

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 1410532

JOSEPH MANGUM, EMPLOYEE,
CLAIMANT/RESPONDENT,

-V-

BUG BUSTERS, INC., EMPLOYER,

AND

ACCIDENT INSURANCE COMPANY, CARRIER,
DEFENDANTS/APPELLANTS

RECEIVED

OCT 14 2016

SC Court of Appeals

Appellate Panel Review held in Columbia,
South Carolina on July 18, 2016
per notices timely and properly served
on all parties of interest.

Appellate Panel Decision and Order Filed
September 13th, 2016.

APPEARANCES:

Claimant/Respondent represented by
Reese M. Stidham IV, Esquire, of Mount Pleasant
South Carolina.

Defendants/Appellants represented by
Timothy B. Killen, Esquire, of Columbia, South Carolina

STATEMENT OF CASE

The parties were heard by the Hearing Commissioner on October 1st, 2015, in Greenville, South Carolina. Claimant/Respondent contended that he suffers from debilitating headaches related to his work injury. Claimant/Respondent contended that he is entitled to continued medical treatment with authorized treating physician Dr. Marshall White. Claimant/Respondent contends that he is entitled to all causally related past and future medical care and treatment and that said future medical care and treatment should be paid for his lifetime pursuant to §42-15-60(c) and/or Dodge vs. Bruccoli, Clark, Layman, Inc., 334 SC 574, 514 SE2d 593 (Ct. App. 1999). Claimant/Respondent contends that he is entitled to reimbursement for traveling to and from causally related medical treatment and that he is entitled to reimbursement for any and all out of pocket expenses.

Defendants/Appellants have denied all injuries related to Claimant/Respondent's headaches. Defendants/Appellants denied Claimant/Respondent is entitled to additional medical care.

On April 14, 2016, Commissioner Beck issued the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

Based upon the greater weight of the evidence, including the testimony of the witnesses, the medical reports, restrictions and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission file relative to this claim,

and the credibility of all the evidence and testimony submitted, this Commissioner therefore makes the following findings of fact:

1. That Claimant, Joseph Mangum, and employer, Bug Busters, Inc. were subject to the South Carolina Workers' Compensation Act, at the time of the accidental injury.
2. That the relationship of employer/employee existed between Claimant, Joseph Mangum, and employer, Bug Busters, Inc., at the time of Claimant's injury.
3. That Claimant timely notified employer of the accidental injury within the time period prescribed by statute.
4. That Claimant sustained injuries to his left leg, neck and head, as a result of his July 7, 2014, accident at work.
5. Based upon the reports of Dr. Bettle and Dr. White, Claimant has satisfied his burden of proof that he sustained causally related compensable headaches.
6. That Claimant has not reached maximum medical improvement and a determination of permanency is premature at this time. I base this finding of fact on the greater weight of the evidence and the medical opinions of his treater, Dr. Bettle and the IME, Dr. Marshall White.
7. That I find the Claimant is out of work and entitled to temporary total disability benefits from 7/23/14 (last day worked) to the present and continuing.
8. That said TTD benefits owed from 7/23/14 to the date of this Order will be paid in a lump sum, with weekly TTD benefits from the date of this Order and thereafter made to the Claimant without interruption until he returns to work.

9. That I find that as a result of Claimant's July 7, 2014 accident at work, Claimant is entitled to, and defendants shall pay for, all past causally related medical care and treatment. Medical payment shall be made by defendants to the medical providers, or to the Claimant or his insurance carrier, if those expenses have been paid by them.
10. That Claimant shall be entitled to, and defendants shall pay for, Claimant's future causally related medical care and treatment as recommended by Dr. Marshall White, his new authorized treating physician. In the event that Dr. White becomes unable or unwilling to continue Claimant's treatment, defendants shall authorize Claimant's medical care and treatment with a new authorized treating physician, that may in.
11. That Claimant is entitled to and defendants shall provide Claimant reimbursement for traveling to and from causally related medical appointments and for any and all out of pocket expenses related to his accident at work.
12. That Claimant is entitled to and defendants shall provide Claimant with reimbursement for all out of pocket expenses for causally related care with Dr. Bettel and Dr. Kramer.
13. That Claimant's TTD award is to be paid in a lump sum.
14. That Defendants are not subject to any fines, fees or penalties.

CONCLUSIONS OF LAW

1. That this case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That S.C. Code Ann. 42-1-40 is applicable in defining, "average weekly wages."
3. That S.C. Code Ann. 42-1-100 is applicable in defining compensation.

4. That S.C. Code Ann. 42-1-120 is applicable in defining disability.
5. That S.C. Code Ann. 42-1-130 is applicable in defining employee.
6. That S.C. Code Ann. 42-1-140 is applicable in defining employer.
7. That S.C. Code Ann. 42-1-150 is applicable in defining employment.
8. That S.C. Code Ann. 42-1-160 is applicable in defining injury and personal injury.
9. That S.C. Code Ann. 42-9-10 is applicable in defining, "the amount of compensation for total disability."
10. That S.C. Code Ann. 42-15-60 is applicable in determining, "medical, surgical, hospital and other treatment."
11. That S.C. Code Ann. 42-70-40 is applicable in, "governing the conduct of hearing and rendering of awards."

ORDER

NOW, THEREFORE, IT IS ORDERED:

1. That I find the Claimant has sustained his burden of proving causally related compensable headaches.
2. That I find that as a result of Claimant's injuries from this work-related accident, that Claimant is entitled to evaluation and causally related treatment as recommended by authorized treating physician Dr. Marshall White.
3. That I find that Claimant is not at maximum medical improvement and that a determination of permanency is premature at this time.
4. That claimant is out of work and entitled to TTD from 7/23/14 to the present and continuing.

5. That the owed TTD benefits from 7/23/14 through the date of this order will be paid in a lump sum.
6. That the Claimant will be paid TTD benefits from the date of this Order going forward on a weekly payment basis without interruption, until such time that the Claimant is released to work.
7. That the Claimant is entitled to reimbursement for any and out of pocket expenses for casually related care with Dr. Bettle and Dr. Kramer.
8. That Defendants will pay for all past and future casually related medical care and treatment. Medical payment shall be made by defendants to the medical providers, or to the Claimant or his insurance carrier, if those expenses have been paid by them.
9. That Claimant is entitled to and defendants shall provide Claimant reimbursement for traveling to and from causally related medical appointments and for any and all out of pocket expenses related to his accident at work accident.

AND IT IS SO ORDERED.

(Order and Award, April 14, 2016)

Within the statutory period, counsel for the Defendants/Appellants filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on July 18, 2016.

By appeal, Defendants/Appellants respectfully submit the following:

1. The Hearing Commissioner erred in finding as a fact and ordering that the Claimant suffered causally related injuries to his neck where no such claim was made by Claimant in his pleadings or at the hearing.
2. The Hearing Commissioner erred in finding as a fact and ordering that Claimant is entitled to temporary total disability benefits from June 23, 2014, to the present and continuing where Claimant was not written out of work and where he testified that he was able to earn wages.
3. The Hearing Commissioner erred in finding as a fact that the Claimant suffered causally related headaches.

In an Appellate Review, the Panel shall, pursuant to S.C. Code Ann. §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 Hearing Commissioner.

After careful review in the instant case, the Panel affirms with amendments the Hearing Commissioner's Order of April 14, 2016, and issues the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

Based upon the greater weight of the evidence, including the testimony of the witnesses, the medical reports, restrictions and other documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act, the Commission file relative to this claim, and the credibility of all the evidence and testimony submitted, the Appellate Panel makes the following findings of fact:

1. That Claimant/Respondent, Joseph Mangum, and employer, Bug Busters, Inc. were subject to the South Carolina Workers' Compensation Act, at the time of the accidental injury.
2. That the relationship of employer/employee existed between Claimant/Respondent, Joseph Mangum, and employer/Appellant, Bug Busters, Inc., at the time of Claimant's injury.
3. That Claimant/Respondent timely notified employer of the accidental injury within the time period prescribed by statute.
4. That Claimant/Respondent sustained injuries to his left leg and head, as a result of his July 7, 2014, accident at work.
5. That Claimant/Respondent's neck should not have been addressed in the April 14, 2016 Order as it was included as a scrivener's error.
6. Based upon the reports of Dr. Bettel and Dr. White, Claimant/Respondent has satisfied his burden of proof that he sustained causally related compensable headaches.
7. That Claimant/Respondent has not reached maximum medical improvement and a determination of permanency is premature at this time. The Appellate Panel bases this finding of fact on the greater weight of the evidence and the medical opinions of his treater, Dr. Bettel and the IME, Dr. Marshall White.
8. That the Appellate Panel finds the Claimant/Respondent is out of work and entitled to temporary total disability benefits from 7/23/14 (last day worked) to the present and continuing.

9. That said TTD benefits owed from 7/23/14 to the date of this Order will be paid in a lump sum, with weekly TTD benefits from the date of this Order and thereafter made to the Claimant/Respondent without interruption until he returns to work.
10. That I find that as a result of Claimant/Respondent's July 7, 2014 accident at work, Claimant/Respondent is entitled to, and Defendant/Appellants shall pay for, all past casually related medical care and treatment. Medical payment shall be made by Defendants/Appellants to the medical providers, or to the Claimant/Respondent or his insurance carrier, if those expenses have been paid by them.
11. That Claimant/Respondent shall be entitled to, and Defendants/Appellants shall pay for, Claimant/Respondent's future causally related medical care and treatment as recommended by Dr. Marshall White, his new authorized treating physician. In the event that Dr. White becomes unable or unwilling to continue Claimant/Respondent's treatment, Defendants/Appellants shall authorize Claimant/Respondent's medical care and treatment with a new authorized treating physician.
12. That Claimant/Respondent is entitled to and Defendants/Appellants shall provide Claimant/Respondent reimbursement for traveling to and from causally related medical appointments and for any and all out of pocket expenses related to his accident at work.
13. That Claimant/Respondent is entitled to and Defendants/Appellants shall provide Claimant/Respondent with reimbursement for all out of pocket expenses for casually related care with Dr. Bettle and Dr. Kramer.
14. That Claimant/Respondent's TTD award is to be paid in a lump sum.
15. That Defendants/Appellants are not subject to any fines, fees or penalties.

CONCLUSIONS OF LAW

1. That this case is governed by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That S.C. Code Ann. 42-1-40 is applicable in defining, "average weekly wages."
3. That S.C. Code Ann. 42-1-100 is applicable in defining compensation.
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8. That S.C. Code Ann. 42-1-160 is applicable in defining injury and personal injury.
9. That S.C. Code Ann. 42-9-10 is applicable in defining, "the amount of compensation for total disability."
10. That S.C. Code Ann. 42-15-60 is applicable in determining, "medical, surgical, hospital and other treatment."
11. That S.C. Code Ann. 42-70-40 is applicable in, "governing the conduct of hearing and rendering of awards."

ORDER

NOW, THEREFORE, IT IS ORDERED:

1. That the Claimant/Respondent has sustained his burden of proving causally related compensable headaches.
2. That as a result of Claimant/Respondent's injuries from his work-related accident, that Claimant/Respondent is entitled to evaluation and causally related treatment as recommended by authorized treating physician Dr. Marshall White.
3. That Claimant/Respondent is not at maximum medical improvement and that a determination of permanency is premature at this time.
4. That claimant is out of work and entitled to TTD from 7/23/14 to the present and continuing.
5. That the owed TTD benefits from 7/23/14 through the date of this order will be paid in a lump sum.
6. That the Claimant/Respondent will be paid TTD benefits from the date of this Order going forward on a weekly payment basis without interruption, until such time that the Claimant is released to work.
7. That the Claimant/Respondent is entitled to reimbursement for any and out of pocket expenses for causally related care with Dr. Bettle and Dr. Kramer.
8. That Defendants/Appellants will pay for all past and future causally related medical care and treatment. Medical payment shall be made by Defendants/Appellants to the medical providers, or to the Claimant/Respondent or his insurance carrier, if those expenses have been paid by them.
9. That Claimant/Respondent is entitled to and Defendants/Appellants shall provide Claimant/Respondent reimbursement for traveling to and from causally related medical

appointments and for any and all out of pocket expenses related to his accident at work accident.

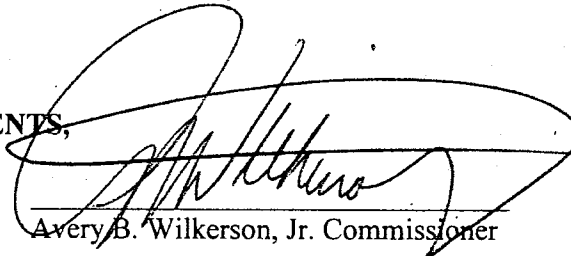
10. The Order and Award of the Hearing Commissioner is hereby affirmed with amendments by the Panel as stated above in this Order, and the same shall constitute the Decision and Order of the Appellate Panel.

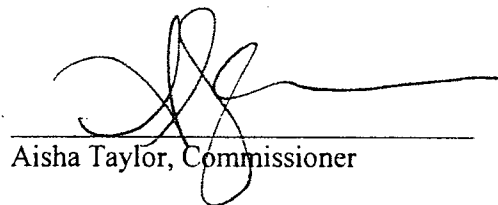
AND IT IS SO ORDERED.

S.C. WORKERS COMPENSATION COMMISSION


Gene McCaskill, Commissioner

**AFFIRMED WITH AMENDMENTS,
CONCUR:**


Avery B. Wilkerson, Jr. Commissioner


Aisha Taylor, 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 September 13, 2016