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SC Court of Appeals

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1410083

TERRY MCCALL,
EMPLOYEE/CLAIMANT,

vs.

TROJAN LABOR/HIRE QUEST,
EMPLOYER

AND

ACE AMERICAN INSURANCE COMPANY,
CARRIER/DEFENDANTS

DATE OF HEARING: August 28, 2015

APPEARANCES: Terry McCall appeared at the hearing pro se; the Employer and Carrier were represented by Collins & Lacy, PC with Christian E. Boesl, Esquire appearing.

PURPOSE OF HEARING: To determine the issues set forth on all Forms 50 and 51 filed by the parties and on the Claimant's various motions.

COMMISSIONER: Gene McCaskill, Commissioner

FILED: February 24, 2016

APA SUBMISSIONS

The Claimant submitted no documents or medical records pursuant to the Administrative Procedures Act. During the course of his testimony, he presented medical records from the Employer/Carrier's brief and some additional medical reports not contained in the Carrier's submission which were marked as Exhibit 1 for the Claimant.

The Employer and Carrier submitted the following documents pursuant to the Administrative Procedures Act:

1	Greenville Memorial Hospital	12/27/2007-10/11/2014	1-168
2	Bon Secours St. Francis Hospital	02/10/2012-07/20/2014	169-212

The Carrier submitted the following exhibits:

A	ISO ClaimSearch Report	07/23/2014	213-225
1	SLED Report	07/23/2014	

STIPULATIONS

Prior to the commencement of the hearing, the Claimant was advised that he was appearing without the benefit of counsel. He indicated he wished to proceed with the hearing. All parties were provided timely and proper notice of the date, time, purpose and location of the hearing. The parties stipulated to an average weekly wage of \$558.75 yielding a compensation rate of \$372.52. There were no objections to jurisdiction, before the S.C. Workers' Compensation Commission, venue at Broad River Correctional Institute, or the admission into evidence of the Employer/Carrier's APA Submissions. The Commission's file was made a part of the record with the exception of self serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

The Commission's file reveals that Claimant was originally represented by The Joel Beiber Firm with attorney Paul Rathke appearing. Pursuant to Mr. Rathke's motion to be relieved, an Order was entered by Commissioner Beck on October 14, 2014 relieving Mr. Rathke as counsel. A Form 50 Hearing Request was filed by McCall on November 18, 2014 alleging injuries to his neck, right shoulder, back, right hand, wrist and teeth on July 4, 2014 when he tripped over a wire and fell. He sought additional medical treatment for his back, right shoulder, right wrist, right hand, neck and teeth. Finally, he sought temporary total disability benefits for an indeterminate time period.

On December 17, 2014, the Employer and Carrier timely filed a Form 51 denying the claim in its entirety. The Carrier specifically denied that McCall suffered an injury by accident arising out of the course and scope of his employment and noting that McCall has a very long history of treatment for his back, neck, right shoulder and right hand. The Carrier further asserted that McCall had a long history of medical treatment for all of the alleged body parts noted on the Form 50 and that Claimant was no greater disabled as a result of his complaints than when he entered the job site. The Carrier denied timely notice and denied McCall's entitlement to any benefits under the Act.

Pursuant to the Forms 50 and 51, a hearing was set before Commissioner Wilkerson in Greenville, South Carolina on April 1, 2015. As a result of that hearing, Commissioner Wilkerson issued an Order on April 8, 2015 returning the file to the general files to allow the Claimant additional time to retain counsel and allowing the Carrier to file a Form 19 seeking closure of the claim in the event the Claimant failed to pursue benefits within sixty (60) days. By

correspondence to the Commission dated April 22, 2015, the Claimant advised that he was requesting another hearing.

A notice was issued setting the case for a hearing before Commissioner James on July 8, 2015 on the Forms 50 and 51 in Greenville, South Carolina. On May 18, 2015, the hearing was postponed due to Claimant's transfer from Greenville, South Carolina to Broad River Correctional Institute. The hearing was reset for August 28, 2015 at Broad River Correctional Institute before Commissioner McCaskill. On August 18, 2015, McCall filed a Motion to Amend his Form 50 to assert a repetitive trauma claim. All parties were present and the record in the case was closed at the conclusion of the hearing.

The Claimant sought a determination of compensability for injuries to his neck, back, right shoulder, right wrist, right hand and for a hernia. He also asserts claims for depression, anxiety and insomnia. On February 7, 2015, it appears that McCall asserted claims for injuries to the right elbow as well as his left foot. McCall alleged entitlement to temporary total disability benefits from June 30, 2014 and continuing as well as additional medical treatment for all these body parts.

The Carrier denied that McCall was injured in the course and scope of his employment, that any injury occurred on the Hire Quest job site, that there was no medical evidence to support McCall's claims for repetitive trauma or a hernia. The Carrier further asserted that the record would establish that McCall made 32 visits to the Emergency Room in the eighteen months prior to June 28, 2014 seeking narcotic medications. Finally, the Carrier maintained that McCall has made thirteen (13) prior workers' compensation or insurance motor vehicle claims prior to this case and that the Claimant simply lacks credibility. (Transcript pp. 9-10)

At the hearing, the Carrier consented to the amendment of the Claimant's Form 50 to include a repetitive trauma injury as well as another accidental injury on June 30, 2014 to the same body parts which are the subject of the July 4, 2014 claim. McCall consented to proceeding on both claims (Transcript p. 12). After discussion with the hearing commissioner regarding the requirements set forth in S.C. Code Ann. Section 42-1-172 to establish a repetitive trauma claim, McCall withdrew his claim alleging repetitive trauma. (Transcript p. 16). In addition, he withdrew his claim for chipped teeth, acknowledging that the tooth "was already fractured at one point in time." (Transcript p. 13).

Following the hearing and the conclusion of the record in the case, McCall filed a series of Motions as follows:

September 10, 2015 "Motion To Amend Record; Motion for Rehearing on Motion to Leave Record Open, Until All Physician Records are Obtained and Presented As Evidence, Violation of Civil Rule 609(A)(2) – Due Process Equal Protection of Law; Motion to Suppress Non Convictions Used At Hearing"

September 13, 2015 "Motion to Compel Single Commissioner Subpoena Claimant's Medical File"

September 14, 2015 "Motion to Stay Hearing Decision to Allow Ample Time for Employee to Obtain Medical File by Which the Defense Counsel and Carrier Had Promised to Obtain but Failed."

These motions will be addressed in this Order.

Evidence of the Case

Testimony:

Terry McCall was the sole witness to testify at the hearing. Prior to his testimony, McCall advised that he was waiving his right to legal counsel and was going forward representing himself. (Transcript p. 5). He was also advised by the hearing commissioner that the hearing commissioner was not representing him in the hearing. (Transcript p. 14). McCall testified he was seeking temporary total disability benefits from June 30, 2014 and continuing as well as additional medical treatment for his shoulder, wrist, hand, back and neck.

McCall testified that when he started working for Trojan Labor, he was in a working management program called Turning Point. (Transcript pp. 17 and 18). He went to work with an electrical company named Recore Electrical out of Charlotte, North Carolina. They were working in a plant in Simpsonville, South Carolina running cable from the bottom floor, first floor and second floor.

On June 30, 2014, he was putting in cable trays when another worker yanked one of the cables tripping him and causing him to fall on his right side injuring his shoulder, back, wrist and hand. (Transcript pp. 18-19). McCall further testified that on June 30, 2014 he was also pulling cable and felt his wrist pop and his hand started burning with pain through his wrist and up his forearm. (Transcript p. 20). Later, he testified that he also pulled his "groin area" during the time he was pulling cable but pulled it more when he fell. At the time he fell, he testified he was "tied off" with a harness because he was working on the third floor and the harness "yanked" him back. (Transcript p. 21). He further testified that he injured his groin in the fall because he was straddling a cable tray when he fell. (Transcript pp. 20-21). McCall testified that he went to the

hospital following the fall and referred the hearing Commissioner to the Defendant's APAs at page 142.

Following the accident on June 30, his supervisor took him back to the trailer to sit down and rest. He wrapped his hand and told him to take the remainder of the day off. The supervisor asked him if he needed to go to the hospital and if he would be able to continue working. McCall responded that he hoped he could continue because he didn't want to lose his job. (Transcript p. 23). McCall testified that he continued to work but his supervisor didn't want him up in high places after his accident on June 30. (Transcript p. 24).

McCall stated that on July 4, 2014, he was working on the third floor, putting in cable trays. There was another company working in the area. McCall stated that one of the employees with another company yanked a wire unexpectedly. McCall fell over into a hole which wedged his right shoulder and neck. He testified that in that accident he injured his back, shoulder, wrist and hand. (Transcript p. 25). McCall maintains that he called Trojan Labor on July 14 or 15, 2014 and spoke with Curtis about his injuries. (Transcript p. 26). At this point, McCall had left Turning Point which was the entity through which he was receiving work on the job site. (Transcript p. 27).

McCall testified that he hasn't been able to use his shoulder or raise his shoulder above his head. He cannot dress himself and must have people in prison help him dress. (Transcript p. 28). McCall offered an affidavit from someone who allegedly saw him fall. The Carrier's objection to the introduction of the affidavit as hearsay which deprived the Carrier of the right of cross examination was sustained. (Transcript pp. 29-30).

On redirect examination, McCall testified that he has completed high school and two years of technical college where he completed his paralegal certificate. He maintained that he cannot work because of his injuries.

At the conclusion of the hearing, the record in the case was closed.

Medical Evidence

The Carrier submitted 212 pages of medical records pursuant to the Administrative Procedures Act dating from December 27, 2007 through October 21, 2014. The reports from Greenville Memorial are summarized as follows:

01/05/2012 – Back Injury – pain. Patient states mid to lower back pain and pain to left shoulder x2 days. Denies trauma or injury. Patient rates pain as 9, flare up of lower back pain started yesterday. (APA p. 3)

03/04/2012 – MVA – major. Pt involved in head on collision in which there was 1 foot of intrusion to drivers side. His steering wheel was against his chest & abdomen. He complains of chest wall pain that increases with movement and inspiration. He also complains of mouth pain. He denies loss of consciousness. Thinks his blood sugar may have been low and made him cross the centerline. Patient was driver. He was wearing a lap/shoulder belt. Dental fractures. Chest contusion. Hand skin tear. Multi-substance abuse. Transported by police. Blood drawn per police request. Patient arrested for possible DUI. (APA p. 6)

04/30/2012 – MRI right shoulder w/o contrast.

07/01/2012 – Low back pain radiating down right hip/upper leg since yesterday. Complains of aggravating his sciatica helping his brother lift some debris in his yard. Says the pain is in back of right hip & goes to knee. (APA p. 21)

07/05/2012 – Low back pain radiating down right buttock since yesterday. Patient left without being seen. (APA p. 25)

07/06/2012 – Pt states, “My sciatic nerve is flared up. I fell back in November and it flared back up 2 weeks ago. Wednesday morning it got worse.” Denies recent trauma. States may have “over done it” recently with work. States has been treated for sciatica in past. (APA p. 27)

07/22/2012 – Chronic lower back and sciatica pain. Also needs right shoulder examined for work related injury. Patient has been warned that if continues to come here and not following up with his PCP or workers’ comp we will not give him any narcotic for his chronic pain. (APA p. 31)

07/29/2012 – Nasal cellulitis w/possible abscess. Anxiety. History of MRSA in past. (APA p. 35)

05/22/2013 – Transfer from Cannon Memorial Hospital. Temp of 107 and seizure. Patient not able to stay in hospital overnight & left against medical advice. Diagnostic tests from Cannon resulting in THC – positive, cocaine – positive, amp – positive, MDMA – positive. (APA p. 27)

06/24/2013 – Right lower back pain radiating down right leg. Hx of sciatica. Fall from ladder less than 3 ft onto hard surface 3 days ago. (APA p. 42)

06/27/2013 – Right shoulder pain from injury last week. Has not been able to follow up with ortho yet. Seen 3 days ago. Rx for Lortab & Prednisone. Pain worse & unable to tolerate Lortab. Also c/o increased right shoulder pain due to aggravation of chronic problem. (APA p. 47)

07/02/2013 – Back pain. Left without being seen. (APA p. 50)

07/13/2013 – C/o “sciatica” pain in right leg & soreness in right shoulder. Started last night. Twisted yesterday & woke up with right sided back pain radiating down leg. Hx of sciatica & does not follow up w/family or back doctor for insurance reasons. Denies injury. (APA p. 51)

07/17/2013 – Brought in by EMS. States he hurts so bad he doesn’t care whether he lives or dies, reports he didn’t follow up w/mental health, but wants help for his depression. Suicidal ideation. Recent admission to MIP. Pt is malingering. UDS positive for illicit street drugs. States narcotic script has been stolen. Continues to claim that he is suicidal. Patient is not suicidal or homicidal. Patient told nurse & tech if we discharge him he’s gonna kill himself. (APA p. 54)

08/05/2013 – Chronic back pain. Long-standing back pain. Right sided & radiating down right leg. No recent trauma. MRI scheduled for tomorrow & is following up with Southeastern Spine. (APA p. 67)

08/06/2013 – MRI lumbar spine w/o contrast. Maturation changes in the disc and facets from L3 to S1 with moderate foraminal stenosis bilaterally at L4-5 and L5-S1. No significant central canal stenosis. Minimal anterolisthesis at L3-4. (APA p. 72)

08/24/2013 – Chronic lower back pain & right sciatica. Has appt w/pain management next week for same. Has had 1st appt w/Dr. Mullinax the first week of September. He is out of meds. (APA p. 74)

09/11/2013 – Right back pain radiating down right leg. Onset yesterday. Pt states it feels like his sciatica. Pt also has small abscess to left wrist. Pt has been painting at home & going up & down a ladder. (APA p. 77)

12/14/2013 – Presents to ER w/lower back pain. States, “it is sciatic nerve.” Pt injured back in 2007 & it is worse today. Has had multiple prior visits to ED for back pain. No new injuries. “It is only helped w/the Norco.” Went to discharge patient & he became very belligerent & talking loudly demanding a shot for pain and a higher dosage of Lortab. Pt became even more agitated

cursing at Dr. McManus, stating he, "was going to report you for not doing your job, you can't treat me"; as patient continued to verbalize he became even more aggressive, clinching fists, face reddened, eyes wide; Dr. McManus attempted to explain to patient that he was not going to change his script. (APA p. 80)

12/20/2013 – Pt states he was walking across street & car pulled out in front of him & hit him. C/o right wrist pain, bilateral shoulder pain & lower back pain. EMS reports there were multiple witnesses that all stated that the car did not hit patient. No evidence of acute injury. Pt quite ambulatory & abusive to staff. Demanding narcotics. This is his 19th visit to ER w/many pain related issues & reports of similar behavior. Pt informed narcotics will not be given. (APA p. 83)

01/15/2014 – Presents w/suicidal ideation. Complains of having family problems. Has had thoughts of suicide for past 2 days & thoughts of harming others. Patient denies having plan. Pt is unemployed & unable to work because of shoulder, wrist & back problems. Sees Dr. Sean Bryan for pain management. Last Rx 1/8/14 for Norco. Followed by New Horizons & received Neurontin, Protonix & Tramadol. Pt is also homeless. (APA p. 90)

02/14/2014 – Lower right side back pain that is chronic. Has been hurting worse over last couple days. Pain radiated into right leg. Pt slipped & fell several days ago & now has exacerbated pain to right low back. (APA p. 117)

03/06/2014 – Pt states he's having suicidal thoughts. States he wants to jump off a bridge. Has had suicidal thoughts in the past as well. Out of meds. Went to Greenville Mental Health for intake appt. Pt is conditionally suicidal, needing pain meds & other meds til he's seen at New Horizons April 3rd. Pt on Celexa which will be changed to Zoloft, Lortab, Lidocaine patch, Neurontin, Protonix, Trazadone. No narcotics written in ER. (APA p. 120)

06/28/2014 – Ingestion – Overdose. Pt went down @ Walmart. Bystanders started CPR & witnessed seizure. Upon EMS arrival, pt stable but combative. Verbally aggressive towards staff upon discharge stating, "how can you kick me out, I'm drunk as a cooter." Pretending to be unsteady even though he was standing @ door with a steady gait. Yelling upon discharge stated that he didn't know what was wrong. (APA p. 133)

07/16/2014 – Tripped & fell & has low back pain. Right shoulder pain & low abdominal pain. "I think I gave myself a hernia." Fell while running/walking on hard surface, landing on right side. (APA p. 142)

07/26/2014 – Back/sciatica pain since June 30 due to work accident. States he hurt right shoulder & low back in fall @ work on June 30th. Was evaluated here 2 weeks later & x-rays of the shoulder were negative. Told the doctors that he hurt himself 4 days ago. "Today he is back because the workers' comp coordinator told him to go to the ER if he was still in pain. She would have a doctor for him to follow up with next week. (APA p. 148)

08/16/2014 – Pt reports ongoing back pain from old job injury. Lower back radiates to right leg. Chronic back pain. Missed Steadman Hawkins appt because mother got ill. New appt on 8/26. (APA p. 154)

08/20/2014 – Pt arrives c/o low back pain, sciatica. Pain & right shoulder pain. Had work place accident on 6/30/14 & has been having pain issues since. Has been seen here multiple times for these complaints. He was here 4 days ago for same complaint. No new issues at this time. Pt has ortho f/u in 6 days. Pt very disappointed not to receive any narcotics today. I told patient that ER was not appropriate place to get chronic pain management & he would have to follow up with PCP and ortho. Patient became threatening & aggressive. I strongly urge that no further narcotics be given to this patient in future w/o obvious painful injury, especially given prior history. (APA p. 158)

08/23/2014 – Pt c/o left foot pain that has been going on for a while. C/o right sciatica & bunions on left foot. Hurts to walk. Got hurt on the job in June & sustained back injury; c/o low back pain radiating to right leg & now left foot pain due to improper walking due to right leg pain. (APA p. 161)

10/11/2014 – Pt stating, "I am having some sciatica pain in right lower back with pain into right leg." Patient walked into triage without any difficulty. States he injured his back on the job in July & has had a flare up of back pain over past few days; states pain located to right lower back that radiates down leg. States he has been moving furniture. Pt states he injured his back in June 2014 @ work. Has seen Dr. Creek at Steadman Hawkins but did not follow up as suggested. States, "I missed my second appointment because I didn't have a ride & I have not been back and I finished all my medications." Patient requesting pain medication, but refused Ibuprofen & Toradol. States, "I don't want a shot & I have Ibuprofen at home." (APA p. 164)

In addition, medical reports from Bon Secours St. Francis Hospital were submitted.

These records are summarized as follows:

02/10/2012 – Chronic low back pain & right hand pain. C/o right lower back pain that radiates down leg. Also reports right shoulder and hand pain. Pains began in November after falling on a roof, but increased tonight. This is a recurrent problem. Current episode started more than 1 week ago. Right hand exhibits tenderness. Normal ROM. (APA p. 169)

06/15/2012 – C/o lower right back pain radiating into right leg s/p old injury. States he was in pain management but is no longer. Has taken Percocet 10 in past but has not had any for 3 months. Taken Motrin and Tylenol without relief. States he was injured at work when he fell on a roof because he slipped on ice. States he has herniated discs at L3, L4 and L5 as well as right hip, right hand and right shoulder pain. Has appt next month with an orthopedist. Rx for Cyclobenzaprine 5 mg, Oxycodone-Acetaminophen 10-325 mg, & Prednisone 10 mg. (APA p. 179)

07/14/2012 – Pt states he has hx of low back pain due to original injury in November. Was outside working yesterday in the yard & had onset of low back pain & sciatic pain during night. Rx for Cyclobenzaprine 10 mg, Oxycodone-Acetaminophen 10-325 mg. (APA p. 184)

07/27/2012 – C/o atraumatic acute chronic low back pain x 1-2 days. Pt reports work related injury associated with lifting. Rx Hydrocodone-Acetaminophen 10-500 mg, Prednisone 20 mg, Promethazine 25 mg. (APA p. 190)

10/29/2012 – C/o lower back pain radiating down right leg onset last pm. Also c/o left shoulder pain. States he was given Percocet by PCP in Georgia & moved here & is out. (APA p. 194)

05/23/2013 – Presents with right hand/wrist pain. Started more than 2 days ago. No hx of trauma (APA p. 199).

04/04/2014 – C/o lower back pain radiating down right leg. Onset 2008 after mcc. States out of pain meds x couple months, but on DHEC record it shows he filled #120 Norco 7.5 mg on 3/5/14 & has every month since last year. When I bring that up to him, he states he lost them. He has also filled numerous intermittent small narcotic meds as well from different EDs. States he normally takes Norco for pain prescribed by PCP. Attempted Tylenol w/o relief. Was told we could not give him narcotics tonight due to fact he has gotten them so many different places. (APA p. 202)

07/20/2014 – Pt states right shoulder injury approx. 1 week ago while @ work. Has been seen at GHS & referred to specialist but did not follow up as instructed. Pt c/o right shoulder pain with pain radiating down into back. Pt states he was prescribed Norco at GHS & is out. I discussed w/patient that I could not provide him with another script for Norco but could provide him w/different pain meds & advised him that he needed to be compliant with f/u for further evaluation & treatment for his right shoulder. (APA p. 208)

Based on the record of the case, the following are my

FINDINGS OF FACT

1. The South Carolina Workers' Compensation Commission has exclusive jurisdiction over this matter. The parties consented to venue in Richland County, South Carolina.
2. All parties received timely and proper notice of the date, place, time and purpose of the hearing.
3. On his Form 50, the Claimant alleges an injury by accident on July 4, 2014 arising out of and within the course and scope of his employment. During his testimony, the Claimant testified

to another accident on June 30, 2014 resulting in injuries to the identical body parts as the July 4, 2014 claim.

4. The Claimant appeared pro se at this hearing. He was advised of and waived his right to legal counsel.

5. Claimant is alleging injuries to his neck, right shoulder, back, right hand and wrist and a hernia.

6. While Claimant initially pled a chipped tooth, he withdrew this claim admitting a prior fracture to the tooth.

7. Additionally, Claimant moved to amend his Form 50 to allege a repetitive trauma injury to which the Carrier consented. There was conversation at the time of the hearing as to the repetitive trauma claim. However, Claimant does not assert a repetitive trauma as part of this claim.

8. The Claimant is seeking medical care and treatment for his neck, right shoulder, back and right hand and wrist.

9. McCall additionally asserted that he had suffered a hernia but this was not pled on his hearing request.

10. He seeks temporary total disability benefits from June 30, 2014 to the present and continuing.

11. The Defendants have asserted a general denial and that the Claimant lacks credibility.

12. Defendants also assert that the Claimant did not report his injury to the Employer until the job had ended.

13. There were no other witnesses to testify at the hearing other than the Claimant. Much of the Claimant's allegations as to the work injury rest solely on his testimony and subjective complaints.

14. As a denied claim, the burden of proof rests solely with the Claimant. The standard is a preponderance of the evidence – more likely than not.

15. The medical records in this case are voluminous as to the extensive medical issues and complaints by the Claimant prior to the alleged accidents in this case.

16. In my reading, the only medical record I found that bolsters the Claimant's assertion that his current complaints emanate from a work related accident on June 30, 2014 (even though the date pled is July 4, 2014) is the medical record found at APA page 142 which is dated July 26, 2014. That record reads in part (pt. here for back/sciatica pain since June 30 due to a work accident." That record goes on to read, "he hurt his right shoulder and low back in a fall at work on June 30." He was evaluated here two weeks later and xrays of the shoulder was negative.(He told the doctor that he hurt himself 4 days prior to arrival). "Today he is back because his Workers' Comp coordinator told him to go to the ER if he was still in pain and she would have doctor for him to follow up next week."

17. The medical record on July 16, 2014 from this same provider (GMMC Primary) reads in part, "tripped and fell and has low back pain, right shoulder pain and low abd pain I think I gave myself a hernia."

18. There is nothing in the July 16, 2014 note which mentions this being a workers' compensation injury.

19. A review of the APAs shows that Claimant is a frequent visitor to the Emergency Room and has been prescribed pain medications on multiple occasions.

20. When the evidence is viewed as a whole, I cannot conclude that the Claimant has met his burden as to a work related accident on either June 30, 2014 or July 4, 2014. A review of the evidence simply does not allow such a determination. The only references in the record are based on the self serving declarations of the Claimant. As to the medical records themselves, the record of July 26, 2014 is again based on the statements of the Claimant.

21. Given the Claimant's lengthy history of bitter complaints of pain in his low back, neck, right shoulder, right wrist and right hand, and his thirteen prior personal injury claims, the self serving declarations of the Claimant in the medical reports are not sufficient to make a finding of compensability.

22. McCall acknowledged pre-existing and prior injuries to virtually every body part he alleged on his Form 50. However, he maintained that these injuries were worse following his falls on June 30, 2014 and July 4, 2014 because he was able to work prior to the falls but was unable to work after the falls. (Transcript p. 31). The Commission's file, which is part of the record in this case contains Claimant's Work History and Wages which establish that following June 30, 2014, McCall worked ten (10) hours on July 1, 2, 3, 4, 7, 8, 9, 10, 11, and 14, and six (6) hours on July 12, 2014. This is inconsistent with his testimony at the hearing. Moreover, McCall testified that he stopped working with Hire Quest when he left Turning Point which is the entity through which he received his employment with Hire Quest. (Transcript p. 27).

23. The Claimant has not met his burden and is not entitled to any benefits under the Act as to the alleged work related accidents he testified to at the hearing.

24. The Claimant has also filed a number of motions with the Commission to reconvene the hearing and reopen the record in this case. The burden as to evidence bolstering the Claimant's case rests with the Claimant. I am not persuaded that any evidence the Claimant sought to admit

after the hearing, if it were produced, would have qualified as after discovered evidence. As such, his motion is denied.

25. Moreover, the Claimant acknowledged at the hearing he was provided with the medical records that the Employer and Carrier intended to submit at the hearing, had reviewed the records and actually used some of the records at the hearing in support of his claim. (Transcript p. 48). Claimant's assertion that he was unaware of the absence of particular medical reports from the record is refuted by his own testimony at the hearing that he was provided with the APA Submissions well in advance of the hearing. (Transcript pp. 48-49).

26. McCall's other motions assert that his SLED criminal history report was admitted in violation of Rule 609(a)(2) of the SC Rules of Evidence. Rule 609(a)(2) allows the admission of evidence "that any witness has been convicted of a crime . . . if it involved dishonesty or false statement, regardless of the punishment." Claimant's SLED report establishes convictions for conspiracy and attempt to distribute crack cocaine; two convictions for obtaining controlled substances by fraud, and giving false information to a police officer. (Defendant's Exhibit 1).

27. Defendant's Exhibit 1 was admitted at the hearing solely for the purposes of impeaching McCall's testimony that he had not been convicted of being dishonest with police officers and had not been convicted of conspiracy on narcotics charges (Transcript p. 37-38). Claimant's Motion for a Rehearing on this basis is denied.

28. This case is dismissed with prejudice.

CONCLUSIONS OF LAW

1. The SC Workers' Compensation Commission has exclusive jurisdiction over this matter pursuant to SC Code Ann. Section 42-1-540.

2. Venue in Richland County, South Carolina was consented to by the parties.
3. The Claimant bears the burden of establishing his entitlement to benefits under the Act and an award "must not be based on surmise, conjecture or speculation." Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (1998).
4. Rule 609 (a)(2) allows the admission into evidence "that any witness has been convicted of a crime . . . if it involved dishonesty or false statement, regardless of the punishment."
5. Regulation 67-707 grants a hearing commissioner discretion to admit additional and newly discovered evidence following the conclusion of a hearing. To prevail on this motion, Claimant must establish "the evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its discovery." In addition, the moving party must establish that admission of the evidence "would likely have produced a different result." Regulation 67-707 Claimant has failed to establish that the evidence was not known to him at the time of the hearing or that its absence from the record was unknown to him. Moreover, it is unlikely that any additional medical reports sought to be admitted by the Claimant would have produced a different decision in this case.
6. Given the inconsistencies in the Claimant's testimony, the abundance of medical records establishing his historical, bitter and consistent complaints of pain to each body part allegedly injured in this case, Claimant has failed to establish that he suffered an injury by accident arising out of the course and scope of his employment and his claim is denied with prejudice.

ORDER

NOW, THEREFORE, IT IS ORDERED that Claimant's request for benefits under the Act is hereby denied with prejudice.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.

AND IT IS SO ORDERED!



Commissioner Gene McCaskill

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).
February 24, 2016

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill