

APPELLATE PANEL  
DECISION AND ORDER  
OF THE

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MAY 25 2016

SC Court of Appeals

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1315719

Nathaniel Spann,

APPELLANT  
CLAIMANT,

vs.

Professional Systems,

EMPLOYER,

AND

Liberty Mutual.

CARRIER.  
DEFENDANTS/RESPONDENTS

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Appellate Panel Review held in Columbia, South Carolina,  
on February 23, 2016 per notices timely and properly served  
upon all parties of interest.

~~Appellate Panel Decision and Order filed~~

~~April 25<sup>th</sup>~~, 2016

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APPEARANCES:

Appellant Nathaniel Spann, Claimant of Lynchburg, South  
Carolina, appearing *pro se*.

Defendants/Respondents represented by Ramie S. Shalabi,  
Esquire of Willson Jones Carter & Baxley, P.A. in  
Columbia, South Carolina.

## STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on March 31, 2015, in Florence, South Carolina. On December 1, 2015, Commissioner Campbell issued an Order 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 Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual as Carrier. Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to September 12, 2013, on which date he did sustain an injury to the low back arising out of and in the course of his employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.

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3. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, making a compensation rate of \$188.48 applicable in this matter.

4. Defendants provided Claimant with evaluations and treatment with Doctor's Care, Dr. Thomas Joseph of Camden Bone and Joint, and Dr. Michael Peelle of Moore Orthopaedics.

5. On August 29, 2014, Dr. Michael Peelle of Moore Center for Orthopaedics placed Claimant at MMI. However, Dr. Peelle did not assign an impairment rating due to not having had the opportunity to review medical records for Claimant's prior low back injury. Dr. Peelle released the Claimant back to work for a sedentary job since Claimant refused to participate in an FCE and states he already has performed his activities with physical therapy (Defendants' APA, p. 4).

6. On December 9, 2014, after having been provided by Defendants with all of

Claimant's medical records for his prior low back injury, Dr. Peelle opined Claimant sustained a 0% impairment to the lumbar spine. He also opined Claimant would not need future medical treatment and released Claimant with restrictions of sedentary work. Dr. Peelle notes the Claimant's work restrictions are due to his prior injuries and are not related to his accident on September 12, 2013.

7. That Claimant reached maximum medical improvement on August 29, 2014 for the injuries resulting from the September 12, 2013 accident and that there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.

8. That Defendants were entitled to stop payment of temporary total compensation effective December 16, 2014 and are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014, against the award for permanent partial disability ordered herein.

9. Claimant is not entitled to an additional evaluation for another rating. Claimant did not dispute he is at maximum medical improvement.

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10. That Claimant has sustained 4% permanent partial disability to his low back as a result of the accidental injury on September 12, 2013.

11. That Claimant has failed to prove that he is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

The Hearing Commissioner set out 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 did sustain an injury to his low back by accident arising out of and in the course and scope of his employment on September 12, 2013.

3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from September 12, 2013 until December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until August 29, 2014, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 4% permanent partial disability to the low back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014.

The Hearing Commissioner issued the following orders:

**IT IS HEREBY ORDERED** that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing.

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**IT IS FURTHER ORDERED** that as a result of Claimant's accidental injury occurring on September 12, 2013, he has sustained 4% permanent partial disability to the low back, for which he is entitled to 12 weeks of compensation, at the compensation rate of \$188.48 per week. This amount equates to \$2,261.76. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation in the amount of \$9,235.52 which represents 49 weeks of overpayment.

**IT IS FURTHER ORDERED** Claimant reached maximum medical improvement on August 29, 2014, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, until and unless further ordered by this Commission.

**IT IS FURTHER ORDERED** that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

**IT IS FURTHER ORDERED** that Defendants are entitled to \$6,973.76 from Claimant. This amount reflects the overpayment of temporary total compensation Defendants are entitled to after taking into account the Claimant's permanent partial disability award of \$2,261.76.

No hearing costs are assessed in this instance.

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

1) Did the Hearing Commissioner err in finding the Claimant reached maximum medical improvement and sustained a 4% permanent partial disability to his low back as a result of the accidental injury on September 12, 2013?

2) Did the Hearing Commissioner err in finding Defendants are entitled to a credit of overpayment of temporary total compensation dating back to December 16, 2014, which is the date in which Defendants filed their Form 21 Request for Hearing?

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Pursuant to S.C. Code Ann. §42-17-50 (1985), the Appellate Panel reviewed the Order 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. The Panel makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

1. Claimant was advised of his right to an attorney by the Hearing Commissioner and Panel and elected to proceed *pro se*.

2. 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 Nathaniel Spann as Employee-Claimant and Professional Systems as Employer and Liberty Mutual as Carrier, Defendants.

3. That Claimant was an employee of the above-named Employer on and prior to September 12, 2013, on which date he did sustain an injury to the low back arising out of and in the course of his employment, and proper notice was given to Employer. This was an accepted claim, and Claimant has received appropriate medical benefits and is presently receiving temporary total compensation.

4. That the average weekly wage of Employee at the time of the above-described accident was \$282.70, making a compensation rate of \$188.48 applicable in this matter.

5. Defendants provided Claimant with evaluations and treatment with Doctor's Care, Dr. Thomas Joseph of Camden Bone and Joint, and Dr. Michael Peelle of Moore Orthopaedics.

6. On August 29, 2014, Dr. Michael Peelle of Moore Center for Orthopaedics placed Claimant at MMI. However, Dr. Peelle did not assign an impairment rating due to not having had the opportunity to review medical records for Claimant's prior low back injury. Dr. Peelle released the Claimant back to work for a sedentary job since Claimant refused to participate in an FCE and states he already has performed his activities with physical therapy (Defendants' APA, p. 4).

7. On December 9, 2014, after having been provided by Defendants with all of Claimant's medical records for his prior low back injury, Dr. Peelle opined Claimant sustained a 0% impairment to the lumbar spine. He also opined Claimant would not need future medical treatment and released Claimant with restrictions of sedentary work. Dr. Peelle notes the Claimant's work restrictions are due to his prior injuries and are not related to his accident on September 12, 2013.

8. That Claimant reached maximum medical improvement on August 29, 2014 for the injuries resulting from the September 12, 2013 accident and that there is no evidence in the record that any additional medical treatment would tend to lessen the period of Claimant's disability.

9. That Defendants were entitled to stop payment of temporary total compensation effective December 16, 2014 and are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014, against the award for permanent partial disability ordered herein.

10. Claimant is not entitled to an additional evaluation for another rating. Claimant did not dispute he is at maximum medical improvement.

11. That Claimant has sustained 4% permanent partial disability to his low back as a result of the accidental injury on September 12, 2013.

12. That Claimant has failed to prove that he is entitled to any further medical benefits, any award for serious disfigurement or any other compensable element under the law, other than the award for disability as ordered herein.

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### CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS 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 did sustain an injury to his low back by accident arising out of and in the course and scope of his employment on September 12, 2013.
3. Under §§ 42-9-10 and 42-1-120, Claimant was entitled to compensation for a period of temporary total disability from September 12, 2013 until December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until August 29, 2014, the date on which Claimant reached maximum medical improvement, but not thereafter, there being no evidence that any additional medical treatment would tend to lessen the period of his disability.

5. Under § 42-9-30, Claimant has sustained 4% permanent partial disability to the low back. From such award, Defendants are entitled to a credit for the overpayment of temporary total compensation since December 16, 2014.

### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

**IT IS, THEREFORE, ORDERED** that the Order of the Single Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**.

**IT IS AFFIRMED** that the Application of Employer/Carrier to stop payment of temporary total compensation is hereby granted, effective December 16, 2014, the date on which Defendants filed their Form 21 Request for Hearing.

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**IT IS FURTHER AFFIRMED ORDERED** that as a result of Claimant's accidental injury occurring on September 12, 2013, he has sustained 4% permanent partial disability to the low back, for which he is entitled to 12 weeks of compensation, at the compensation rate of \$188.48 per week. This amount equates to \$2,261.76. From this amount, the Defendants are entitled to a credit or offset for the overpayment of temporary total compensation in the amount of \$9,235.52 which represents 49 weeks of overpayment.

**IT IS FURTHER AFFIRMED** that Claimant reached maximum medical improvement on August 29, 2014, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date, until and unless further ordered by this Commission.

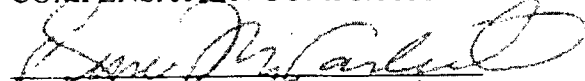
**IT IS FURTHER AFFIRMED** that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

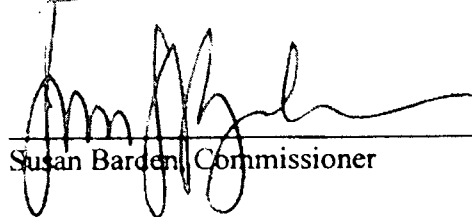
**IT IS FURTHER AFFIRMED** that Defendants are entitled to \$6,973.76 from Claimant. This amount reflects the overpayment of temporary total compensation Defendants are entitled to after taking into account the Claimant's permanent partial disability award of \$2,261.76.

**AND IT IS SO ORDERED.**

**AFFIRMED WITH  
AMENDMENT  
CONCUR:**

SOUTH CAROLINA WORKERS'  
COMPENSATION COMMISSION

  
Gene McCaskill, Commissioner

  
Susan Barden, Commissioner

  
Melody James, 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 April 25, 2016***