

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1209393

RECEIVED

MAY 31 2016

SC
COMMISSION of Appeals

MATTHEW EDWARDS,

EMPLOYEE.
APPELLANT/CLAIMANT.

-vs-

S.C. DEPARTMENT OF PUBLIC SAFETY,

EMPLOYER.

AND

STATE ACCIDENT FUND,

CARRIER.
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina, on
February 22, 2016 per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed May 20, 2016.

APPEARANCES:

Appellant/Claimant represented by J. Kirkman Moorhead, Esquire of
Krause Moorhead & Draisen, P.A., Anderson, South Carolina.

Defendants/Respondents represented by Zachary M. Smith, Esquire
of Willson Jones Carter & Baxley, P.A., Greenville, South Carolina.

STATEMENT OF THE CASE

The parties were heard by Commissioner Avery B. Wilkerson, Jr., on July 14, 2015, in Columbia, South Carolina. On November 9, 2015, Commissioner Wilkerson issued the following Order:

IT IS HEREBY ORDERED that as a result of Claimant's accidental injury occurring on July 16, 2012, Claimant has sustained 45% permanent partial disability to the back, for which he is entitled to 135 weeks of compensation, at the compensation rate of \$483.27 per week.

IT IS FURTHER ORDERED that Defendants are responsible for all authorized, causally related medical treatment through July 14, 2015, the date of the hearing. Defendants are also responsible for future pain management treatment, per Dr. Loudermilk, the authorized treating physician, as long as the need for such treatment is causally related to the July 16, 2012 work accident and tends to lessen the period of disability.

No hearing costs are assessed in this instance.

IT IS SO ORDERED.

In his Decision and Order, dated November 9, 2015, Commissioner Wilkerson made the following specific Findings of Fact and Conclusions of Law:

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 Matthew Edwards as Employee-Claimant and S.C. Department of Public Safety as Employer and State Accident Fund as Carrier, Defendants.
2. That Claimant's testimony was credible.
3. That Claimant is 35 years old, and he is a high school graduate. Claimant later graduated from the Criminal Justice Academy, and he also obtained his Data Master certification and took a class to become a K-9 handler. This finding is based on Claimant's testimony.
4. That prior to working for SCDPS, Claimant worked as a deputy sheriff for the Pickens County Sheriff's Office for five years. This finding is based on Claimant's testimony.
5. That Claimant was hired by the SCDPS as a transport police officer in October 2007, and at the time of his work accident on July 16, 2012, his position was senior officer. His job duties required him to enforce State and Federal commercial trucking and vehicle laws, and he inspected vehicles, issued citations, prosecuted violators in Magistrate Courts, handled radio and phone

- calls, and completed paperwork. This finding is based on Claimant's testimony.
6. That Claimant sustained an admitted injury to his lower back arising out of and in the course of his employment with SCPDS on July 16, 2012, when he slipped while walking down a flight of stairs.
 7. That Claimant's average weekly wage at the time of the above-described accident was \$724.88, yielding a corresponding compensation rate of \$483.27.
 8. That prior to seeking medical treatment through Defendants, Claimant initially treated on his own at PS Chiropractic and Greenville Memorial Hospital. This finding is based on Claimant's testimony. (*See also* Defendants' APAs #9 & #10).
 9. That the post-accident lumbar spine MRI, dated August 1, 2012, revealed a single level disc herniation at L4-5 with a "[m]igrated fragment from the L5-S1 disc into the right S-1 lateral recess severely compressing the right S-1 transverse root." (*See* Claimant's APA #5, p. 54). This finding is also supported by the deposition testimony of Dr. Loudermilk and Dr. Burnette.
 10. That Defendants ultimately referred Claimant to Dr. Michael Bucci, who diagnosed Claimant with a large free fragment disc herniation at L5-S1 with right S1 nerve root compression and recommended surgical intervention. (*See* Claimant's APA #4, pp. 42-44).
 11. That Dr. Bucci performed a right L5-S1 laminectomy, facetectomy, foraminotomy, and discectomy on October 1, 2012. (*See* Claimant's APA #4, pp. 46-47).
 12. That Claimant's back pain improved after surgery; however, he has continued to have pain and problems with his right leg since surgery. This finding is based on Claimant's testimony.
 13. That Claimant sustained permanent nerve damage as a result of his work related herniated disc at L5-S1. This finding is based on the medical records as a whole and the deposition testimony of Dr. Loudermilk.
 14. That Claimant was referred to Dr. Loudermilk for pain management treatment, and Dr. Loudermilk has been providing Claimant with pain management treatment since February 2013. Dr. Loudermilk's treatment has consisted of nerve blocks, therapy, and numerous medications. This finding is supported by Claimant's testimony and the medical records and deposition testimony of Dr. Loudermilk.
 15. That Dr. Bucci released Claimant to return to light duty work on January 7, 2013 with a weight limit of 30 pounds. (*See* Defendants' APA #11, pp. 118-119).
 16. That the SCDPS provided Claimant with a light duty position within his restrictions, and Claimant returned to work on January 14, 2013. This finding is based on Claimant's testimony and the signed Form 17.
 17. That while on light duty, Claimant worked in the SCDPS's District Office in Greenville as an assistant to his supervisor. His light duty position was a desk job, and it consisted of doing paperwork, reading inspections, watching videos, and filing tickets. This finding is supported by Claimant's testimony.

18. That Claimant underwent an FCE at Doshier Physical Therapy Associates on April 23, 2013. The FCE revealed he was capable of working a position in the Medium strength category with a maximum lifting capacity of 50 pounds and a maximum carrying capacity of 25 pounds. The FCE also showed he had limitations crawling on his hands and feet and with balancing activities that required crouching. (See Claimant's APA #8).
19. That Dr. Burnette performed an impairment evaluation on Claimant on July 2, 2013. Dr. Burnette opined Claimant had sustained 25% whole person impairment, which she converted to 32% impairment of lumbar spine, as a result of his July 16, 2012 work accident. Dr. Burnette's rating to the whole person took into consideration the ongoing problems Claimant has with his right leg. This finding is based on Dr. Burnette's report and deposition testimony.
20. That at her deposition on July 31, 2014, Dr. Burnette testified she assigned her impairment rating based on "Class 4" under the Motion Segment Lesion and Intervertebral Disc Herniation impairment of Table 17-4 (Lumbar Spine Regional Grid) of the 6th Edition of the AMA Guides. While Claimant sustained a *single level* disc herniation and while "Class 4" is used for patients with disc herniations at *multiple levels*, Dr. Burnette testified she assigned Claimant's impairment rating under Class 4 because a portion of his herniated disc had broken off, migrated down, and affected the S1-2 level. This finding is based on Dr. Burnette's deposition testimony. (See also Defendants' Exhibit A).
21. That even though she maintained her opinion regarding Claimant's rating at her deposition, Dr. Burnette confirmed that a "Class 2" impairment was for patients with a *single level* disc herniation with radiculopathy. She testified that if Class 2 (single level disc herniation) was used, Claimant's rating would be 14% whole person impairment. This finding is based on Dr. Burnette's deposition testimony. (See also Defendants' Exhibit A).
22. That Dr. Burnette's rating from July 2, 2013, two years prior to the hearing before the undersigned, is the only impairment rating in the record. This finding is based on the evidence in the record as a whole.
23. That Dr. Loudermilk assigned Claimant permanent restrictions, based on his FCE, of no lifting greater than 50 pound occasionally, 25 pounds frequently, or 12 pounds constantly; no carrying greater than 25 pounds occasionally, 12 pounds frequently, or 5 pounds constantly; no pushing or pulling greater than 100 pounds; no crawling on his hands and feet; and no crouching on a narrow beam for up to 30 seconds. This finding is based on the medical records of Dr. Loudermilk. (See Claimant's APA #1, p. 14).
24. That Claimant was unable to return to his regular job as a law enforcement officer due to the restrictions in his FCE. This finding is based on the medical records as a whole and the deposition testimony of Dr. Loudermilk.
25. That Claimant worked light duty with the SCDPS until June 30, 2013. when he resigned from his position and accepted state disability retirement. Claimant receives \$2,200 per month in state disability retirement benefits. This finding is based on Claimant's testimony.

26. That Claimant does not like taking medications. He does not like the way medications make him feel. Claimant is also afraid of becoming addicted to pain medications and will only take the prescribed medications on a limited basis. This finding is based on Claimant's testimony.
27. That Claimant was getting some relief and improvement from his right leg pain when taking the medications – specifically the combination of non-narcotic Gralise, Ultracet, and pain cream – as prescribed by Dr. Loudermilk. This finding is supported by Dr. Loudermilk's medical records and deposition testimony.
28. That on October 15, 2013, Robert E. Brabham, Ph.D performed a psychological and vocational evaluation on Claimant at the request of his attorney. Dr. Brabham diagnosed Claimant with pain disorder, depressive disorder, and generalized anxiety disorder, and he opined that Claimant was unable to engage in his past work as a police officer, or in any other alternative work setting, as a result of the medical conditions resulting from his July 2012 work injury. (See Claimant's APA #6).
29. That Claimant underwent a 2 day FCE at New Day Physical Therapy on November 20 & 21, 2014. The FCE results indicated Claimant's capacities decreased between day one and day two, but the therapist opined Claimant was capable of working an eight hour day at a sedentary work level position. (See Claimant's APA #7).
30. That James R. Myers, MA, QRP, CCM, CRC (Defendants' expert) performed a vocational evaluation on Claimant, and on May 8, 2015, Mr. Myers opined, with vocational certainty, that Claimant was employable and would have little difficulty qualifying for and transitioning into alternative employment options based on his assessment results, educational background, and previous vocational background. (See Defendants' APA #13). At his deposition on July 8, 2015, Mr. Myers testified that in his opinion, to a reasonable degree of vocational certainty, Claimant was capable of returning to the workforce in his current condition. (Depo. p. 57).
31. That James Myers also completed a labor market survey listing some of the available jobs he believed Claimant could perform. These positions included surveillance monitor, collection clerk, customer service representative, and fraud investigator. (See Defendants' APA #13). Mr. Myers testified the jobs listed on his labor market survey were just a sample of the available jobs. (Depo. p. 53).
32. That Claimant testified he called some of the employers listed on the labor market survey and that some of the jobs did not exist and that some of the employers were not hiring when he called.
33. That Claimant's current medications include Ultracet and a neuropathic pain cream, but he takes the Ultracet very sparingly. He had only taken 2 or 3 Ultracet in the week before the hearing. This finding is supported by Claimant's testimony and the medical records and deposition testimony of Dr. Loudermilk.

34. That because Claimant does not like taking oral medications, Dr. Loudermilk has recommended a spinal cord stimulator ("SCS"). This finding is supported by the medical records and deposition testimony of Dr. Loudermilk.
35. That Claimant is "an ideal candidate" for a SCS because of the nature of his pain of his pain/symptoms and because he is a reliable patient. This finding is based on the deposition testimony of Dr. Loudermilk.
36. That a SCS would likely improve his condition. This finding is based on the deposition testimony of Dr. Loudermilk.
37. That Claimant wanted to proceed with a SCS stimulator trial in April 2015. This finding is supported by the medical records and deposition testimony of Dr. Loudermilk. (See Defendants' APA #12, p. 124 & Depo. p. 22).
38. That while he admitted Dr. Loudermilk informed him that he was an ideal candidate for a SCS, Claimant testified at the hearing he does not want to proceed with the SCS. Claimant testified that he does not want anything implanted inside of him, that a friend of his had a bad experience with a SCS, and that he is scared to have the SCS because he is uncomfortable around doctors now and because he had an allergic reaction to an injection at Greenville Memorial Hospital shortly after his accident. This finding is based on Claimant's testimony.
39. That even though he testified he does not want to pursue a SCS, Claimant is scheduled for a psychological evaluation to obtain clearance for a SCS trial. Claimant testified he was debating on whether to cancel the scheduled psychological evaluation. This finding is based on Claimant's testimony.
40. That Claimant's current daily activities include taking care of and watching his three year-old daughter throughout the day. He also tries to keep up with chores around the house, including laundry and dish washing. This finding is based on Claimant's testimony.
41. That during the winters since being placed at MMI by Dr. Loudermilk, Claimant has used a chainsaw and a hydraulic wood splitter to cut firewood for his house. Claimant also helped his mother-in-law move out of her house within the last year and a half. Claimant testified that he drove the truck and moved a couple of bags of clothes. This finding is based on Claimant's testimony.
42. That Claimant has used computers on the job in the past. He is able to surf the Internet, and he has some knowledge about using Microsoft programs. Claimant admitted he could learn how to do more on a computer if he had the opportunity. This finding is based on Claimant's testimony.
43. That Defendants have provided Claimant with appropriate medical treatment. This finding is supported by the evidence in the record as a whole.
44. That Claimant reached maximum medical improvement on May 6, 2013 for the injuries resulting from his July 16, 2012 work accident. This finding is based on the parties' stipulation.
45. That based on the greater weight of the evidence in the record, including the deposition testimony of Dr. Loudermilk, Claimant has significant disability which could be lessened with a spinal cord stimulator.

46. That based on the greater weight of the evidence in the record, Claimant has failed to meet his burden of proof that he is permanently and totally disabled as a result of his July 16, 2012 work accident. This finding is supported by the evidence in the record as a whole, including but not limited to the medical records, Dr. Loudermilk's deposition testimony, the FCEs, and the vocational report and deposition testimony of James Myers.
47. That Claimant has sustained 45% permanent partial disability to his back as a result of the accidental injury on July 16, 2012. This finding is based on the evidence in the record as a whole, including but not limited to the medical records, Claimant's testimony, Dr. Loudermilk's deposition testimony, the FCEs, and the vocational report and deposition testimony of James Myers.
48. That Claimant is not entitled to a lump sum payment of benefits. Claimant's condition may improve in the future, especially if he pursues the recommended SCS; therefore, because there is a greater than usual chance of a change of condition for the better, I find it would be prejudicial to Defendants to grant Claimant's request for a lump sum.
49. That although Claimant cannot be forced to undergo the SCS, his decision to refuse the recommended SCS, which Defendants have agreed to authorize, should be considered when determining disability. I find that it would be improper to award permanent and total disability benefits in the present case given Dr. Loudermilk's testimony that Claimant is "an ideal candidate" for a SCS and the fact that a SCS would likely improve his condition and lessen his disability.
50. That Defendants are responsible for, and Claimant is entitled to, ongoing pain management treatment per Dr. Loudermilk. This finding is based on the evidence in the record as a whole.
51. That with regard to the recommended SCS, I would close the medical on the SCS issue if Claimant does not want the SCS following psyche evaluation.

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 did sustain an injury to his back by accident arising out of and in the course and scope of his employment on July 16, 2012.
3. Under § 42-9-30, Claimant has sustained 45% permanent partial disability to the back as a result of his July 16, 2012 work injury.
4. Under § 42-9-301, Defendants are not ordered to make payment in lump sum since ordering payment in lump sum would be prejudicial to Defendants as Claimant's condition may improve.
5. Under § 42-15-60, Defendants are responsible for all causally related medical treatment authorized by them, through July 14, 2015, the date of the hearing.

6. Under § 42-15-60, Defendants are also responsible for future, causally related pain management treatment, per Dr. Loudermilk, the authorized treating physician.

On November 23, 2015, within the statutory period, counsel for Claimant filed an application for review in the case setting forth his grounds for review, copies of which were furnished to all interested parties prior to oral argument presented to the Appellate Panel on February 22, 2016. By appeal, counsel for Claimant submitted the following grounds for review:

1. The Hearing Commissioner erred in his Finding of Fact No. 45. Error was committed in that the Hearing Commissioner found that the spinal cord stimulator "could" lessen the Claimant's disability instead of would most probably lessen the Claimant's disability.
2. The Hearing Commissioner erred in his Finding of Fact No. 46. Error was committed in that the greater weight or preponderance of the evidence shows that the Claimant is totally and permanently disabled.
3. The Hearing Commissioner erred in his Finding of Fact No. 47. Error was committed in that the greater weight or preponderance of the evidence shows that the Claimant is totally and permanently disabled.
4. The Hearing Commissioner erred in his Finding of Fact No. 48. Error was committed in denying the Claimant a lump sum payment of his award based on the fact that his condition could improve.
5. The Hearing Commissioner erred in his Order. Error was committed in that the Commissioner failed to award a lump sum payment with a Utica-Mohawk provision.
6. The Hearing Commissioner erred in his Finding of Fact No. 49. Error was committed in denying the Claimant total and permanent disability because he did not want the spinal stimulator.
7. The Hearing Commissioner erred in his Finding of Fact No. 50. Error was committed in that the Commissioner limited the Claimant's future medical care to pain management.
8. The Hearing Commissioner erred in his Finding of Fact No. 51. Error was committed in that the Commissioner arbitrarily denied the Claimant's future accessibility to the spinal cord stimulator.
9. The Hearing Commissioner erred in his Conclusion of Law No. 4. Error was committed in that the Claimant should have been awarded a lump sum payment of his award.
10. The Hearing Commissioner erred in his Order. Error was committed in that the greater weight or preponderance of the evidence shows that the Claimant should have been found to be totally and permanently disabled.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann. Section 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing, and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Single Commissioner.

All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration. After careful review in the instant case, the Appellate Panel, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Conclusions of Law are correct as stated. As such, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, fully affirms the Single Commissioner's Order, and issues the following Findings of Fact and Conclusions of Law, which shall become, and hereby are, the law of the case.

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. 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 Matthew Edwards as Employee-Claimant and S.C. Department of Public Safety as Employer and State Accident Fund as Carrier, Defendants.
2. That Claimant's testimony was credible.
3. That Claimant is 35 years old, and he is a high school graduate. Claimant later graduated from the Criminal Justice Academy, and he also obtained his Data Master certification and took a class to become a K-9 handler. This finding is based on Claimant's testimony.

4. That prior to working for SCDPS, Claimant worked as a deputy sheriff for the Pickens County Sheriff's Office for five years. This finding is based on Claimant's testimony.

5. That Claimant was hired by the SCDPS as a transport police officer in October 2007, and at the time of his work accident on July 16, 2012, his position was senior officer. His job duties required him to enforce State and Federal commercial trucking and vehicle laws, and he inspected vehicles, issued citations, prosecuted violators in Magistrate Courts, handled radio and phone calls, and completed paperwork. This finding is based on Claimant's testimony.

6. That Claimant sustained an admitted injury to his lower back arising out of and in the course of his employment with SCPDS on July 16, 2012, when he slipped while walking down a flight of stairs.

7. That Claimant's average weekly wage at the time of the above-described accident was \$724.88, yielding a corresponding compensation rate of \$483.27.

8. That prior to seeking medical treatment through Defendants, Claimant initially treated on his own at PS Chiropractic and Greenville Memorial Hospital. This finding is based on Claimant's testimony. (*See also* Defendants' APAs #9 & #10).

9. That the post-accident lumbar spine MRI, dated August 1, 2012, revealed a single level disc herniation at L4-5 with a "[m]igrated fragment from the L5-S1 disc into the right S-1 lateral recess severely compressing the right S-1 transverse root." (*See* Claimant's APA #5, p. 54). This finding is also supported by the deposition testimony of Dr. Loudermilk and Dr. Burnette.

10. That Defendants ultimately referred Claimant to Dr. Michael Bucci, who diagnosed Claimant with a large free fragment disc herniation at L5-S1 with right S1 nerve root compression and recommended surgical intervention. (*See* Claimant's APA #4, pp. 42-44).

11. That Dr. Bucci performed a right L5-S1 laminectomy, facetectomy, foraminotomy, and discectomy on October 1, 2012. (*See* Claimant's APA #4, pp. 46-47).

12. That Claimant's back pain improved after surgery: however, he has continued to have pain and problems with his right leg since surgery. This finding is based on Claimant's testimony.

13. That Claimant sustained permanent nerve damage as a result of his work related herniated disc at L5-S1. This finding is based on the medical records as a whole and the deposition testimony of Dr. Loudermilk.

14. That Claimant was referred to Dr. Loudermilk for pain management treatment, and Dr. Loudermilk has been providing Claimant with pain management treatment since February 2013. Dr. Loudermilk's treatment has consisted of nerve blocks, therapy, and numerous medications. This finding is supported by Claimant's testimony and the medical records and deposition testimony of Dr. Loudermilk.

15. That Dr. Bucci released Claimant to return to light duty work on January 7, 2013 with a weight limit of 30 pounds. (See Defendants' APA #11: pp. 118-119).

16. That the SCDPS provided Claimant with a light duty position within his restrictions, and Claimant returned to work on January 14, 2013. This finding is based on Claimant's testimony and the signed Form 17.

17. That while on light duty, Claimant worked in the SCDPS's District Office in Greenville as an assistant to his supervisor. His light duty position was a desk job, and it consisted of doing paperwork, reading inspections, watching videos, and filing tickets. This finding is supported by Claimant's testimony.

18. That Claimant underwent an FCE at Doshier Physical Therapy Associates on April 23, 2013. The FCE revealed he was capable of working a position in the Medium strength category with a maximum lifting capacity of 50 pounds and a maximum carrying capacity of 25 pounds. The FCE also showed he had limitations crawling on his hands and feet and with balancing activities that required crouching. (See Claimant's APA #8).

19. That Dr. Burnette performed an impairment evaluation on Claimant on July 2, 2013. Dr. Burnette opined Claimant had sustained 25% whole person impairment, which she converted to 32% impairment of lumbar spine, as a result of his July 16, 2012 work accident. Dr. Burnette's rating to the whole person took into consideration the ongoing problems Claimant has with his right leg. This finding is based on Dr. Burnette's report and deposition testimony.

20. That at her deposition on July 31, 2014, Dr. Burnette testified she assigned her impairment rating based on "Class 4" under the Motion Segment Lesion and Intervertebral Disc Herniation impairment of Table 17-4 (Lumbar Spine Regional Grid) of the 6th Edition of the AMA Guides. While Claimant sustained a *single level* disc herniation and while "Class 4" is used for patients with disc herniations at *multiple levels*. Dr. Burnette testified she assigned Claimant's impairment rating under Class 4 because a portion of his herniated disc had broken off, migrated down, and affected the S1-2 level. This finding is based on Dr. Burnette's deposition testimony. (*See also Defendants' Exhibit A*).

21. That even though she maintained her opinion regarding Claimant's rating at her deposition, Dr. Burnette confirmed that a "Class 2" impairment was for patients with a *single level* disc herniation with radiculopathy. She testified that if Class 2 (single level disc herniation) was used, Claimant's rating would be 14% whole person impairment. This finding is based on Dr. Burnette's deposition testimony. (*See also Defendants' Exhibit A*).

22. That Dr. Burnette's rating from July 2, 2013, two years prior to the hearing before the Single Commissioner, is the only impairment rating in the record. This finding is based on the evidence in the record as a whole.

23. That Dr. Loudermilk assigned Claimant permanent restrictions, based on his FCE, of no lifting greater than 50 pound occasionally, 25 pounds frequently, or 12 pounds constantly; no carrying greater than 25 pounds occasionally, 12 pounds frequently, or 5 pounds constantly; no pushing or pulling greater than 100 pounds; no crawling on his hands and feet; and no crouching on

a narrow beam for up to 30 seconds. This finding is based on the medical records of Dr. Loudermilk. (See Claimant's APA #1, p. 14).

24. That Claimant was unable to return to his regular job as a law enforcement officer due to the restrictions in his FCE. This finding is based on the medical records as a whole and the deposition testimony of Dr. Loudermilk.

25. That Claimant worked light duty with the SCDPS until June 30, 2013, when he resigned from his position and accepted state disability retirement. Claimant receives \$2,200 per month in state disability retirement benefits. This finding is based on Claimant's testimony.

26. That Claimant does not like taking medications. He does not like the way medications make him feel. Claimant is also afraid of becoming addicted to pain medications and will only take the prescribed medications on a limited basis. This finding is based on Claimant's testimony.

27. That Claimant was getting some relief and improvement from his right leg pain when taking the medications – specifically the combination of non-narcotic Gralise, Ultracet, and pain cream – as prescribed by Dr. Loudermilk. This finding is supported by Dr. Loudermilk's medical records and deposition testimony.

28. That on October 15, 2013, Robert E. Brabham, Ph.D performed a psychological and vocational evaluation on Claimant at the request of his attorney. Dr. Brabham diagnosed Claimant with pain disorder, depressive disorder, and generalized anxiety disorder. and he opined that Claimant was unable to engage in his past work as a police officer, or in any other alternative work setting, as a result of the medical conditions resulting from his July 2012 work injury. (See Claimant's APA #6).

29. That Claimant underwent a 2 day FCE at New Day Physical Therapy on November 20 & 21, 2014. The FCE results indicated Claimant's capacities decreased between day one and day two, but the therapist opined Claimant was capable of working an eight hour day at a sedentary work level position. (See Claimant's APA #7).

30. That James R. Myers, MA, QRP, CCM, CRC (Defendants' expert) performed a vocational evaluation on Claimant, and on May 8, 2015, Mr. Myers opined, with vocational certainty, that Claimant was employable and would have little difficulty qualifying for and transitioning into alternative employment options based on his assessment results, educational background, and previous vocational background. (See Defendants' APA #13). At his deposition on July 8, 2015, Mr. Myers testified that in his opinion, to a reasonable degree of vocational certainty, Claimant was capable of returning to the workforce in his current condition. (Depo. p. 57).

31. That James Myers also completed a labor market survey listing some of the available jobs he believed Claimant could perform. These positions included surveillance monitor, collection clerk, customer service representative, and fraud investigator. (See Defendants' APA #13). Mr. Myers testified the jobs listed on his labor market survey were just a sample of the available jobs. (Depo. p. 53).

32. That Claimant testified he called some of the employers listed on the labor market survey and that some of the jobs did not exist and that some of the employers were not hiring when he called.

33. That Claimant's current medications include Ultracet and a neuropathic pain cream, but he takes the Ultracet very sparingly. He had only taken 2 or 3 Ultracet in the week before the hearing. This finding is supported by Claimant's testimony and the medical records and deposition testimony of Dr. Loudermilk.

34. That because Claimant does not like taking oral medications, Dr. Loudermilk has recommended a spinal cord stimulator ("SCS"). This finding is supported by the medical records and deposition testimony of Dr. Loudermilk.

35. That Claimant is "an ideal candidate" for a SCS because of the nature of his pain of his pain/symptoms and because he is a reliable patient. This finding is based on the deposition testimony of Dr. Loudermilk.

36. That a SCS would likely improve his condition. This finding is based on the deposition testimony of Dr. Loudermilk.

37. That Claimant wanted to proceed with a SCS stimulator trial in April 2015. This finding is supported by the medical records and deposition testimony of Dr. Loudermilk. (*See Defendants' APA #12, p. 124 & Depo. p. 22*).

38. That while he admitted Dr. Loudermilk informed him that he was an ideal candidate for a SCS, Claimant testified at the hearing he does not want to proceed with the SCS. Claimant testified that he does not want anything implanted inside of him, that a friend of his had a bad experience with a SCS, and that he is scared to have the SCS because he is uncomfortable around doctors now and because he had an allergic reaction to an injection at Greenville Memorial Hospital shortly after his accident. This finding is based on Claimant's testimony.

39. That even though he testified he does not want to pursue a SCS, Claimant is scheduled for a psychological evaluation to obtain clearance for a SCS trial. Claimant testified he was debating on whether to cancel the scheduled psychological evaluation. This finding is based on Claimant's testimony.

40. That Claimant's current daily activities include taking care of and watching his three year-old daughter throughout the day. He also tries to keep up with chores around the house, including laundry and dish washing. This finding is based on Claimant's testimony.

41. That during the winters since being placed at MMI by Dr. Loudermilk, Claimant has used a chainsaw and a hydraulic wood splitter to cut firewood for his house. Claimant also helped his mother-in-law move out of her house within the last year and a half. Claimant testified that he drove the truck and moved a couple of bags of clothes. This finding is based on Claimant's testimony.

42. That Claimant has used computers on the job in the past. He is able to surf the Internet, and he has some knowledge about using Microsoft programs. Claimant admitted he could learn how to do more on a computer if he had the opportunity. This finding is based on Claimant's testimony.

43. That Defendants have provided Claimant with appropriate medical treatment. This finding is supported by the evidence in the record as a whole.

44. That Claimant reached maximum medical improvement on May 6, 2013 for the injuries resulting from his July 16, 2012 work accident. This finding is based on the parties' stipulation.

45. That based on the greater weight of the evidence in the record, including the deposition testimony of Dr. Loudermilk, Claimant has significant disability which could be lessened with a spinal cord stimulator.

46. That based on the greater weight of the evidence in the record, Claimant has failed to meet his burden of proof that he is permanently and totally disabled as a result of his July 16, 2012 work accident. This finding is supported by the evidence in the record as a whole, including but not limited to the medical records, Dr. Loudermilk's deposition testimony, the FCEs, and the vocational report and deposition testimony of James Myers.

47. That Claimant has sustained 45% permanent partial disability to his back as a result of the accidental injury on July 16, 2012. This finding is based on the evidence in the record as a whole, including but not limited to the medical records, Claimant's testimony, Dr. Loudermilk's deposition testimony, the FCEs, and the vocational report and deposition testimony of James Myers.

48. That Claimant is not entitled to a lump sum payment of benefits. Claimant's condition may improve in the future, especially if he pursues the recommended SCS; therefore, because there is a greater than usual chance of a change of condition for the better, we find it would be prejudicial to Defendants to grant Claimant's request for a lump sum.

49. That although Claimant cannot be forced to undergo the SCS, his decision to refuse the recommended SCS, which Defendants have agreed to authorize, should be considered when

determining disability. We find that it would be improper to award permanent and total disability benefits in the present case given Dr. Loudermilk's testimony that Claimant is "an ideal candidate" for a SCS and the fact that a SCS would likely improve his condition and lessen his disability.

50. That Defendants are responsible for, and Claimant is entitled to, ongoing pain management treatment per Dr. Loudermilk. This finding is based on the evidence in the record as a whole.

51. That with regard to the recommended SCS, we would close the medical on the SCS issue if Claimant does not want the SCS following psyche evaluation.

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 back by accident arising out of and in the course and scope of his employment on July 16, 2012.
3. Under § 42-9-30, Claimant has sustained 45% permanent partial disability to the back as a result of his July 16, 2012 work injury.
4. Under § 42-9-301, Defendants are not ordered to make payment in lump sum since ordering payment in lump sum would be prejudicial to Defendants as Claimant's condition may improve.
5. Under § 42-15-60, Defendants are responsible for all causally related medical treatment authorized by them, through July 14, 2015, the date of the hearing.
6. Under § 42-15-60, Defendants are also responsible for future, causally related pain management treatment, per Dr. Loudermilk, the authorized treating physician.

ORDER/AWARD

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

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner filed in the above-captioned matter on November 9, 2015, is hereby affirmed by the Panel, and the above Findings of Fact and Conclusions of Law shall constitute the Decision and Order of the Appellate Panel.

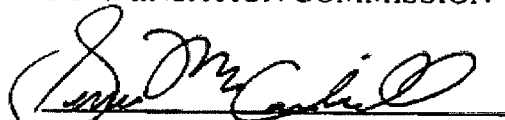
IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on July 16, 2012, Claimant has sustained 45% permanent partial disability to the back, for which he is entitled to 135 weeks of compensation, at the compensation rate of \$483.27 per week.

IT IS FURTHER ORDERED that Defendants are responsible for all authorized, causally related medical treatment through July 14, 2015, the date of the hearing. Defendants are also responsible for future pain management treatment, per Dr. Loudermilk, the authorized treating physician, as long as the need for such treatment is causally related to the July 16, 2012 work accident and tends to lessen the period of disability.

No hearing costs are assessed in this instance.


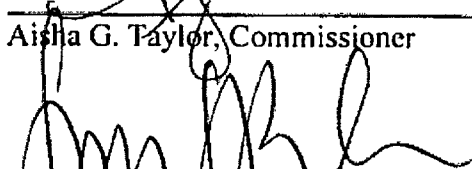
AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Gene McCaskill, Commissioner

FULL AFFIRMATION

CONCUR:


Aisha G. Taylor, Commissioner
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 May 20, 2016