The Commissioner erred in concluding Laches, an affirmative defense, was applicable when it was not pled by the Defendants.
2. The Commissioner erred in finding and concluding Claimant was barred from relief based on the Doctrine of Laches.
3. The Commissioner erred in finding and concluding Laches was applicable because the Defendants were prejudice.
4. The Commissioner erred in finding and concluding Laches was applicable when the Defendants could have requested a Hearing at any time.
5. The Commissioner erred in finding and concluding Laches was applicable when the Defendants failed to provide any evidence whatsoever of any prejudice suffered.
6. The Commissioner erred in disregarding the reports of Dr. Thomas Holbrook and Dr. Don Johnson which concluded Claimant had at least a twenty-five percent whole person impairment as a result of the surgery performed on Claimant as a result of the surgery performed on Claimant as a result of his accident on September 17, 2008.
7. The Commissioner erred in disregarding the reports of Dr. Thomas Holbrook and Dr. Don Johnson when the Defendants failed to provide any medical evidence to contradict those reports.
8. The Commissioner erred in finding and concluding any finding of impairment or disability benefits would be speculative when the Defendants failed to produce any medical evidence to contradict the reports of Dr. Thomas Holbrook and Dr. Don Johnson.
9. The Commissioner erred in failing to find and conclude that the Claimant was entitled to an award for disability benefits based upon the interior cervical discectomy and fusion performed on Claimant.

## EVIDENCE OF THE CASE

### TESTIMONY

The Claimant was the only witness to testify on his behalf. The Claimant testified that he is currently 42-years of age and resides in Hopkins, South Carolina, with his wife and two children. The Claimant stated that he was involved in a work-related accident on September 17, 2008, and sustained an injury to the neck while rising from a bent over position, which the Claimant was in while welding a girder. (Hr'g Tr. 22:3-22) Claimant stated that he sought and received initial medical treatment at Doctors Care and was taken to Doctors Care by a representative of the Insured on September 17, 2008. Based on a review of the medical records, Claimant was initially examined at Doctors Care on September 17, 2008, and diagnosed with an acute cervical strain. (See Defendants' APA, p. 83). Claimant testified that he sought and received medical treatment at Doctors Care in the form of injections, prescription medication and physical therapy, which he underwent for approximately 6 to 12 weeks. On the other hand, Claimant stated that his neck pain and problems did not improve, following the receipt of the above-referenced medical treatment, and that he was referred to Dr. Holbrook for additional medical treatment.

Claimant testified that he sought and received additional medical treatment with Dr. Holbrook, who initially examined Claimant in August 2009. (See Claimant's APA, p. 2-3). Claimant stated that he initially received treatment from Dr. Holbrook in the form of an injection but that he did not experience any improvement of his neck pain or problems following the injection. (See Claimant's APA, p. 4). Claimant indicated that he subsequently underwent surgery, which was performed by Dr. Holbrook in November 2009. (Hr'g Tr. 23:3-5) Based on a review of the medical records, Dr. Holbrook performed an anterior cervical discectomy and

fusion at C5-6 on November 10, 2009. (See Claimant's APA, p. 5-6). Claimant testified that he experienced limited improvement of his neck pain and problems following surgery, and that he also underwent physical therapy, following surgery, for a period of approximately five to six weeks. (See Claimant's APA, p. 7, 9). Claimant testified that he was released from the care of Dr. Holbrook in July 2010, but that he did provide Dr. Holbrook with complaints of neck pain and problems prior to being released from the care of Dr. Holbrook in July 2010. (Hr'g Tr. 31:16-22) Based on a review of the medical records, Dr. Holbrook determined that Claimant reached maximum medical improvement on July 21, 2010, and assigned a 25% impairment rating to the whole person. (See Claimant's APA, p. 15). Claimant stated that he did return to Dr. Holbrook in 2012 for medical treatment following an incident wherein Claimant lifted his daughter off of the ground after she had fallen from a porch. Claimant testified that he provided Dr. Holbrook with complaints of right shoulder pain but that his neck was not injured in the above-referenced incident. (Hr'g Tr. 32:18-33:3; 34:6-15) Claimant indicated that Dr. Holbrook did not provide him with medical treatment, but referred Claimant to an orthopaedic physician for additional medical treatment. (Hr'g Tr. 36:1-14)

The Claimant testified he is currently employed with the Defendants as lead man or shop foreman, and is physically capable of performing his job duties and responsibilities for the Defendants. (Hr'g Tr. 44:3-8) Most notably, the Claimant stated that he is currently earning greater wages with the Defendants at the present time than he was earning on the date of his September, 2008 work-related accident. (Hr'g Tr. 24:10-12) The Claimant indicated he continues to experience throbbing pain in the neck, which occurs approximately one-to-two times per week and that he alleviates pain and problems associated with his neck through the use of over-the-counter medication, an ice pack, and a heating pad. (Hr'g Tr. 23:18-25; 46:12-47:7) The

Claimant, who is right-hand dominant, testified that he also experiences numbness and tingling in the left upper extremity that occurs approximately one-to-two times per week.

On cross-examination, the Claimant testified that he was involved in a motor vehicle accident in April 2010 (Hr'g Tr. 28:5-25), a work-related accident in October 2010 (Hr'g Tr. 54:15-17), an accident that occurred at his home in February 2012 (Hr'g Tr. 54:21-23), a motor vehicle accident in July 2013 (Hr'g Tr. 27:12-14), and a motor vehicle accident in March 2014 (Hr'g Tr. 24:24-25:14). (See Defendants' APA, p. 50-54). The Claimant was quite adamant that, despite the occurrence of each of the above-referenced incidents, he was of the opinion that his current neck pain and problems were entirely related to his September 2008 work-related accident. (Hr'g Tr. 55:5-25). Most interestingly, the Claimant indicated that he did not provide Dr. Holbrook with complaints of increased neck and upper extremity problems after attempting to pick up his daughter, who had fallen from a porch in February 2012, despite medical records that were inconsistent with the testimony of the Claimant. (Hr'g Tr. 33:1-3, 34:6-15; see Defendants' APA, p. 47). The Claimant indicated that he did sustain injuries to the neck and back as a result of his motor vehicle accident, which occurred in February 2014, or March 2014, and was of the opinion that his neck pain and problems, due to the above-referenced motor vehicle accident, had resolved. (See Defendants' APA, p. 50-62). The Claimant indicated that, despite his ongoing neck pain and problems, he regularly performs yard work, goes fishing, and rides motorcycles. (Hr'g Tr. 47:16-51:8). In addition, the Claimant testified that he was most recently involved in a physical altercation with a co-employee, and that the above-referenced physical altercation, which occurred in either June 2014 or July 2014, resulted in the Claimant both throwing the above-referenced individual to the ground and throwing multiple punches. (Hr'g Tr. 52:7-54:5).

Terry Hartwell testified on behalf of the Defendants. Mr. Hartwell, who has been employed with the Defendants for approximately 10 years, stated that he is currently employed as a shift supervisor, and has been the Claimant's supervisor for approximately one year. (Hr'g Tr. 62:1-21). Mr. Hartwell indicated that he observed the Claimant performing his job on a daily basis and that the Claimant appears to be physically capable of performing his job duties and responsibilities as a lead man. (Hr'g Tr. 63:25-64:4). Most notably, Mr. Hartwell testified that the Claimant has not requested that the Defendants modify the Claimant's job duties or responsibilities in light of the Claimant's ongoing neck pain and problems. (Hr'g Tr. 64:5-8). Most interestingly, Mr. Hartwell stated he observed the physical altercation between the Claimant and a former co-employee that occurred in June 2014 or July 2014, and witnessed the Claimant throwing the above-referenced employee to the ground and throwing punches. (Hr'g Tr. 65:17-66:5).

## **FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **FINDINGS OF FACT**

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Pursuant to Section 42-17-20, this hearing was set before the Single Commissioner on remand of the Full Commission.
3. Claimant average weekly wage is Seven Hundred Ninety-One and 75/100 (\$791.75) Dollars with a corresponding compensation rate of Five Hundred Twenty-Seven and 86/100 (\$527.86) Dollars.
4. The Claimant is alleging that he sustained injuries by accident arising out of and within the course and scope of his employment on September 17, 2008. The

Claimant is alleging injuries to the back/neck/cervical spine, right shoulder, left shoulder and any/all other areas of the body directly/indirectly affected, including but not limited to any nervous condition and/or mental condition which Claimant has or may have as a result therefrom.

5. The Defendants maintained that the equitable defense of Laches barred the Claimant's receipt of permanent partial disability benefits. Furthermore, the Defendants maintained that the Claimant had sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident and, therefore, any award of permanent partial disability benefits would be speculative and, therefore, prohibited pursuant to Section 42-9-30 of the Act.
6. The Defendants argue that this claim is barred by the Doctrine of Laches and, subsequently, a determination as to the Claimant's entitlement to permanent partial disability is barred in that to make such a determination would require speculation on the part of the undersigned Commissioners, which the Act says the Commission cannot do. The Claimant argues that the Doctrine of Laches does not apply.
7. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant settled a workers compensation claim on September 8, 2011 arising out of an October 4, 2010 date of accident, which occurred while the Claimant was employed with the Defendants. (See Defendants' APA, p. 46).
8. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony,

we find that the Claimant was in a motorcycle accident on April 4, 2010, and complained of pain in his left shoulder. (See Defendants' APA, p. 63-65).

9. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant had suffered an injury at home in late February 2012, while lifting his daughter, and complained of neck and back pain. (See Defendants' APA, p. 47, 73-79).
10. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant was involved in a motor vehicle accident on March 8, 2014, and complained of pain from the top of his neck to the top of his right buttock. (See Defendants' APA, p. 50-54).
11. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, the Claimant's testimony, and the Commission file, we find that, while the Claimant alleges that he suffered a work-related injury on September 17, 2008 and it is an active file, the first request for a hearing was filed by the Claimant on May 15, 2013.
12. The threshold matter is whether or not this claim is barred by the Doctrine of Laches. The Defendants argue that this claim is barred by the Doctrine of Laches and a determination as to the Claimant's entitlement to permanent partial disability benefits is barred in that to make such a determination would require speculation on our part, which the Act says we cannot do. The Claimant argues that the Doctrine of Laches does not apply.

13. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that, in the present case, the Claimant alleges an accident occurred on September 17, 2008. Since the date of this accident, the Claimant has settled another case via a Form 16A and been awarded benefits pursuant to the Act. (See Defendants' APA, p. 46).
14. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has also been in at least three other accidents, subsequent to the September 17, 2008 accident, and those accidents gave rise to complaints of pain/injury to some the body parts pled in this case. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79).
15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that the Claimant has indeed slept on his rights, and to now go back for a possible determination compensability and disability after at least three intervening accidents over the past six and one-half years would be both speculative and prejudicial to the Defendants.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant was represented and no just cause has been shown as to why he could not file for a hearing then. (Hr'g Tr. 14:22-16:9).

17. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, we find that the claim is barred by the Doctrine of Laches.
18. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.
19. Claimant sustained a work-related injury to the exact same part of his body in 2010 that he injured in September 2008. Claimant reinjured his neck in either September 2010 or October 2010. In addition, Claimant re-injured the same part of his body in February 2012 when he lifted his child off of the ground after the child had fallen off a porch. (See Defendants' APA, p. 46, 47, 50-54, 63-65, 73-79). To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioners.
20. Based on the entirety of the evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally related condition was as a

result of the September 17, 2008 accident.

21. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant's request for permanent partial disability benefits is denied.
22. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

#### CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et seq., that:

1. Pursuant to South Carolina Code Ann. §42-15-10 and §42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Pursuant to South Carolina Code Ann. §42-1-40 and §42-1-100, Claimant's average weekly wage is Two Hundred Eighty Four Dollars (\$284.85) and 85/100 with a corresponding compensation rate of One Hundred Eighty Nine Dollars (\$189.91) and 91/100.
4. The scope of review of the Full Commission is not limited. The Commission can, like the Single Commissioner, consider all of the evidence and reach its own

findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).

5. The Full Commission is not necessarily bound by the Single Commissioner's findings of fact, and is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc.
6. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter. 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co. 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds.
7. To be eligible for compensation under the Act in South Carolina, a work-related injury must arise out of and in the course and scope of employment. S.C. Code Ann. § 42-1-160 provides that "injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of employment." This section "contains a two-pronged test for compensable injuries: the injury must arise out of the employment and simultaneously co-exist in the course of the employment." Kinsey v. Champion Am. Serv. Center. 268 S.C. 177, 182, 232 S.E.2d 720, 722 (1977).
8. The burden of proof is upon the claimant to establish that the accident arose out of employment. "Whether the employee's injuries arose out of employment is, in part, a factual issue, but where the facts are virtually undisputed, the issue is

primarily one of law." Doe v. South Carolina State Hospital. 285 S.C. 183, 188 n.4, 328 S.E.2d 652, 655 n.4 (Ct. App. 1985).

9. Prior to the Single Commissioner Hearing, the Full Commission's ruling was not appealed and became the law of the case, allowing Defendants to raise the Doctrine of Laches on remand. See Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 175, 525 S.E.2d 869, 871 (2000) (because respondent did not appeal the ruling of the reviewing court, the courts on remand were bound by the ruling as the law of the case and they erred in ignoring the reviewing court's directive to determine the amount of actual damages).
10. On remand from the Full Commission, Defendants properly pled the equitable defense of Laches in its Form 58 Prehearing Brief. As a result, on remand, the Single Commissioner properly ruled on the Laches issue, and we find that the Laches issue is properly presented before us since Defendants properly preserved the issue for appeal.
11. The question of Laches is largely a factual one, so each case must be judged on its own merits. Mid-State Trust. II v. Wright. 323 S.C. 303, 307, 474 S.E.2d 421, 423-24 (1996).
12. "Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Muir v. C.R. Bard. Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct. App. 1999) (citations omitted). Under the Doctrine of Laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity

steps in and refuses to enforce those rights. Id. at 296, 519 S.E.2d at 599. "Whether the claim is barred by Laches is to be determined in light of the facts of the case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute Laches." SCDSS v. Holden, 319 S.C. 72, 75, 459 S.E.2d 846, 848 (1995). The party asserting Laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. Id. at 297, 519 S.E.2d at 599.

13. Our appellate courts have recognized the applicability of the Doctrine of Laches in a workers' compensation claim. See Muir, 336 S.C. at 296-97, 519 S.E.2d at 598-99 (affirming the commission's finding that the claim was not barred by the Doctrine of Laches because claimant did not act unreasonably in pursuing the claim); McMillan v. Midlands Human Res., 305 S.C. 532, 533, 409 S.E.2d 443, 444 (Ct. App. 1991) (quoting the commission's finding that "[a] claimant must prosecute his claim in a timely fashion or it may be barred by the Doctrine of Laches," although the commission's authority to dismiss the case for failure to prosecute was not disputed on appeal).
14. In the present case, despite the shared responsibility in requesting a hearing set forth in Halks, the Defendants nonetheless demonstrated that the Claimant was negligent in pursuing his claim, he had the opportunity to act sooner, and they were prejudiced as a result of Claimant's unreasonable delay. Specifically, Claimant has sustained multiple subsequent injuries to the back/neck since the date of his September 17, 2008 work-related accident, Claimant has settled another case via a Form 16A and was awarded benefits pursuant to the Act, and

Claimant has been in at least three other accidents (subsequent to his September 17, 2008 accident) and those accidents gave rise to complaints of pain/injury to the same body parts pled in this case; therefore, any award of permanent partial disability benefits would be speculative, and thus prohibited, pursuant to Section 42-9-30 of the Act, resulting in prejudice to the Defendants if permanency was awarded. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has been represented since 2009 and no just cause has been shown as to why he could not file a Form 50 prior to May 15, 2013.

15. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we conclude that the claim is barred by the Doctrine of Laches.
16. Based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, it is clear from a review of the record, as a whole, that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating. See Tiller v. Nat'l Health Care Ctr. of Sumter. 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) (Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794

(Ct. App. 1997) rev'd on other grounds.

17. To award permanent partial disability benefits to the Claimant over three years after the Claimant reached maximum medical improvement, considering that the Claimant re-injured the same part of his body within the last two years, would require speculation on the part of the undersigned Commissioners prohibited by the South Carolina Workers Compensation Act. See Tiller, 334 S.C. 333, 513 S.E.2d 843 (1999)
18. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants, and the Claimant's testimony, we find that the Claimant has not met his burden of proving by preponderance of the evidence as to what his causally related condition was as a result of the September 17, 2008 accident.
19. Pursuant to South Carolina Code Ann. §42-9-30 and based on the entirety of the evidence including the medical records submitted, the testimony of the representatives of the Defendants; and the Claimant's testimony, we find that the Claimant's request for permanent partial disability benefits is denied.
20. Based on the substantial evidence, including the medical records submitted, the testimony of the representatives of Defendants, and the Claimant's testimony, we find that the Decision and Order of the Single Commissioner is affirmed in its entirety.

**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is affirmed in its entirety.

**IT IS HEREBY ORDERED** that the claim for compensation is barred by the Doctrine of Laches.

**IT IS FURTHER ORDERED** that, even if Laches was not a bar to the receipt of benefits, there have been so many intervening accidents over time, it would be impossible to determine the Claimant's entitlement to permanent partial disability benefits without speculating.

**IT IS FURTHER ORDERED** that the Claimant has not met his burden of proving by a preponderance of the evidence as to what his causally-related condition was as a result of the September 17, 2008 accident.

**IT IS FURTHER ORDERED** that Claimant's claim for benefits available under the act is **DENIED**.

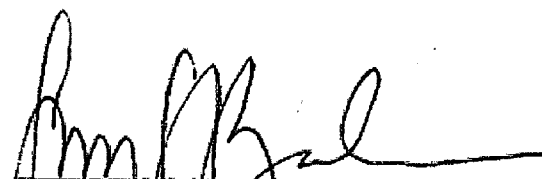
**AND IT IS SO ORDERED.**

**WE CONCUR:**


**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 September 8, 2015*

  
\_\_\_\_\_  
Commissioner Susan Barden  
For the Appellate Panel

  
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Commissioner Asha Taylor

  
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Commissioner T. Scott Beck