

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1303989

**RECEIVED**  
MAR 21 2016  
SC Court of Appeals

CLARENCE B. JENKINS,

Employee,

Claimant/Appellant,

vs.

AMAZON.COM DEDC, LLC,

Employer,

AND

INSURANCE CO. OF THE STATE OF PA.,

Carrier,

Defendants/Respondents.

**RESPONDENTS' BRIEF  
TO  
FULL COMMISSION**

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND  
CLARENCE B. JENKINS, *PRO SE* CLAIMANT:

**STATEMENT OF THE CASE**

Claimant experienced an admitted incident at work on February 10, 2013 when he leaned over and struck his head on a table. Defendants furnished Claimant with medical evaluation and treatment. No disability compensation benefits were paid.

Claimant filed Forms 50 contending that he had sustained injuries to multiple body parts, including his head, eyes, ear, legs, feet, neck, shoulders, hands, back, and that he experiences anxiety as a result of his incident at work. A hearing was held on May 21, 2015 in Columbia, South Carolina before Commissioner Michael Campbell. At the hearing, Claimant sought additional medical examination and treatment, temporary total disability compensation benefits

from April 22, 2013 to September 23, 2013 and January 22, 2014 to present, and permanent disability benefits. Defendants denied that Claimant was entitled to any further benefits beyond the medical evaluations and treatment to attempt to assess Claimant's multiple complaints.

Commissioner Campbell issued a Decision and Order on August 14, 2015 denying Claimant's claim for further benefits. Commissioner Campbell ruled that Claimant failed to establish that he sustained any disabling injury or that he is entitled to any compensation benefits or further medical benefits. Commissioner Campbell concluded that Claimant did not sustain any compensable disabling work injury to his head, brain, eyes, ear, legs, feet, neck, shoulders, hands, back or anxiety; that Claimant had reached maximum medical improvement by October 23, 2013; that Defendants furnished appropriate medical evaluation or treatment; that Claimant is not entitled to any temporary disability compensation benefits; and, that Claimant is not entitled to any permanent disability compensation benefits.

Claimant filed a Form 30 seeking review by the Full Commission. Claimant asserted 38 grounds for review and accompanied his filing with 38 exhibits. Subsequently, Claimant has offered numerous additional exhibits. Defendants have objected to, and moved to exclude, the post-hearing exhibits offered by Claimant.

### **FACTUAL BACKGROUND**

Claimant is a forty-six year old college graduate. During the 21 years between 1994 and 2015, the Claimant worked for approximately 11½ years and was unemployed for approximately 9 years. He received unemployment compensation benefits from 2007 to 2012 prior to commencing work with Amazon in 2012 as a warehouse associate. [Transcript of Hearing, pp. 38-47].

Claimant experienced an incident at work on February 10, 2013. He struck his head on the edge of a table while bending over to retrieve an object from the floor. Claimant did not fall down and suffered no loss of consciousness or alteration in awareness. [Transcript of Hearing, pp. 49-51 and multiple APA submissions]. Claimant's initial presentation for medical evaluation reflected no visible evidence of any injury, any swelling, any discoloration or broken skin, and no outward evidence of any injury or neurological deficits. [APA No. 6, pp. 50-53].

Claimant's subsequent presentation for medical evaluation at HealthWorks several days after the work incident demonstrated no objective manifestations of any neurological deficits or other injury. A CT scan of the head was normal. On February 15, 2013, Claimant reported that his symptoms were much improved. He was pronounced able to work full-duty without restriction. No return appointments or further evaluations were recommended. [APA No. 5, pp. 35-49].

Subsequent medical evaluations two months later at Palmetto Health Richland Memorial Hospital Emergency Room and at HealthWorks reflected that Claimant's neurological and other clinical examination continued to be normal. The emergency room physician directed Claimant to see his family physician for high blood pressure, but otherwise he was not found to need any other evaluation or management. HealthWorks stated that the Claimant's current symptoms did not appear to be related to his February 2013 work injury and were more likely related to other health issues. The HealthWorks physician recommended that the Claimant see his family physician for follow-up of non-work-related conditions, stating that the cause of Claimant's problems are not known and the objective findings are not consistent with a history of work-related etiology. Claimant was given work restrictions but it was noted that they were not caused by the work incident. [APA No. 4, pp. 23-26; APA No. 5, pp. 27-34].

On August 26, 2013 and October 23, 2013, Mahmoud Abu-Ata, M.D., a neurologist, noted that at the time of the work incident Claimant had no loss of consciousness or awareness and that he suffered no scalp laceration or bleeding. Claimant exhibited a normal neurological and other clinical examination. Dr. Abu-Ata assessed Claimant's condition as "description of post traumatic headache," with possible migraine, rebound analgesic headache, hypertension and tension component. The Claimant refused to undergo CSF examination for evaluation of headaches. Dr. Abu-Ata recommended an MRI of the brain, an MRI of the cervical spine, and nerve conduction studies with EMG testing. MRI scanning of the brain was normal. Nerve conduction studies and EMG testing was normal. MRI scanning of the neck revealed multi-level mild-moderate degenerative disc disease and Dr. Abu-Ata recommended that Claimant be evaluated by a spine surgeon for evaluation of cervical spine disease. [APA No. 2, pp. 4-13].

Neurological evaluation by Charles S. Jervey, M.D., a neurologist, on November 19, 2013 noted that the Claimant experienced no loss of consciousness at the time of his work incident, that the CT and MRI scans of the head were normal, and that the MRI scan of the neck did not reveal anything that would be expected to cause symptoms. Dr. Jervey opined that the Claimant had sustained a mild head injury which should not cause Claimant's alleged ongoing symptoms and would not be expected to cause permanent nor long-term recurring symptoms. He did not find any cognitive impairment. Dr. Jervey did not feel that any other symptoms were caused by or related to the Claimant's work incident and did not recommend any work restrictions. [APA No. 3, pp. 14-15].

Neurological evaluation by David Stickler, M.D., a neurologist, on August 20, 2014 also noted that the Claimant had not experienced any loss of consciousness, dizziness, memory loss or laceration initially at the time of his work incident and that Claimant's current clinical

examination was unremarkable. Dr. Stickler opined that the history of Claimant's work injury did not support a concussive event and that Claimant's complaints of chronic daily headaches should not be caused by mild head trauma from Claimant's work incident. Dr. Stickler concluded that the Claimant's other symptoms were not related to the work incident. He felt that the Claimant had previously reached maximum medical improvement. [APA No. 1, pp. 1-3].

Dr. Stickler testified that the Claimant's history and presentation did not reflect that he had experienced even a mild concussive event; that any current symptoms would not result from Claimant's work incident; that the majority of people who have like degrees of head trauma improve within the first month, or within a matter of weeks; that Claimant had most likely reached maximum medical improvement by the time of his October 23, 2013 evaluation by Dr. Abu-Ata, which was more than eight months following the work incident; that there was no permanent impairment to the Claimant's brain; that any physical restrictions were based solely upon the Claimant's subjective complaints and that there were no objective findings that would require that any type of physical restrictions be imposed as any result from Claimant's work incident; that no medications would be required because of Claimant's work incident; and, that no effects of the work incident required further evaluation or referral of Claimant to other medical specialists for examination. [Defendants' Exhibit No. 2].

The Claimant was able to continue working during the initial months following his work injury. [Transcript of Hearing, p. 50; Defendants' Exhibit No. 1].

Drs. Jervy and Stickler state that any work-related headaches should have resolved during the initial months following Claimant's mild head trauma and that any subsequent headaches are not related to Claimant's work incident. [APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit

No. 2]. Medical evidence fails to support any causal relationship to Claimant's other complaints or symptoms, including his eyes, ear, legs, feet, neck, shoulders, hands, back and anxiety. Dr. Abu-Ata's records do not comment upon any relationship from Claimant's work injury to his other multiple and varied symptoms. Dr. Jervy opines that Claimant's other symptoms are not related to his work incident. Dr. Stickler similarly opines that Claimant's other symptoms are not related to his work incident. [APA No. 4, pp. 23-26; APA No. 5, pp. 27-34; APA No. 2, pp. 4-13; APA No. 3, pp. 14-15; APA No. 1, pp. 1-3; Defendants' Exhibit No. 2].

Claimant saw numerous medical care practitioners in several different settings over a period of almost two years without acknowledgement by Claimant that any treatment has improved the Claimant's description of his complaints and symptoms. [Transcript of Hearing, pp. 56-58].

Claimant complains of ongoing symptoms and multiple conditions that he says prevent him from working, including allegations that noise, vision and light trigger his symptoms. However, Claimant is able to drive a car, work on his computer, actively email, actively post on Twitter, and actively post on Facebook. During the year between May 17, 2014 and the hearing on May 21, 2015, the Claimant posted 1,066 tweets on Twitter, which averages greater than three tweets per day. His Facebook posts reflect that he attended at least two political rallies during that same period of time. None of his Twitter or Facebook posts reflect any complaints or descriptions of his symptoms or contentions regarding disability. [Transcript of Hearing, pp. 53-55, 58-61, 64-72, 77-80; Defendants' Exhibit No. 3; Defendants' Exhibit No. 4].

## ARGUMENTS

**I. Admission of purported evidentiary exhibits by Claimant after the Commission's issuance of its Decision and Order is violative of applicable law and such exhibits should be excluded as inadmissible evidence.**

Defendants have properly replied to Claimant's attempts to admit post-hearing exhibits and moved to exclude such exhibits from consideration as evidence. Attached to Claimant's Form 30 and in subsequent additional submissions are multiple exhibits which contain documents not previously admitted into evidence at the hearing.

Pursuant to S.C. Code Ann. Section 42-17-50, South Carolina Workers' Compensation Regulation 67-707, and other applicable law, Defendants assert that such exhibits are not properly before the Workers' Compensation Commission as after-discovered evidence, or as admissible evidence in any other manner, and respectfully assert that any consideration of such exhibits by the Workers' Compensation Commission is legally inappropriate.

At the commencement of the hearing, extensive discussions took place regarding Claimant's attempts to submit bundles of unidentified evidentiary exhibits. In response to Defendants' objections, Claimant was advised by the Hearing Commissioner that the hearing would be postponed if Claimant wished to exercise his right to have and/or obtain legal counsel to represent him. The Claimant had been previously represented by legal counsel, but this relationship was terminated. The Claimant testified that he had been advised by Defendants' legal counsel to obtain legal representation. The Claimant declined to retain legal counsel and elected to proceed with the hearing *pro se*.

→ Claimant asserts that Commissioner Campbell improperly applied South Carolina Workers' Compensation Regulation 67-611 regarding Claimant's failure to submit a Pre-hearing Brief. To the extent that Commissioner Campbell may have erred regarding Claimant's

submission of a Pre-hearing Brief, such error is harmless. Claimant still failed to comply with South Carolina Workers' Compensation Regulation 67-612 regarding admission of experts' reports as evidence. Regulation 67-611 does not allow for admission of experts' reports.

Accordingly, Defendants respectfully assert that the law does not permit Claimant's submission of evidence on appeal to the Full Commission after the close of the hearing record and issuance of Commissioner Campbell's Decision and Order. Admission of such evidence violates Defendants' due process and other rights set forth in the South Carolina Administrative Procedures Act, the South Carolina Workers' Compensation Act, the South Carolina Workers' Compensation Regulations and other applicable law. Such evidence should be rejected and excluded.

**II. Claimant's incident at work caused only mild head trauma. Any resulting effects of such mild trauma from the work incident resolved uneventfully. Claimant's subsequent description of multiple and varied physical symptoms and alleged disability are not because of his work incident. Claimant is not entitled to any additional workers' compensation benefits.**

The Claimant described a relatively nominal blow to his head that occurred at work on February 10, 2013. He struck his head on a table when he bent over. He did not fall in any uncontrolled or violent manner onto the edge of a table. Nothing caused any severe trauma to his head. He did not lose consciousness or experience any alteration of awareness. His presentation following the incident manifested no visible evidence of any injury, any swelling, any discoloration or broken skin and no evidence of any injury or neurological deficits. He continued working initially.

Claimant initially complained only of a headache and pain. Claimant initially denied dizziness or any visual changes. Subsequently, Claimant's description of his symptoms

progressed to complaints of multiple and varied pain and physical conditions that he contended resulted from his work incident.

During ensuing medical evaluations following his work injury, substantial medical evidence confirms that Claimant had not experienced any loss of consciousness, dizziness, memory loss, scalp laceration or bleeding initially at the time of his work incident; that he had normal CT and MRI imaging; that his clinical examinations were repeatedly unremarkable by various medical care practitioners; that Claimant did not exhibit any cognitive impairment; that Claimant's history and presentation did not reflect that he had experienced even a mild concussive event; that Claimant's current symptoms did not appear to be related to his February 2013 work injury and were more likely related to other health issues; that the cause of Claimant's problems were not known and the objective findings were not consistent with history of a work-related etiology.

Medical opinions stated that the Claimant had sustained a mild head injury which would not be expected to cause permanent nor long-term recurring symptoms; that the persistence of the Claimant's alleged ongoing symptoms were unexplained following such relatively mild head trauma; that it would be very uncommon that any current headaches should be caused by Claimant's mild head trauma; that the presence of chronic daily headaches could not be attributed to the work incident; that the majority of people who have like degrees of head trauma improve within the first month, or within a matter of weeks; that Claimant's other alleged symptoms were not caused by or related to the Claimant's work incident; and, that it would be most likely that the Claimant had reached maximum medical improvement by the time of his October 23, 2013 evaluation by Dr. Abu-Ata, which was more than eight months following the work incident.

No medical evaluation or treatment ever resulted in Claimant describing sustained improvement in his diffuse symptoms.

Claimant contended that he had been intermittently disabled since his work incident because activity and environment, including typing on a computer, shopping, walking, attending church or other events, noise, bright lights, heat and smell cause the onset of his multiple symptoms. Claimant's regular and daily use of his computer is inconsistent with his complaints that vision and light trigger his symptoms. His attendance at rallies is inconsistent with his complaints that noise triggers his symptoms.

Medical testimony established that Claimant reached maximum medical improvement by October 23, 2013 from any effects from his work incident. After that date, no further medical treatment or evaluation would be because of the injury or tended to lessen any period of disability. Further, medical evidence reflected that there was no permanent impairment to the Claimant's brain; that any physical restrictions were based solely upon the Claimant's subjective complaints at the time and that there were no objective findings that would require that any type of physical restrictions be imposed as any result from Claimant's work incident; that no medications would be required because of Claimant's work incident; and, that Claimant's work incident required no further evaluation or referral to other medical specialists for examination. Claimant was not incapable because of his work incident from earning the same or similar wages. Any lost time from work was not because of any disabling injury from his work incident.

Claimant has sustained no permanent lost earnings capacity because of his work incident. Claimant has sustained no permanent specific loss of use to any body parts because of his work incident.

The evidence establishes Claimant no longer suffered from any work injury-related condition or effects after, at worst, October 23, 2013 that entitled him to any further workers' compensation benefits. Denial of Claimant's request for benefits is supported by substantial evidence.

**CONCLUSION**

Defendants respectfully assert that the record compiled at the hearing in this case should be legally upheld and that Claimant's attempts to submit post-hearing evidence is improper, is properly excluded and should be rejected. Commissioner Campbell's denial of Claimant's claim for further medical benefits and disability compensation benefits should be affirmed. Claimant failed to meet his burden of proof to establish by a preponderance of the evidence that he sustained any disabling injury or that he is entitled to any compensation benefits or further medical benefits.

Respectfully submitted,



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