THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

T. Scott Beck, Workers' Compensation Commissioner

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SC Court of Appeals

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

Keith Case,

Employee/Appellant,

v.

J. Crawford Logging, Inc. Employer,

And

Palmetto Timber Fund SIF Carrier,
Defendants/
Respondents

FINAL BRIEF OF APPELLANT

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Dated: 8/28, 2015
Spartanburg, South Carolina

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(B) STATEMENT OF ISSUES ON APPEAL

1. DID THE FULL COMMISSION IN AFFIRMING THE SINGLE COMMISSIONER ERR IN CONCLUDING DR. CHARLES KANOS WAS UNABLE TO PROVIDE AN OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY THAT THE CLAIMANT'S CERVICAL PAIN WAS CASUALLY RELATED TO THE ACCIDENT ON AUGUST 27, 2012.

2. DID THE FULL COMMISSION ERR IN AFFIRMING THE DECISION OF THE SINGLE COMMISSIONER WHO FAILED TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW DEALING WITH THE MRI PERFORMED APRIL 17, 2014 AND FURTHER ERR IN CONCLUDING THE CLAIMANT FAILED TO CARRY HIS BURDEN OF PROVING A COMPENSABLE INJURY TO THE CERVICAL SPINE.

(C) STATEMENT OF THE CASE

This action was timely commenced by the filing of a Form 50 on October 4, 2012 alleging injury to the claimant's spine and both lower extremities. It was an action against the Defendants based on an injury which occurred on August 27, 2012, when Keith Case fell from a pulpwood hauler after a log struck him on the left leg (R. p. 10). The Defendants admitted injury to the right lower extremity (R. p. 11). The matter originally came before the single Commissioner on September 19, 2013. A dispute arose regarding the compensability of the spine. The carrier allowed Dr. Charles Kanos to evaluate the Claimant and authorized a lumbar MRI. That MRI was read as unremarkable. Dr. Kanos determined the Claimant had an abnormal neurological test and directed the Claimant to undergo a cervical MRI. The Defendants opposed this. Following a stop pay request, the Single Commissioner allowed Dr. Kanos' deposition to be taken on the causation issue. The record was frozen with the Single Commissioner retaining jurisdiction. The matter was reset and heard on all issues on November 18, 2014. The Single Commissioner issued a decision dated August 27, 2014, determining the Claimant was entitled to a 10% permanent partial disability to the right lower extremity, determined he was not entitled to future medical care for the right lower extremity, ordered the Defendants were entitled to stop temporary total disability and were entitled to a credit for temporary total disability paid beyond May 9, 2013, and denied the claimant's request for benefits to his neck (R. pp. 2-5). The Claimant appealed the Single Commissioner's decision to the Full Commission. The Full Commission made no independent findings of fact or conclusions of law, but rather adopted the Single

Commissioner's decision in its entirety in an order dated March 10, 2015 (R. pp. 6-9). This appeal follows.

(D) STATEMENT OF THE FACTS

Keith Case was employed as a truck driver for J. Crawford Logging. Before the injury of August 27, 2012, the claimant weighed between 240 to 280 pounds. At the time of the hearing on April 23, 2014 his weight had dropped to 180 to 185 pounds. He is married, has seven children and completed the 11th grade. He has a GED. His work history involved chip hauling, driving dump trucks, hauling pulpwood and the latter is what he did for J. Crawford Logging. His job as a pulpwood hauler required him to strap the load down, trim it with a chainsaw, take the load to the pulpwood yard, and unstrap it (R. p.22-25).

On the date of his injury, Mr. Case was coming down off the logs. He grabbed on and a log rolled over onto his left leg. He pushed off and in that maneuver, fell off the tractor frame landing on his left leg and slamming his right knee. He went down face forward. At the time, he had his hard hat on and when it slammed down he noted his neck "crunched down and it jolted [his] back." He fell between eight and eleven feet (R. p. 26, lines 2-16).

The claimant was asked about other parts of his body apart from the left knee. He said, "My right knee hit, my left hip's out of whack...I slammed down onto my elbow...my shoulder is hurt, and I hit my neck—when I hit, like I said, my neck on down hurts." The claimant noted he had numbness in his hips and both legs after the fall. He indicated he told personnel at the hospital this (R. pp. 28-29). The claimant testified he told Dr. Bruton he was numb on the outside. No one ever checked his neck out. (R. pp.

29-30).

The carrier provided a referral to Dr. Charles Kanos, a board certified neurosurgeon. Dr. Kanos saw Mr. Case on May 20, 2013. He received a history of the claimant having had numbness in his hips and both legs to the knees since the injury. Dr. Kanos recommended a lumbar MRI following that visit (R. p. 86).

The lumbar MRI was performed on June 13, 2013. That history reflected low back pain and lower extremity numbness with bowel and bladder dysfunction. The impression noted degenerative changes in the disc at L4-5 and mild facet arthropathy at each level from L3-S1 (R. pp. 84-85).

Mr. Case returned to Dr. Kanos on July 1, 2013. His primary complaint was burning, stabbing, pins and needles, and numbness along with neck pain. On that date, an examination of the claimant revealed a positive Hoffman's. This is a test where Dr. Kanos was looking for a myelopathic reflex. He wanted to see if the pathology in the spinal cord indicated compression in the neck. He noted the test was not positive when he saw him on May 20, 2013, but it was positive when he saw him on July 1, 2013. Dr. Kanos felt the cervical spine MRI was most appropriate as it "might have been the problem all along. I might have been wrong, ordering just the lumbar MRI" (R. p. 63, lines 5-15; R. pp. 82-83).

After Dr. Kanos recommended the cervical MRI, the carrier refused to provide it. Thereafter, the claimant's chiropractor arranged for him to have an MRI which was performed on April 17, 2014. That MRI showed loss of disc height and signal and a posterior disc-osteophyte complex effacing the anterior thecal sac and impinging the cord creating stenosis at C4-5. At C5-6 there was also noted to be moderate loss of disc height

and signal. There was also a 1-2mm posterior disc-osteophyte complex effacing the anterior thecal sac and impinging upon the cord. There was also focal right central foraminal disc protrusion compounding the central stenosis and effacing the neural foramen (R. pp.247-248).

The Single Commissioner ruled the claimant sustained bilateral lower extremity injuries and awarded permanency only to one extremity. He determined the claimant failed to carry his burden of proof in proving a compensable injury to the neck. He further determined the Defendants' were entitled to a credit for TTD paid beyond May 9, 2013 and the claimant was not entitled to future medical care for the right lower extremity.

(E). ARGUMENT ONE

THE FULL COMMISSION ERRED IN AFFIRMING THE SINGLE COMMISSIONER BY CONCLUDING DR. CHARLES KANOS WAS UNABLE TO PROVIDE AN OPINION TO A REASONABLE DEGREE OF MEDICAL CERTAINTY THAT THE CLAIMANT'S CERVICAL PAIN WAS CAUSALLY RELATED TO THE ACCIDENT ON AUGUST 27, 2012.

Dr. Kanos was asked the following: "And given the entirety of the sequence, the fall, the severity of the injury, understanding that the legal standard is simply more likely than not, do you believe more likely than not his need for the cervical MRI is because of the fall?" Dr. Kanos answered yes (R. p. 63, lines 16-23). Defense counsel asked Dr. Kanos: "You're able to state today within a reasonable degree of medical certainty that most probably a symptom that shows up 11 months later is directly related to a fall that happened the prior year on August 27?" Dr. Kanos answered, "With the question stated like that, I cannot. Knowing that, I mean, I've had two different questions here now" (R.

p 67, lines 19-23; p. 68, lines 5-7). But then Dr. Kanos goes on to explain his answer by saying, "Ok, in terms of your saying that he had no upper extremity symptoms whatsoever and then the Hoffman's - - no one's probably check for a Hoffman's other than me. I'm the neurosurgeon. I don't expect a family or whoever to do it. I certainly don't expect Dr. Folk, a hip doctor, to check it...So, with those symptoms and he had zero neck complaints at any point during that time, my notes didn't really indicate neck. The mechanism of injury and he comes in hyperreflexic, I thought it all was related at the time. That's at the time" (R. 68, lines 19-25; p. 69, lines 1-14). Dr. Kanos went on to further state that the cervical MRI is going to tell the story. If he's got a cord injury or if he's got some kind of a significant disc injury (R. p. 73, lines 19-25).

In this case, the Single Commissioner and the Full Commission focused on just one area of Dr. Kanos' deposition as opposed to reading it in its entirety. It is the established law of this state that any reasonable doubt as to the construction of a Workers' Compensation law must be resolved in favor of the claimant, its provisions reconciled if possible, its purposes effectuated, and its presumptions and penalties directed toward the end of providing coverage rather than non-coverage. Cokeley v. Robert Lee, Inc., 197 SC 157, 14 S.E.2d 889 (1941); Ham v. Mullins Lumber Company, 193 SC 66, 7 S.E.2d 712 (1940); Baldwin v. Pepsi Cola Bottling Company, 234 SC 320, 108 S.E.2d 409 (1959); DeBerry v. Coker Freight Lines, 234 SC 304, 108 S.E.2d 114 (1959). Any reasonable doubt as to the construction of the Workers' Compensation Act will be resolved in favor of coverage. Bentley v. Spartanburg County, 398 SC 418, 730 S.E.2d 296 (2012). The Workers' Compensation Act is liberally construed toward the end of providing coverage rather than denying coverage in order to further the beneficial

purposes for which it was designed. Bentley, Supra.

It is submitted the Single Commissioner and the Full Commission erred in concluding Dr. Kanos was unable to provide an opinion to a reasonable degree of medical certainty in light of the above.

(F). ARGUMENT TWO

THE SINGLE COMMISSIONER AND THE FULL COMMISSION ERRED IN FAILING TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW DEALING WITH THE MRI DATED SEPTEMBER 24, 2014 AND FURTHER ERRED IN CONCLUDING THE CLAIMANT FAILED TO CARRY HIS BURDEN OF PROVING A COMPENSABLE INJURY TO THE CERVICAL SPINE.

A reading of the Order reveals no finding of fact nor conclusion of law dealing with the single most important piece of evidence was made by the Single Commissioner or the Full Commission. The cervical MRI revealed cord impingement at two levels. This finding, in light of Dr. Kanos' overall testimony regarding why he recommended the cervical MRI in the first place, is susceptible of the inference that this claimant injured his neck the way he said he did. There is no finding in the order that the claimant was not credible. His testimony, however, is referred to only in the scantest of terms. By failing to match the cervical MRI to Dr. Kanos' overall testimony, the Single Commissioner erroneously concluded the claimant had not met his burden of proof.

Is this law to be construed in favor of coverage as opposed to exclusion of coverage? Until the latter becomes the law in the state of South Carolina, the former should govern. It is a law well set with historic precedence for over 75 years. A reading of the Full Commission's decision, which adopted the Single Commissioner's Order in

its entirety, reveals an abject failure in addressing the claimant's neck injury. It is akin to an argument that the claimant's neck injury is idiopathic in nature. Idiopathic injuries are generally non-compensable, absent evidence the workplace contributed to the severity of the injury. Bagwell v. Ernest Burwell, Inc., 277 S.C. 444, 88 S.E. 2d 611 (1955). This is based on the notion that an idiopathic injury does not stem from an accident but is brought on by a condition particular to the employee that could have manifested itself anywhere. Ellis v. Spartan Mills, 276 S.C. 216, 277 S.E. 2d 590 (1981); Barnes v. Charter 1 Realty, 411 S.C. 391, 768 SE 2d 651 (2015).

The Full Commission and Single Commissioner failed to look at the progression of Mr. Case's symptoms. He went from 240 pounds plus prior to the injury to 180 pounds now. He had a positive Hoffman's; numbness in the lower extremities from the beginning, the nature of the injury falling 11 feet, landing on his face and "crunching" his neck, all leads to more like than not his neck was injured as a result of the severe fall. That is exactly the opinion Dr. Kanos opined when he said, "The mechanism of the injury and he comes in hyperreflexic, I thought it all was related at the time" (R. pp. 68-69). If the Full Commission and Single Commissioner had made the proper conclusion that the claimant's neck injury arose out of and in the course of his employment (especially in light of no alternative to explain his injury) then the extreme harshness of this result would have been avoided. The meager 10% awarded to one lower extremity for permanent partial disability pales in comparison to the overage the defendants now claim this destitute father of seven owes.

Compensation laws constitute a form of social legislation and were enacted primarily for the benefit, protection and welfare of working men and their dependents.

Cokeley, Supra; Kennerly v. Ocmulgee Lumber Company, 206 SC 481, 34 S.E.2d 792 (1945); Marchbanks v. Duke Power Co., 190 SC 336, 2 S.E.2d 825 (1939); Phillips v. DixieStores, Inc., 186 SC 374, 195 S.E.2d 646 (1938). This decision offers no benefit, no protection, no welfare to this injured worker. The concept of Workers' Compensation was founded upon recognition of the advisability from the standpoint of society as well as of an employer and employee, of discarding the common law of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the employers' part, regardless of fault, to compensate the employee in predetermined amounts based upon his wages for loss of earnings resulting from accidental injury arising out of and in the course of employment. Because of this the employee receives the right to swift and sure compensation and the employer receives immunity from tort actions by the employee. Mendenall v. Anderson Hardwood Floors, 401 SC 558, 738 S.E.2d 251 (2013).

The result of this particular decision, denying a man benefits when the overall body of evidence preponderates in his favor, does not act for the benefit of this claimant and his children. On the contrary, the harsh result puts the burden of nine family members on society. This is not the way the law is supposed to be in South Carolina.

(G). CONCLUSION

For the reasons stated above, this Decision should be reversed, remanded to the Full Commission with directives for the claimant found to have a compensable injury to his cervical spine and afforded reasonable treatment and provided appropriate benefits.

Respectfully Submitted by:

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with *SCACR* Rule 211(b).

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PROOF OF SERVICE OF FINAL BRIEF

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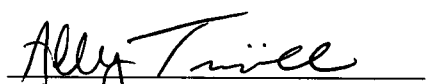
PROOF OF SERVICE

I certify that I have served the Final Brief of the Appellant on J. Crawford Logging, Inc., by depositing a copy of it in the United States Mail, postage prepaid, on September 3, 2015, addressed to his attorney of record, John W. Rabb, Jr., Post Office Box 1481, Columbia, South Carolina 29202 and the South Carolina Workers' Compensation Commission, PO Box 1715, Columbia, South Carolina 29202.

September 3, 2015

Hodge & Langley Law Firm, PC



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