

**DECISION AND ORDER**  
OF THE  
**APPELLATE PANEL**  
OF THE  
**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**RECEIVED**  
OCT 13 2015  
SC Court of Appeals

FILE NO.: 0802605

**Tommy G. Houston**, Employee-Claimant,  
Respondent,

vs.

**Garda World Security**, Employer-Defendant,

and

**Gallagher Bassett Services, Inc.**, Carrier-Defendant,

Appellants.

Appellate Panel Review Held in Columbia,  
South Carolina on June 15, 2015, per notice timely  
and properly served upon all parties of interest.

Appearances: Kathryn Williams, Esq. of Kathryn Williams, P.A., of Greenville,  
South Carolina for Claimant

R. Daniel Addison, Esq. of Hedrick, Gardner, Kincheloe &  
Garofallo, L.L.P., of Columbia, South Carolina for Defendants

Purpose: Appellate Panel Review of issues set forth on Defendants' Form 30  
Request for Commission Review

Filed:

September 8, 2015

## STATEMENT OF CASE

This claim came before the Single Commissioner on November 14, 2014 on Claimant's Form 50 seeking a change of condition for the worse to his right knee subsequent to an accepted claim and award with a date of injury of March 11, 2008. Claimant, then unrepresented by counsel, entered into a Form 16A settlement agreement on February 4, 2010 with Defendants for injuries sustained in a motor vehicle accident in the course and scope of his employment to his right shoulder and low back with affected ribs, right knee, right hand, left hip, and left leg. Claimant, after retaining counsel, pursued a change of condition for additional medical treatment by filing a Form 50, claim only, on July 13, 2010 for the all the body parts listed above. Claimant continued to pursue additional medical treatment for his change of condition by filing a Form 50, request for hearing, on November 11, 2010.

Prior to the hearing set on Claimant's Form 50, the parties entered into a Consent Order dated March 16, 2011. In that Consent Order, the parties agreed that Claimant sustained a change of condition to his low back and right shoulder, Defendants would provide treatment with Dr. Phillip Wessinger and temporary total disability benefits, and all other issues were held in abeyance.

The hearing before the Single Commissioner was set on Claimant's Form 50, request for hearing, filed July 22, 2014, where Claimant contended he sustained an injury to his right knee in the original accident that was an undiagnosed condition or, alternatively, has since become worse and needs additional medical treatment, including surgery recommended by Dr. John Paylor. Claimant asserted that he met the requirements for preserving the issue of treatment and benefits for his right knee, and that

at the time of the March 16, 2011 Consent Order, surgery to his low back was the immediate medical issue. Additionally, Claimant asserted that he was not sitting on his rights to bring a claim for his right knee because, in the interest of judicial economy, there was no reason to seek an Order from the Commission for treatment until such time as treatment was denied – which did not occur until after March 2014.

Defendants asserted Claimant did not timely pursue his right knee change of condition claim as required by S.C. Code Ann. § 42-17-90. Defendants did not object to the Commission's jurisdiction to hear the claim but asserted that the Single Commissioner must make a finding that Claimant timely pursued his claim under § 42-17-90 before addressing the merits. Defendants further argued that if the Single Commissioner held the change of condition claim was timely pursued, Claimant's current right knee symptoms were new and not related to his original injury by accident.

By Order filed February 17, 2015, the Single Commissioner found that the term "held in abeyance" in the March 16, 2011 Consent Order preserved Claimant's right to file for a change of condition for his right knee as it was initially pled in his Form 50 for a change of condition that was filed within the one year period per the statute. As Claimant's right to file for a change of condition for his right knee was preserved, the Single Commissioner found that the Commission has jurisdiction to hear Claimant's change of condition claim. After finding the Commission has jurisdiction, the Single Commissioner held that Claimant met his burden of proving a change of condition for the worse to his right knee; that Claimant is entitled to all causally related medical treatment and evaluation expenses to his right knee, including the right knee surgery recommended by Dr. Paylor; and that Claimant has not reached maximum medical improvement. The

Single Commissioner also found Claimant credible in his testimony, wherein he described the gap between his initial report of his right knee injury and later complaints as being due to the greater pain he felt and priority he gave to addressing his back and right shoulder, which both required surgery.

Within the statutory period, Defendants filed a Form 30, request for commission review, of the Single Commissioner's Order. Defendants contend the Single Commissioner erred in finding jurisdiction to review a change of condition award to Claimant's right knee and finding Claimant sustained a compensable change of condition for the worse to his right knee.

Claimant contends the Single Commissioner committed no error, correctly determined the presented issues, and that the Order of the Single Commissioner should be affirmed in its entirety.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration.

#### **EVIDENCE OF THE CASE**

At the hearing before the Single Commissioner, the following summarized evidence was presented:

Claimant testified that he is 58 years old, graduated high school, attended two years of college, but did not earn a degree. (Hrg. tr. p. 13, line 18 – p. 14, line 2) Claimant testified that he started work for Employer-Defendant in May 2005 as a driver/messenger. (Hrg. tr. p. 14, lines 3 – 11) Claimant testified that his job duties included driving and transporting money to and from the Federal Reserve Bank, local

banks, and merchants. (Hrg. tr. p. 14, lines 6 – 17) Claimant testified he was originally injured in a motor vehicle accident at work on March 11, 2008. (Hrg. tr. p. 14, line 18 – p. 15, line 18)

As a result of the accident, Claimant testified he underwent right shoulder surgery with Dr. Wessinger in July 2008. (Hrg. tr. p. 16, lines 5 – 9) Claimant testified he was out of work until May 11, 2009 from the shoulder surgery then settled his workers' compensation claim on a Form 16A, unrepresented by counsel, in February 2010. (Hrg. tr. p. 16, line 10 – p. 17, line 3) Claimant testified that when he signed the Form 16A, his right shoulder had improved post-surgery but his right knee and back were getting worse after starting work and becoming more active again. (Hrg. tr. p. 17, line 18 – p. 18, line 9)

Claimant testified that he returned to Dr. Wessinger in September 2010 complaining of his back and right knee. (Hrg. tr. p. 18, line 20 – p. 19, line 16) Claimant testified he saw Dr. Michael Bucci and then Dr. Charles Kanos, who evaluated his back but would not address his right knee. (Hrg. tr. p. 19, line 21 – p. 20, line 1; p. 33, lines 16 – 23) Claimant testified several documents were completed during his return period of treatment with Dr. Wessinger that list his right knee as a complaint, including: a Patient Recheck Questionnaire completed at Dr. Wessinger's office on October 6, 2010, FMLA application paperwork, and a FMLA patient addendum from Steadman Hawkins. (Hrg. tr. p. 20, line 2 – p. 24, line 22)

Claimant testified that during the time of his deposition in November 2010 he complained of his right knee as part of his injury by accident and would not have settled his claim unless his back and right knee were included. (Hrg. tr. p. 29, line 18 – p. 30,

line 6) Claimant testified he pursued his back claim as his most symptomatic medical condition until the carrier denied treatment and then he retained counsel to help seek the treatment recommended by Dr. Kanos. (Hrg. tr. p. 30, line 7 – p. 31, line 7) Claimant testified that after approval, Dr. Kanos performed back surgery then referred him back to Dr. Jyoti Math for chronic pain management. (Hrg. tr. p. 31, line 13 – p. 31, line 25) Claimant testified that he told all his treating physicians about his right knee symptoms.

Claimant testified that while recovering from his back surgery, his medical care providers encouraged him to increase walking, and he noticed his right knee was worse. (Hrg. tr. p. 32, lines 3 – 7) Claimant testified he requested treatment for his right knee and Defendants sent him to Dr. Paylor. (Hrg. tr. p. 32, lines 8 – 13) Claimant testified that the carrier approved all treatment with Dr. Paylor until surgery was recommended, at which point all further treatment was denied. (Hrg. tr. p. 32, line 14 – p. 33, line 5) Claimant testified that he has not received any treatment for his right knee since the carrier denied authorization but that he would like the treatment that Dr. Paylor has recommended. (Hrg. tr. p. 32, line 24 – p. 33, line 11)

The medical evidence shows that when Claimant presented to Dr. Wessinger on April 30, 2008, Dr. Wessinger noted Claimant complained of right knee pain after his motor vehicle accident at work on March 11, 2008 but that the pain had improved since the date of accident. (APA p. 192) Dr. Wessinger continued to monitor Claimant's shoulder and back injuries and on July 1, 2009, Dr. Wessinger placed Claimant at maximum medical improvement for his right shoulder and back and assigned a 15 percent impairment to his right shoulder and 7 percent to his back. (APA p. 230)

Claimant completed a Patient Recheck Questionnaire at Dr. Wessinger's office on October 6, 2010, and indicated problems with his back, shoulder, and knee. (APA p. 10) In a November 3, 2010 statement, Dr. Wessinger opined that Claimant sustained a change of condition for the worse since release on July 1, 2009. (APA p. 14)

Claimant completed an Information for Disability/FMLA Benefits Form on October 6, 2010, indicating that he was injured in an auto accident on March 11, 2008, and sustained injury to his right shoulder, right knee, and lower back. (APA p. 191)

On December 12, 2012, Claimant underwent back surgery with Dr. Kanos, who performed: 1) L5-S1 posterior lumbar interbody fusion; 2) Orthofix Phoenix L5-S1 pedicle screw fixation; 3) L5-S1 interbody fusion cage; 4) L5-S1 decompressive laminectomy; 5) L5-S1 total facetectomy; and 6) L5-S1 foraminotomies. (APA p. 175)

On April 24, 2013, Dr. Kanos assigned Claimant permanent restrictions of no lifting over 35 pounds, no repetitive bending more than 60 degrees, and restricted his ability to sit for 8 hours a day or walk for 2 hours with breaks. (APA p. 169) Dr. Kanos placed him at maximum medical improvement for his back with a 25 percent impairment rating to the lumbar spine. (Id.) Dr. Kanos noted that Claimant was treating with Dr. Math for pain management and recommended that treatment continue. (Id.) On an October 21, 2013 follow up, Dr. Kanos noted that Claimant used a cane because of right knee pain and had received a diagnosis of a meniscal tear. (APA p. 172)

Claimant began treatment with Dr. Math on August 18, 2011, initially on referral from Dr. Bucci, then again after back surgery with Dr. Kanos. (APA p. 101) On a June 6, 2013 recheck, Dr. Math noted that Claimant complained of right knee pain that had gotten worse. (Id.) On September 9, 2013, Dr. Math confirmed with her office that they

tried on multiple occasions to contact workers' compensation regarding his right knee without receiving a response. (APA p. 110) Dr. Math noted that she hoped Claimant would not sustain further damage to his right knee as it needed serious attention. (Id.)

On an October 9, 2013 recheck, Dr. Math noted Claimant continued to have right knee pain secondary to a meniscal tear. (APA p. 113) Dr. Math noted her concern that Claimant needed to be seen by an orthopedic surgeon but had not heard from workers' compensation. (Id.) Dr. Math noted she would send another request to Claimant's follow up appointment with Dr. Wessinger and, in the meantime, arrange a knee brace and prescribe Voltaren gel. (Id.)

On January 6, 2014, Dr. Math noted Claimant had right knee pain since his work injury and a June 25, 2013 MRI was read to reveal an extensive tear in the lateral meniscus, possible bucket handle tear, and lateral tibiofibular chondromalacia. (APA pp. 121, 416) She noted Claimant had treated with Dr. Wessinger and was evaluated by Dr. Paylor. (APA p. 121) She noted Dr. Paylor recommended surgery and was awaiting approval from workers' compensation. (Id.) She noted Claimant had right knee pain that gave him a lot of trouble and his knee started to make noises – cracking and popping – whenever he walked. (Id.) She noted he walked with a limp from right knee pain. (Id.) On June 4, 2014, Dr. Math noted that Claimant still had not received surgery for his right knee meniscal tear and he was also waiting for a SI injection. (APA p. 137)

In a June 13, 2014 statement, Dr. Math opined that it is more likely than not that the increased activity and walking that Claimant engaged in pursuant to his medical providers' advice following his back surgery aggravated his right knee pain causing the need for additional evaluation and treatment of his right knee. (APA p. 140)

On July 2, 2014, Dr. Math noted that Claimant continued to have left hip, lower back, and right knee pain. (APA p. 141) She noted Claimant felt the right knee pain was getting worse as the knee would occasionally lock or give out on him and he was scared of losing his balance and falling. (Id.) Dr. Math noted Claimant felt his gait had been abnormal because of the knee pain and that his left hip had flared up around the left SI joint. (Id.) She noted that Claimant continued to wait for workers' compensation regarding the recommended arthroscopic repair by Dr. Paylor. (APA p. 142) Dr. Math noted that if the repair is not done in a timely manner, the outcome will not be optimal. (Id.)

October 17 and 28, 2013 office notes from Piedmont Orthopaedics show workers' compensation authorization for evaluation and treatment of Claimant's right knee. (APA pp. 181, 182)

Claimant underwent an evaluation with Dr. Paylor for his right knee on November 5, 2013. (APA p. 178) Dr. Paylor noted that Claimant sustained a right knee injury from a March 11, 2008 on the job motor vehicle accident, experienced pain since the injury, and that his right knee continued to bother him a great deal. (APA p. 179) Dr. Paylor discussed treatment recommendations and noted Claimant would like to be scheduled for an arthroscopy of the right knee with a lateral meniscectomy. (Id.)

On March 25, 2014, Dr. Paylor noted that Claimant's right knee was getting worse and was still swollen. (APA p. 180) He noted that Claimant required a cane to walk, was unable to work, and was waiting on approval for surgery. (Id.)

In a June 26, 2014 statement, Dr. Paylor opined that it is more likely than not that Claimant suffered injury to his right knee as a result of his motor vehicle accident while

working on or about March 11, 2008, that his right knee symptoms became less noticeable as he pursued treatment for other injuries and was less active, and then became more symptomatic again as treatment for his other injuries wound down and he increased his activity and began walking more following his back surgery. (APA p. 185)

In his November 17, 2010 deposition, Claimant testified that when he was 18 years old he was involved in a motor vehicle accident in which he was struck by a drunk driver. (Claimant depo p. 16, lines 13 – 18) As a result of the accident, Claimant testified that he had right knee surgery to repair cartilage but did not have any further problems with his right knee until his March 11, 2008 motor vehicle accident at work. (Claimant depo p. 16, lines 19 – 25) After his March 11, 2008 accident, Claimant testified that he treated with Dr. Wessinger for his right shoulder, back, and right knee. (Claimant depo p. 24, lines 16 – 20) Claimant testified that while he was treating with Dr. Wessinger, his right knee symptoms improved as he recovered from surgery but when he returned to work on May 11, 2009, his knee symptoms returned and slowly got worse. (Claimant depo p. 24, line 21 – p. 25, line 1)

Claimant testified that at the time of signing the Form 16A in February 2010, he had soreness and swelling in his right knee and that the next treatment he received was a return visit to Dr. Wessinger on September 1, 2010 for pain in his right shoulder, back, and right knee. (Claimant depo p. 33, lines 2 – 15) Claimant testified that he began to notice soreness and a worsening of his right knee when he returned to work and became active after remaining largely immobile after surgery. (Claimant depo p. 41, lines 13 – 24) Claimant testified that if he walked for 10 minutes, he needed something to hold for support because he felt like his knee would give away. (Claimant depo p. 45, lines 4 -13)

Claimant testified that he thought his back was the worst problem initially but Dr. Wessinger was focused on his right shoulder. (Claimant depo p. 45, line 25 – p. 46, line 5)

In Dr. Paylor's July 1, 2014 deposition, he testified that if other medical records do not include mention of Claimant's right knee, it is likely because the medical providers did not specifically ask and that they were focused on other body parts besides the right knee. (Paylor depo p. 20, line 15 – p. 21, line 9) Dr. Paylor noted that he did not ask about or give an opinion regarding Claimant's back because he focused on Claimant's right knee. (Paylor depo p. 23, line 20 – p. 24, line 11) Dr. Paylor testified that the only known cause for Claimant's right knee problems was the March 11, 2008 motor vehicle accident. (Paylor depo p. 24, lines 12 – 24; p. 25, lines 12 – 21) Dr. Paylor testified that the radiology note from Claimant's June 25, 2013 MRI did not mention a new tear since the accident and opined that if Claimant's tear was newer, the radiologist would have made note of it. (Paylor depo p. 26, line 25 – p. 27, line 7) Dr. Paylor testified that it is a regular occurrence for the severe injuries from an auto accident to be treated first and then for other injuries that were not as noticeable at the time to arise later. (Paylor depo p. 30, lines 8 – 13, 23 – 25) Dr. Paylor testified that on Claimant's right knee MRI, the handle portion of the bucket handle tear can no longer be seen, indicating the tear has been present a long time. (Paylor depo p. 34, line 22 – p. 35, line 2)

Dr. Math testified in her September 3, 2014 deposition that she saw Claimant mainly for his right shoulder and back issues, not his right knee. (Math depo p. 8, lines 6 – 13) Dr. Math testified that she recalled and her medical records reflect that Claimant

complained of knee pain in his first visit in August 2011 but she did not record which knee. (Math depo p. 11, line 19 – p. 12, line 8; p. 27, lines 3 – 11) Dr. Math testified that she specifically noted that Claimant complained of right knee pain in June 2013 but that his knee had been bothering him since his March 11, 2008 motor vehicle accident. (Math depo p. 29, lines 5 – 10) Dr. Math opined to a degree of certainty greater than 50 percent that the motor vehicle accident most likely caused Claimant's right knee traumatic tear. (Math depo p. 34, line 20 – p. 35, line 8; p. 58, lines 5 – 22) Dr. Math testified that in her experience, she commonly sees patients complain about the most symptomatic body part, receive treatment for that one body part, the body part improves, and then the focus shifts to the next more symptomatic body part that was injured but underlying. (Math depo p. 67, lines 10 – 21) Dr. Math maintained and reiterated her June 13, 2014 statement that, to a reasonable degree of medical certainty, more likely than not, Claimant's increased activity after his back surgery aggravated his right knee pain causing the need for additional evaluation and treatment. (Math depo p. 73, lines 2 – 18)

Dr. Wessinger testified in his October 10, 2014 deposition that in his initial office note on April 30, 2008, he recorded that Claimant experienced right knee pain but mainly focused on his more symptomatic back and shoulder. (Wessinger depo p. 5, lines 22 – 25) Dr. Wessinger testified that Claimant complained of knee pain on the Patient Recheck Questionnaire for his office on October 6, 2010, in FMLA documents completed the same day, and in Claimant's November 2010 deposition. (Wessinger depo p. 60, line 14 – p. 61, line 2; p. 61, lines 10 – 16; p. 62, lines 6 – 20; p. 63, lines 2 – 10) Dr. Wessinger testified that Claimant's account that his right knee pain increased after returning to activity post back surgery is possible. (Wessinger depo p. 66, lines 6 – 17; p.

69, lines 7 – 23) Dr. Wessinger testified that it is also possible Claimant's right knee problems originated in his work related accident and that he did not record or recall specifically examining Claimant's right knee. (Wessinger depo p. 69, line 24 – p. 70, line 1; p. 81, lines 17 – 25) Dr. Wessinger testified that his speculation on probability is based on information from an MRI he had not read and a knee he had not evaluated. (Wessinger depo p. 70, lines 7 – 12) Based on that speculation, Dr. Wessinger testified that, outside the period of Claimant's treatment with him, he would defer to the opinion of Dr. Paylor who had the opportunity to see the diagnostic imaging and examine Claimant's right knee. (Wessinger depo p. 70, lines 15 – 21; p. 71, lines 13 – 21)

### DECISION

Under S.C. Code Ann. § 42-17-50, an Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown therefore, make its own factual findings and legal conclusions consistent with or inconsistent with the Single Commissioner.

Based upon its review of all the evidence on the record in this case, the Panel hereby finds a **full affirmation** of the Single Commissioner's Decision and Order and adopts the Single Commissioner's Findings of Fact and Rulings of Law.

The Panel thereby makes the following Findings of Fact and Rulings of Law:

### FINDINGS OF FACT

1. An employee/employer relationship existed between the parties at the time of Claimant's injuries. This finding is based on all the evidence on the record, including

but not limited to the parties' stipulation, Form 16A dated February 4, 2010, and Consent Order dated March 16, 2011.

2. Claimant's average weekly wage is \$616.96, for a corresponding compensation rate of \$411.32. This finding is based on all the evidence on the record, including but not limited to the parties' stipulation, Form 16A dated February 4, 2010, and Consent Order dated March 16, 2011.

3. Claimant testified that he worked for Employer-Defendant as a driver/messenger, which required him to drive and transport money to and from the Federal Reserve Bank, local banks, and merchants. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony.

4. Claimant was injured on March 11, 2008 in a motor vehicle accident arising out of and in the course of his work duties for Employer-Defendant. This finding is based on all the evidence on the record, including but not limited to the Claimant's testimony, Form 16A dated February 4, 2010, and Consent Order dated March 16, 2011.

5. Claimant, unrepresented by counsel, initially resolved his workers' compensation claim via a Form 16A settlement on February 4, 2010. Although Claimant's right knee was listed as an affected body part, Claimant only received compensation for his back and his right shoulder. Other affected body parts included Claimant's ribs, right hand, left hip, and left leg. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the Form 16A settlement agreement dated February 4, 2010 in Claimant's APA submission 10, at page 186.

6. On July 13, 2010, after retaining counsel, Claimant filed a Form 50, claim only, alleging a change of condition to his right shoulder, back, ribs, right knee, right hand, left hip, and left leg. This finding is based on all the evidence on the record, including but not limited to the Commission's file.

7. On November 11, 2010, within the one year period per § 42-17-90, Claimant filed a Form 50, request for hearing, alleging a change of condition to his right shoulder, back, ribs, right knee, right hand, left hip, and left leg. This finding is based on all the evidence on the record, including but not limited to the Commission's file and Claimant's Form 50, request form hearing, in Claimant's APA submission 11, at page 188.

8. The change of condition hearing notice was served on the parties on January 7, 2011, with a hearing date of February 17, 2011. This finding is based on all the evidence on the record, including but not limited to the Commission's file.

9. Prior to the February 17, 2011 hearing, the parties entered in to a Consent Order, dated March 16, 2011, wherein Defendants admitted that Claimant sustained a change of condition to his back and right shoulder and that "all other issues are held in abeyance." This finding is based on all the evidence on the record, including but not limited to the Commission's file.

10. The Panel finds that the term "held in abeyance" in the March 16, 2011 Consent Order preserved Claimant's right to file for a change of condition for his right knee as it was initially pled in his Form 50 for a change of condition that was filed within the one year period per the statute. This finding is based on all the evidence on the

record, including but not limited to the Commission's file and Claimant's Form 50 in APA submission 11, at page 188.

11. As Claimant's right to file for change of condition for his right knee was preserved, the Panel finds the Commission has jurisdiction to hear Claimant's change of condition claim as it pertains to his right knee. This finding is based on all the evidence on the record, including but not limited to the Commission's file and Claimant's Form 50 in APA submission 11, at page 188.

12. Claimant testified that when he signed the Form 16A settlement agreement on February 4, 2010, his right shoulder had improved post-surgery but his right knee and back were getting worse after starting work and becoming more active again. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and deposition.

13. Claimant testified in his November 17, 2010 deposition that while he was treating with Dr. Wessinger, his right knee symptoms improved while he recovered from right shoulder surgery but when he returned to work on May 11, 2009, his knee symptoms returned and slowly got worse. This finding is based on all the evidence on the record, including Claimant's deposition testimony.

14. Claimant testified that during the time of his deposition in November 2010, he complained of his right knee as part of his injury by accident and would not have settled his claim unless his back and right knee were covered under the terms of the settlement. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and deposition.

15. Claimant testified that while recovering from his back surgery with Dr. Kanos, his medical care providers encouraged him to increase walking, and he noticed his right knee became more symptomatic. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and deposition.

16. Claimant continued treatment with Dr. Math after his back surgery with Dr. Kanos and in a June 6, 2013 recheck, Dr. Math noted that Claimant complained of right knee pain that had gotten worse as he increased activity. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records and opinions of Dr. Math.

17. Claimant underwent a June 25, 2013 MRI at Innervision which was read to reveal an extensive tear in the lateral meniscus, possible bucket handle tear, and lateral tibiofibular chondromalacia. This finding is based on all the evidence on the record, including but not limited to the medical records of Dr. Math and Innervision.

18. In a June 13, 2014 statement, reiterated in her September 3, 2014 deposition, Dr. Math opined that it is more likely than not that the increased activity and walking that Claimant engaged in following his back surgery aggravated his right knee pain causing the need for additional evaluation and treatment of his right knee. This finding is based on all the evidence on the record, including but not limited to the medical records, opinion, and deposition testimony of Dr. Math.

19. In her September 3, 2014 deposition, Dr. Math testified that in her experience, she commonly sees patients complain about the most symptomatic body part, receive treatment for that one body part, the body part improves, and then the treatment shifts to a more symptomatic body part that was injured but underlying. This finding is

based on all the evidence on the record, including but not limited to the medical records, opinion, and deposition testimony of Dr. Math.

20. Defendants authorized Claimant's evaluation and treatment with Dr. Paylor for his right knee problems. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records of Dr. Paylor in Claimant's APA submission 9, pages 181 – 184.

21. Dr. Paylor evaluated Claimant for his right knee pain originating from his March 11, 2008 motor vehicle accident at work and recommend a right knee surgery. This finding is based on all the evidence on the record, including but not limited to the medical opinion and records of Dr. Paylor, specifically in Claimant's APA submissions, pages 178 – 179.

22. After evaluation, Dr. Paylor opined in June 26, 2014 statement that it is more likely than not that Claimant suffered injury to his right knee as a result of his motor vehicle accident while working on or about March 11, 2008, that his right knee symptoms became less noticeable as he pursued treatment for other injuries and was less active, and then became more symptomatic again as treatment for his other injuries wound down and he increased his activity and began walking more following his back surgery. This finding is based on all the evidence on the record, including but not limited to the medical opinion and records of Dr. Paylor, specifically Claimant's APA submission 9, at page 185.

23. In his July 1, 2014 deposition, Dr. Paylor testified that it is a regular occurrence for the severe injuries from an auto accident to be treated first then other injuries that were not as noticeable at the time of the accident to arise later. This finding

is based on all the evidence on the record, including but not limited to the medical records, opinion and deposition testimony of Dr. Paylor.

24. Dr. Paylor testified in his deposition that the handle portion of the bucket handle tear can no longer be seen on Claimant's June 25, 2013 MRI, indicating the tear has been present for a long time. This finding is based on all the evidence on the record, including but not limited to the medical records, opinion and deposition testimony of Dr. Paylor.

25. The Panel finds that Claimant has met his burden of proving a change of condition for the worse as it pertains to his right knee. This finding is based on all the evidence on the record, including but not limited to the medical opinion and records of Dr. Paylor, who was authorized by the Defendants.

26. The Panel finds Claimant credible in his testimony, wherein he described the gap between his initial reporting of his right knee injury and his later complaints as being due to the greater pain he felt and priority he gave to addressing his back and right shoulder, which both required surgery. This finding is based on all the evidence on the record, including but not limited to Claimant's testimony and the medical records and opinions of Dr. Paylor and Dr. Math.

27. The Panel finds Claimant is entitled to all causally related medical treatment and evaluation expenses to his right knee, including the right knee surgery as recommended by Dr. Paylor. This finding is based on all the evidence on the record, including but not limited to Claimant's credible testimony and the medical records and opinions of Dr. Paylor.

28. Claimant has not reached maximum medical improvement. This finding is based on all the evidence on the record, including but not limited to Claimant's credible testimony and the medical records and opinions of Dr. Paylor and Dr. Math.

#### RULINGS OF LAW

1. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over Claimant's claim for benefits.

2. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, Claimant's average weekly wage is \$616.96, for a corresponding compensation rate of \$411.32.

3. Under S.C. Code Ann. § 42-1-160, Claimant sustained compensable injuries by accident arising out of and in the course of his employment with Employer-Defendant on or about March 11, 2008, specifically causing injury to his right knee.

4. Under S.C. Code Ann. § 42-15-20, Claimant timely reported his March 11, 2008 work related accident and subsequent change of condition to his right knee.

5. Under S.C. Code Ann. § 42-17-90, Claimant properly preserved his right to pursue a change of condition for the worse to his right knee.

6. Under S.C. Code Ann. § 42-17-90, Claimant has sustained a change of condition for the worse to his right knee. See also Gattis v. Murrells Inlet VFW #10420, 353 S.C. 100, 576 S.E.2d 191 (Ct.App.2003)(a change of condition occurs when the claimant experiences a change in physical condition as a result of the original injury, occurring after the first award).

7. Claimant has not reached maximum medical improvement. See Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct.App.1999)(maximum

medical improvement is the plateau at which no further medical care or treatment will lessen the degree of impairment).

8. Under S.C. Code Ann. § 42-15-60, Claimant is entitled to and Defendants are responsible for all causally related medical evaluation and treatment expenses.

### ORDER

**IT IS, THEREFORE, ORDERED** that the Order of the Single Commissioner is hereby affirmed in its entirety.

**IT IS FURTHER ORDERED** that:

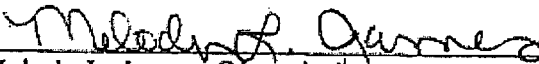
1. Claimant properly preserved his rights under S.C. Code Ann. § 42-17-90 to pursue a change of condition for the worse to his right knee.
2. Claimant met his burden of proving he suffered a change of condition for the worse to his right knee from his March 11, 2008 injury by accident.
3. Claimant has not reached maximum medical improvement.
4. Claimant is entitled to and Defendants are responsible for all causally related medical evaluation and treatment expenses, specifically including right knee surgery as recommended by Dr. Paylor.


**AND IT IS SO ORDERED.**

**S.C. WORKERS' COMPENSATION COMMISSION**

  
Gene McCaskill, Commissioner and Appellate Panel Chair

CONCUR:

  
Melody L. James, Commissioner

  
R. Michael Campbell II, Commissioner

Date: \_\_\_\_\_  
Columbia, South Carolina

**RECEIVED**

OCT 13 2015

SC Court of Appeals

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***