

**APPELLATE PANEL  
DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
WCC FILE NO.: 1009298**

Pedro A. Moran,  
Employee/Claimant,  
Appellant

vs.

JMR Siding, LLC,  
Employer,

and

Hartford Underwriters Insurance Company,  
Carrier,  
Defendants,  
Respondents.

**RECEIVED**

FEB 19 2016

SC Court of Appeals

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Appellate Panel Review in Columbia, South Carolina set for October 19, 2015 per notices timely and properly served on all parties of interest.

Appellate Panel Decision and Order filed January 21<sup>st</sup>, 2016.

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**Appearances:**

Claimant/Appellant represented by Stephen Samuels, Esquire, of Columbia, South Carolina.

Defendants/Respondents represented by Sarah S. Alphin, Esquire, of Willson Jones Carter & Baxley of Columbia, South Carolina.

## STATEMENT OF THE CASE

The parties were heard by Commissioner Susan S. Barden on March 2, 2015 in Columbia, South Carolina. As a result of said hearing, Commissioner Barden issued an Order dated July 24, 2015 from which the Claimant appealed.

The Hearing Commissioner's Decision and Order set forth the following **Findings of Fact**:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Pedro A. Moran as Employee-Claimant and JMR, LLC as Employer and Hartford Underwriters Insurance Company as Carrier, Defendants.
2. That the average weekly wage of Employee at the time of the above-described accident was \$700.00, and his compensation rate was \$466.20.
3. Claimant sustained injuries to his pelvis, head, and psychological overlay.
4. Defendants have provided appropriate benefits to the pelvis, head, and psychological overlay pursuant to the Act.
5. Claimant reached MMI for his pelvis injury on December 15, 2011. No further treatment was recommended for Claimant's pelvis injury, and therefore, Claimant is not entitled to future medical treatment of his pelvis. Such finding is based on the expert medical opinions of Dr. McIntosh and Dr. Bethea. (Claimant's APA #1 and Defendants' APAs 5, 8).
6. Claimant is not entitled to any further medical treatment for his back.
7. Claimant reached MMI for his head and psychological overlay on July 28, 2014. Such finding is based on the opinion of Dr. Healy. (Claimant's APA #10, pg. 159).
8. While Claimant sustained a head injury, he did not sustain physical brain damage

within the confines of S.C. Code 42-9-10 so as to entitle Claimant to lifetime benefits. Claimant's head injury is not of the most permanent and severe nature as contemplated by S.C. Code 42-9-10 and pursuant to the Crisp and Sparks cases, and therefore, Claimant is not entitled to lifetime benefits. Such a finding is based on the evidence as a whole. Specifically, multiple doctors labeled Claimant's head injury as mild. Dr. Waid noted Claimant had a reasonable good recovery from a mild traumatic brain injury. Dr. Taylor noted Claimant's learning and memory were within normal limits and that Claimant had mild cognitive impairment. Dr. Healy noted Claimant's issues is "predominantly depression." (Claimant's APA pg. 127, 129, 140).

9. Claimant does not meet the burden of proof for physical brain damage within the confines of S.C. Code 42-9-10. Claimant was described as being a "good historian" when it came to his history and injuries. (Claimant's APA pg. 152). Claimant's head injury is described as mild throughout the records. (Claimant's APA pg. 118, 149, 45, 46, 46, 105).

10. Claimant continues to receive his own weekly compensation checks, is able to drive, and is able to operate vehicle jumper cables.

11. Claimant is not credible. Claimant's testimony was evasive when asked about his education level and operating jumper cables. Claimant repeatedly asked for more time when answering questions, and the Undersigned Commissioner attributes this to Claimant being evasive.

12. Claimant's credibility is called into question by his dishonest testimony regarding his education level. For reasons unknown to the Undersigned Commissioner, Claimant testified he only had a few years of grade school. Numerous medical records indicate Claimant self-reported to nearly all of his doctors that he had education through the 10<sup>th</sup> grade of school. Furthermore, Claimant's testimony at his 2010 deposition revealed he had 10 years of formal education. This is further confirmed by multiple doctor's reports indicating Claimant gave a history of 10 years of

education or education up to the tenth grade. (See Claimant's APA pg. 40, 41, 45, 46, 49, 90, 99, 102; Defendants' pg. 76). Claimant was unable to offer a reasonable explanation for his dishonest testimony.

13. Much of Claimant's testimony is unreliable, and the Undersigned believes Claimant often asked for questions to be repeated to give him time to formulate an answer. When asked whether Claimant was able to use jumper cables and whether he was comfortable with using them, he responded that people can help him if he does not know how to do something. Such an answer calls into question Claimant's testimony and credibility.

14. Claimant's credibility further supports the Undersigned's opinion that he does not suffer from a physical brain damage within the confines of S.C. Code 42-9-10 so as to entitle Claimant to lifetime benefits.

15. Claimant is permanently and total disabled due to combination of his pelvis, head, and psychological overlay. Claimant is entitled to lump sum of balance of permanent and total disability benefits.

16. Dr. Healy opined Claimant requires future medical treatment. As such, Claimant is entitled to lifetime causally-related medical treatment for his head and psychological overlay that tends to lessen his period of disability. (Claimant's APA #10, pgs. 159, 161).

The Hearing Commissioner's Decision and Order set forth the following **Conclusions of Law**:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant sustained injuries to his pelvis, head, and psychological overlay in an accident arising out of and in the course of his employment with Defendant Employer

on June 22, 20110.

3. Under § 42-15-60 and other applicable law, Claimant reached MMI on June 28, 2014. Claimant is entitled to lifetime causally-related medical treatment for his head and psychological condition that tends to lessen Claimant's period of disability. Claimant is not entitled to any further medical benefits for his pelvis or back.

4. Under § 42-9-10, Crisp v. Southco, Inc., 401 S.C. 627 (2013), Sparks v. Palmetto Hardwood, 401 S.C. 619 (2013), and other applicable law, Claimant did not sustain a physical brain injury, and he is not entitled to lifetime benefits. Claimant did not sustain a brain injury that is permanent and severe.

5. Under §§ 42-9-10 and 42-1-120, the Defendants are entitled to stop payment of temporary benefits.

6. Under § 42-9-10, Claimant is permanently and total disabled as a result of the combination of his pelvis, head, and psychological injuries and is entitled to the balance of the award of permanent and total disability paid in a lump sum subject to discount for lump sum as allowed by S.C. Workers' Compensation Act and Commission Regulations.

Within the statutory period, Counsel for the Claimant filed an Application for Review in the case setting forth the following assignments of error:

1. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant is not entitled to lifetime compensation?

2. Whether the Single Commissioner erred as a matter of fact and law in failing to consider the fact that the authorized treating neurologist assigned a 75% permanent impairment rating for brain damage?

3. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant

was not credible and in giving undue weight to her own subjective credibility findings of a brain-damaged individual testifying through an interpreter?

4. Whether the Single Commissioner erred as a matter of fact and law in failing to make specific and detailed factual findings?

5. Whether the Single Commissioner erred as a matter of fact and law in finding that Claimant is not entitled to lifetime compensation for physical brain damage when she found "Claimant permanently and totally disabled (based upon brain, pelvis and psychological injuries)...?"

6. Whether the Single Commissioner erred as a matter of fact and law in misapplying Pearson, Sparks and Crisp?

7. Whether the Single Commissioner erred as a matter of fact and law in failing to find that even a mild TBI can and did result in severe physical brain damage sufficient to render the Claimant incapable of sustained gainful employment?

Copies of the above assignments of error were furnished to all interested parties prior to oral argument scheduled before the Appellate Panel on October 19, 2015.

Pursuant to S.C. Code Ann. § 42-17-50 (1985), the Appellate Panel reviewed the Award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the brief of the Appellant and Respondents.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Hearing Commissioner is hereby **AFFIRMED IN FULL**. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, and as specified above, are hereby **AFFIRMED IN FULL**.

## **FINDINGS OF FACT**

### **IT IS FOUND AS A FACT:**

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Pedro A. Moran as Employee-Claimant and JMR, LLC as Employer and Hartford Underwriters Insurance Company as Carrier, Defendants.
2. That the average weekly wage of Employee at the time of the above-described accident was \$700.00, and his compensation rate was \$466.20.
3. Claimant sustained injuries to his pelvis, head, and psychological overlay.
4. Defendants have provided appropriate benefits to the pelvis, head, and psychological overlay pursuant to the Act.
5. Claimant reached MMI for his pelvis injury on December 15, 2011. No further treatment was recommended for Claimant's pelvis injury, and therefore, Claimant is not entitled to future medical treatment of his pelvis. Such finding is based on the expert medical opinions of Dr. McIntosh and Dr. Bethea. (Claimant's APA #1 and Defendants' APAs 5, 8).
6. Claimant is not entitled to any further medical treatment for his back.
7. Claimant reached MMI for his head and psychological overlay on July 28, 2014. Such finding is based on the opinion of Dr. Healy. (Claimant's APA #10, pg. 159).
8. While Claimant sustained a head injury, he did not sustain physical brain damage within the confines of S.C. Code 42-9-10 so as to entitle Claimant to lifetime benefits. Claimant's head injury is not of the most permanent and severe nature as contemplated by S.C. Code 42-9-10 and pursuant to the Crisp and Sparks cases, and therefore, Claimant is not entitled to lifetime benefits. Such a finding is based on the evidence as a whole. Specifically, multiple doctors

labeled Claimant's head injury as mild. Dr. Waid noted Claimant had a reasonable good recovery from a mild traumatic brain injury. Dr. Taylor noted Claimant's learning and memory were within normal limits and that Claimant had mild cognitive impairment. Dr. Healy noted Claimant's issues is "predominantly depression." (Claimant's APA pg. 127, 129, 140).

9. Claimant does not meet the burden of proof for physical brain damage within the confines of S.C. Code 42-9-10. Claimant was described as being a "good historian" when it came to his history and injuries. (Claimant's APA pg. 152). Claimant's head injury is described as mild throughout the records. (Claimant's APA pg. 118, 149, 45, 46, 46, 105).

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14. Claimant's credibility further supports the Undersigned's opinion that he does not suffer from a physical brain damage within the confines of S.C. Code 42-9-10 so as to entitle Claimant to lifetime benefits.

15. Claimant is permanently and total disabled due to combination of his pelvis, head, and psychological overlay. Claimant is entitled to lump sum of balance of permanent and total disability benefits.

16. Dr. Healy opined Claimant requires future medical treatment. As such, Claimant is entitled to lifetime causally-related medical treatment for his head and psychological overlay that tends to lessen his period of disability. (Claimant's APA #10, pgs. 159, 161).

#### **CONCLUSIONS OF LAW**

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant sustained injuries to his pelvis, head, and psychological overlay in an accident arising out of and in the course of his employment with Defendant Employer on June 22, 20110.

3. Under § 42-15-60 and other applicable law, Claimant reached MMI on June 28,

2014. Claimant is entitled to lifetime causally-related medical treatment for his head and psychological condition that tends to lessen Claimant's period of disability. Claimant is not entitled to any further medical benefits for his pelvis or back.

4. Under § 42-9-10, Crisp v. Southco, Inc., 401 S.C. 627 (2013), Sparks v. Palmetto Hardwood, 401 S.C. 619 (2013), and other applicable law, Claimant did not sustain a physical brain injury, and he is not entitled to lifetime benefits. Claimant did not sustain a brain injury that is permanent and severe.

5. Under §§ 42-9-10 and 42-1-120, the Defendants are entitled to stop payment of temporary benefits.

6. Under § 42-9-10, Claimant is permanently and total disabled as a result of the combination of his pelvis, head, and psychological injuries and is entitled to the balance of the award of permanent and total disability paid in a lump sum subject to discount for lump sum as allowed by S.C. Workers' Compensation Act and Commission Regulations.

### **ORDER**

The Order of the Single Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**

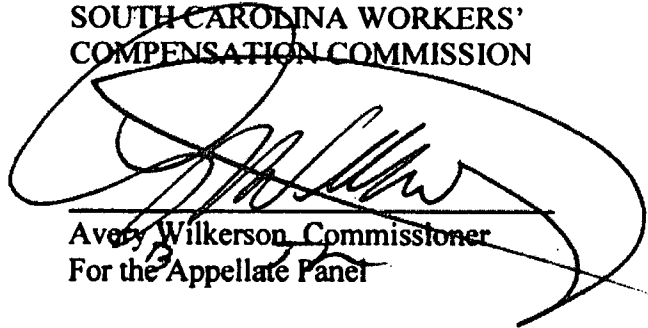
**IT IS HEREBY ORDERED** Claimant did not sustain a physical brain injury so as to entitle him to lifetime benefits. Claimant did not sustain a permanent and severe brain injury.

**IT IS FURTHER ORDERED** that Defendants are entitled to stop payment of temporary disability benefits.

**IT IS FURTHER ORDERED** Claimant is permanently and totally disabled.

**IT IS SO ORDERED.**

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

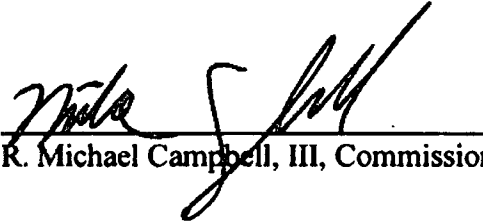


Avery Wilkerson, Commissioner  
For the Appellate Panel

Concur:



T. Scott Beck, Commissioner



R. Michael Campbell, III, Commissioner

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Kim Falls on January 21, 2016***