

STATE OF SOUTH CAROLINA

BEFORE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1301480

RECEIVED

MAR 07 2016

SC Court of Appeals

Ronnie McDonald,)
)
 Employee,)
)
 Claimant,)
)
 -vs-)
)
 J Mac's Express, LLC)
)
 Direct Employer,)
)
 Gregg Blakely Logging, Inc.)
)
 Statutory Employer)
 Employers,)
)
 AND)
)
 WC Uninsured Employers Fund and)
 Palmetto Timber Fund,)
)
 Carriers,)
)
 Defendants.)

ORDER OF APPELLATE
PANEL

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

Appellate Panel Decision and Order filed

February 11, 2016

APPEARANCES:

Joe Ann Calvy, Esq. Defendant, Gregg Blakely Logging, Inc., the Statutory Employer, represented by Walter H. Barefoot, Esq. of MGC Insurance Defense. Defendant, J Mac's Express, LLC, the Direct Employer, is an uninsured employer and did not appear for this hearing.

PURPOSE OF THE HEARING:

To determine issues as set forth on the Form 30 filed timely on July 15, 2015 by Defendant, Gregg Blakely Logging, Inc.

PROCEDURAL HISTORY

This matter was first heard before the Single Commissioner, Honorable T. Scott Beck, on March 25, 2015, in Florence County, South Carolina. Claimant testified that he sustained an injury as a result of an accident arising out of and within the course and scope of his employment when a tree log being carried by a crane hit his person. This claim came before the Commission upon the Claimant filing a WCC Form 50 (Request for Hearing) asking for a determination of permanent total disability under §42-9-10, payment in lump sum with allocation language in the order, lifetime medical treatment which could include but is not limited to prescription medication, bracing, hardware replacement, hip replacement, etc.

The Defendant, Gregg Blakely Logging, Inc., accepted that the Claimant injured his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013. Gregg Blakely Logging, Inc. also contended that if it is found that the Claimant is found to be permanently and totally disabled under §42-9-10, then payment should not be paid in lump sum. That the carrier is entitled to credit for overpayment of benefits from the date of Maximum Medical Improvement (MMI). By Decision and Order dated July 15, 2015, Commissioner Beck made the following:

After due consideration of the claim, all defenses and after reviewing all the evidence and the records, the following findings of fact, as required under Section 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

FIRST: The South Carolina Workers' Compensation Commission has jurisdiction over this claim with venue being proper in Florence County, State of South Carolina. The Claimant's direct Employer was J Mac's Express, LLC at the time of the injury and Gregg Blakely Logging, Inc. is only a statutory employer.

SECOND: This claim was heard before Commissioner Beck on March 25, 2015, in accordance with notices timely and properly served upon all parties of interest.

THIRD: The Claimant sustained compensable injuries to his right hip, left hip, left knee, left thigh, and left ankle.

FOURTH: Claimant returned to work for 2 days in which he performed 13 hours of work but he was unable to perform the work provided to him as a truck driver because of his pain.

FIFTH: The Claimant reached Maximum Medical Improvement on December 9, 2014 based on the records of Dr. Rodney Alan.

SIXTH: Gregg Blakely Logging, Inc. is responsible for any medicals related to the Claimant's injuries for which he has paid.

SEVENTH: Claimant's injuries render him totally and permanently disabled pursuant to § 42-9-10, S.C. Code Ann.

EIGHTH: Pursuant to §42-9-301, S.C. Code Ann., Claimant has demonstrated a need for the monetary benefit of his claim to be paid in a lump sum amount with allocation language included consistent with Supreme Court decisions in Utica-Mohawk Mills vs. Orr, 227 S.C. 226.87 SE2d 589 (1955) and James v. Anne's Inc., 2010 WL 4184120 (2010). Claimant demonstrated that a lump sum award would be in his best interest in that he is a homeowner, he is able to manage his own finances and he has legal fees which he is not able to pay outside of an award in lump sum. Although they objected to a lump sum payment, Defendant, Gregg Blakely Logging, Inc. did not present any evidence that such a payment would be an undue hardship to them.

NINTH: Claimant is entitled to lifetime causally related care to include prescription medications, bracing, hip replacement surgery and lifetime repair, maintenance or replacement of causally related hardware.

On July 27, 2015, Defendant, Gregg Blakely Logging, Inc., requested a Full Commission review of the Single Commissioner's Decision and Order pursuant to WCC Form 30 Request for Commission Review. Gregg Blakely Logging, Inc. argued that the Commissioner Beck erred and made the following exceptions:

Defendant, Gregg Blakely Logging, Inc. raised ten exceptions to the Single Commissioner's Decision and Order in the Form 30 Request for Commission Review. While preserving all ten exceptions and incorporating them by reference, for clarity and brevity, the exceptions were consolidated into the following issue on appeal by the Defendant, Gregg Blakely Logging, Inc. Did the Single Commissioner err in finding that the Claimant demonstrated that a lump sum award would be in the best interest of the Claimant and his dependents, when such a factual finding is against the greater weight and preponderance of reliable and substantial evidence in the record and is based on erroneous legal conclusion.

A hearing before the Full Commission was held on October 19, 2015, in Richland County, South Carolina. The Claimant was represented by Joe Ann Calvy, Esquire. The Defendant, Gregg Blakely Logging, Inc. was represented by Walter Barefoot, Esquire.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following medical reports and documents were submitted into evidence:

CLAIMANT'S SUBMISSIONS

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
1.	FI FI Jubran Vocational Specialist	08/08/14	1-9
2.	Drs. Alan and Watford McLeod Orthopaedics	02/01/13-06/23/14	10-49, 60-62
3.	Williamsburg Regional Hospital Physical Therapy	04/25/13-09/01/13	50-59,63-108

4.	McLeod Regional Medical Center	02/07/13	109-112
5.	Carolinas Rehabilitation Hospital	02/12/13	113-115
6.	Williamsburg Regional Hospital	01/07/13-01/29/13	116-150
7.	SCWCC Decision and Order	08/13/13	151-162

DEFENDANT BLAKELY LOGGING INC./EMPLOYER'S SUBMISSIONS

	NAME OF APA # PROVIDER/OTHER(S)	DATE(S) OF RECORDS	NUMBER
1.	Page Rehabilitation Services	11/06/14	6
2.	McLeod Orthopaedics	07/17/13-10/07/14	29
3.	McLeod Health	07/17/13-02/01/13	1

DEFENDANT J MAC'S EXPRESS/EMPLOYER'S SUBMISSIONS

No APAs were submitted on behalf of the employer.

STIPULATIONS

FIRST: Venue for this claim was properly set in Florence County, South Carolina pursuant to the parties' agreement. Jurisdiction in this matter is properly before this court.

SECOND: Claimant suffered a compensable injury to his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013.

THIRD: The required mediation was held by the parties on August 27, 2014 but the parties reached an impasse.

FOURTH: The Commission file, with the exception of unstipulated medical records and self-serving statements, was made a part of the record.

MOTIONS

Prior to the hearing of this case Samuel Brunson, Esquire moved to have the South Carolina Uninsured Employers' Fund dismissed as a party pursuant to §42-1-440 of the Workers' Compensation Act and the Court of Appeals ruling in Miller vs. Lawrence Robinson Trucking, reasoning that the Fund is no longer a necessary party. The Motion was granted and a separate Order was signed by the hearing Commissioner on the day of this hearing and served on the parties on April 3, 2015. Commissioner Susan S. Barden executed an Order on August 13, 2013 finding Gregg Blakely Logging, Inc. to be the Claimant's statutory employer of the Claimant with the Claimant being the statutory employee of Gregg Blakely Logging, Inc. Commissioner Barden also issued a finding in the

same Order that J Mac's Express, LLC is directly liable for benefits and if J Mac's Express, LLC is unwilling or unable to provide benefits, Palmetto Timber Fund, the carrier for Gregg Blakely Logging, Inc., is liable, but is entitled to indemnity pursuant to §42-1-440 of the Workers' Compensation Act.

BIOGRAPHICAL INFORMATION

<u>Name:</u>	Ronnie McDonald
<u>Age/DOB:</u>	47; August 24, 1967
<u>Marital Status/Family:</u>	Married; 26 years
<u>Education:</u>	High School Graduate
<u>Military Experience:</u>	N/A
<u>Prior Work Experience:</u>	J Mac's Express –Truck Driver

STATEMENT OF THE CASE

This claim comes before the Commission upon the Claimant filing a WCC Form 50 (Request for Hearing) asking for a determination of permanent total disability under §42-9-10, payment in lump sum with allocation language in the order, lifetime medical treatment which could include but is not limited to prescription medication, bracing, hardware replacement, hip replacement, etc.

The Defendant, Gregg Blakely Logging, Inc. accepts that the Claimant injured his left ankle, left knee, left thigh, and bilateral hips on January 7, 2013. The Defendant, Gregg Blakely Logging, Inc., also contends that if it is found that the Claimant is found to be permanently and totally disabled under §42-9-10, then payment should not be paid in lump sum. That the carrier is entitled to

credit for overpayment of benefits from the date of Maximum Medical Improvement (MMI).

EVIDENCE OF THE CASE

The Claimant testified before the Single Commissioner that he is 47 years old having been born August 24, 1967. He is married and has been for the past 26 years to Sharon McDonald and is the father of four children three of which are with his wife. He is a truck driver and has been for about 28-29 years. At the time of his injury, he was working as a truck driver for J. Mac's Express when the driver of a crane dropped a tree log on his person. Claimant testified that as a result of this injury, he experienced severe pain to his body which resulted in a right hip fracture, a crushed left hip, and a torn ACL. This resulted in hip surgery with retained hardware, knee surgery with ACL brace in place and knee replacement suspected in the very near future. Claimant has been unable to return to work since his injury of January 7, 2013. He testified that the authorized treating physician returned him back to work and that he was only able to work 13 hours because of his hip and knee pain. He testified that his left hip is where he experiences the most pain. In addition to the pain he feels a pinching sensation and he has pain to his hip at least 5 days a week. He also continues to

have pain and swelling in his left leg and knee and that he can only stand for about 10 minutes at a time.

Claimant stated that his current source of income is his workers' compensation check. He has applied for Social Security Disability Benefits but his case is pending.

Claimant stated that if he is found to be totally and permanently disabled that he would like to receive his money in a lump sum. Claimant testified that prior to his injury he was able to physically pay all of his bills but because of his physical condition, his wife, to whom he has been married for over 26 years, has to physically pay all the bills. He is buying his home. He testified that he is not currently in bankruptcy. At one point he owned his own tractor trailer truck and was able to prepare his own paperwork. He has a son that still lives with him and one that visits him and stays over regularly. Prior to his injury, he was able to pay his bills but now that he is not working his bills are behind and he has to borrow money to pay his bills and in most cases has to do without.

The Defendants presented no witnesses in the case.

MEDICAL EVIDENCE OF THE CASE

Claimant's APA 1- (FI FI Jubran, Vocational Specialist) On July 14, 2014, Claimant was assessed by Ms. Jubran for the purpose of determining whether he is employable. Ms. Jubran noted that Mr. McDonald's prior work history consist of being a truck driver, janitor, machine operator and bus driver. She also noted that his prior work history involved heavy lifting, up to 70 pounds constantly, prolonged

standing and walking, frequent stooping, kneeling, and handling. She noted that the authorized treating physician, Dr. Rodney Alan, has limited the Claimant to sedentary work. The vocational consultant concluded that when his significant physical limitations are considered, it is highly unlikely he will be able to find or sustain employment. That based on his physical limitation, he is not a reasonable vocational rehabilitation candidate and a reasonable stable market does not exist for the type of services the Claimant is physically, educationally, or vocationally capable of performing/sustaining.

Claimant's APA 2 - (McLeod Orthopaedics –Rodney Alan, M.D. and Kyle E. Watford, M.D.) Claimant crushed his right hip which required open reduction internal fixation surgery, fractured his left hip, and tore his left knee, which required ACL reconstruction surgery, and injured his left ankle. On May 7, 2014 Dr. Alan released Claimant at Maximum Medical Improvement and indicated that he will eventually need a right hip replacement, probably in the next 5-10 years, will need continued use of a knee brace, and continued use of anti-inflammatories as needed for pain. Claimant also has hardware in his left hip. Dr. Alan indicated that he does not think the Claimant will be able to return to his previous job as a truck driver, and restricted him to sedentary to light physical exertion as defined by Social Security. Dr. Alan assigned a 20% impairment rating to right hip based on hip radiographic estimate based on the Fifth Edition of the AMA Guides, and 7% impairment rating to the left knee based on the diagnosis-related estimate of cruciate ligament tear with mild instability based on the Fifth Edition of the AMA Guides. Prior to these final ratings, on December 9, 2014 Dr. Alan assigned a 9.25% rating to the left thigh from femoral

nerve weakness based on the Fifth Edition of the AMA Guides and on June 28, 2013 Dr. Alan assigned a 5% permanent impairment rating to the left ankle based on the Fifth Edition of the AMA Guides.

Defendant/Employer APA 1 (George H. Page, Page Rehabilitation Services)- Defendant, Gregg Blakely Logging, Inc. submitted a vocational report from George H. Page dated August 6, 2014. In his report Mr. Page opined that physically Claimant will not be able to return to the type of truck driving he has done in the past in his current condition but that there are lighter duty work options that may work for Claimant, including escort driver and school bus driver. Mr. Page admitted that the bus driver job he mentions is identified by the Department of Labor as a medium duty job, yet he concludes this is a job the Claimant could perform at this time despite Mr. Page's acknowledgement that Dr. Alan has restricted the Claimant to sedentary or light work.

FULL COMMISSION FINDINGS OF FACT

After due consideration of the claim, all defenses and after reviewing all the evidence and the records, the following findings of fact, as required under Section 42-17-40, South Carolina Code of Laws, 1976, as amended, are set forth:

FIRST: The South Carolina Workers' Compensation Commission has jurisdiction over this claim with venue being proper in Florence County, State of South Carolina. The Claimant's direct Employer was J Mac's Express, LLC at the time of the injury and Greg Blakely Logging, Inc. is only a statutory employer.

SECOND: This claim was heard before Commissioner Beck on March 25, 2015, in accordance with notices timely and properly served upon all parties of interest.

THIRD: The Claimant sustained compensable injuries to his right hip, left hip, left knee, and left thigh, and left ankle.

FOURTH: Claimant returned to work for 2 days in which he performed 13 hours of work but he was unable to perform the work provided to him as a truck driver because of his pain.

FIFTH: The Claimant reached Maximum Medical Improvement on December 9, 2014 based on the records of Dr. Rodney Alan.

SIXTH: The Defendant, Gregg Blakely Logging, Inc. is responsible for any medicals related to the Claimant's injuries for which has not been paid.

SEVENTH: Claimant's injuries render him totally and permanently disabled pursuant to § 42-9-10, S.C. Code Ann.

EIGHTH: Pursuant to §42-9-301, S.C. Code Ann., Claimant has demonstrated a need for the monetary benefit of his claim to be paid in a lump sum amount with allocation language included consistent with Supreme Court decisions in Utica-Mohawk Mills vs. Orr, 227 S.C. 226.87 SE2d 589 (1955) and James v. Anne's Inc., 2010 WL 4184120 (2010). Claimant demonstrated that a lump sum award would be in his best interest in that he is a homeowner, he is able to manage his own finances and he has legal fees which he is not able to pay outside of an award in lump sum. Although they objected to a lump sum payment, Employer, Gregg Blakely Logging, Inc., did not present any evidence that such a payment would be an undue hardship to the company.

NINTH: Claimant is entitled to lifetime causally related care to include prescription medications, bracing, hip replacement surgery and lifetime repair, maintenance or replacement of causally-related hardware.

CONCLUSIONS OF LAW

Accordingly, as provided in §42-17-40, South Carolina Code of Laws, 1976, as amended, it is the determination of this Commission as follows:

FIRST: Under §42-1-130, the Claimant was a covered employee at the time in question.

SECOND: Under §42-1-140, the Defendant/Employer, J Mac's Express, LLC, was a covered Employer under the Act and the Defendant/Employer, Gregg Blakely Logging, Inc., was a Statutory Employer under §42-1-420.

THIRD: Under §42-1-40, average weekly wage is defined.

FOURTH: Under §42-1-160, the Claimant sustained a compensable injury by accident to his right hip, left hip, left knee, left thigh, and left ankle.

FIFTH: Under §42-15-20, proper notice was provided to the Employers, Gregg Blakely Logging, Inc. and J Mac Express, LLC.

SIXTH: Under §42-9-10, §42-9-20, §42-1-160 and §42-15-60, the Claimant is totally and permanently disabled resulting from the injuries by accident arising out of and in the course of and scope of employment.

AND IT IS SO ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein as set forth verbatim.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION.

MAJORITY AFFIRM



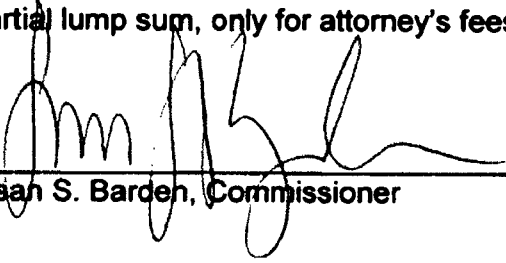
Aisha Taylor, Commissioner



Gene McCaskill, Commissioner

DISSENT

Respectfully, I dissent from the majority opinion in this appeal. The Claimant does not have a bank account; nor is he on his wife's account. The Claimant has tax difficulties, too. I would not order a total lump sum payment for the Claimant. I would order a partial lump sum, only for attorney's fees.



Susan S. Barden, 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 Eugenia Hollmon on February 11, 2016