

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL

W.C.C. FILE NO.: 1305020

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SC Court of Appeals

WALLACE HEMINGWAY,)
)
Employee/Claimant,)
)
vs.)
)
ACE LOGGERS,)
)
Employer,)
)
and)
)
PALMETTO TIMBER S.I. FUND C/O)
WALKER, HUNTER & ASSOCIATES,)
INC.)
Carrier,)
)
Defendants.)
_____)

DECISION AND ORDER

PROCEDURAL HISTORY

The parties were heard by the Single Commissioner on January 28, 2015 in Florence, South Carolina pursuant to the Forms 50 and 51 to determine whether the Claimant was injured in the course and scope of his employment and therefore entitled to benefits under the Act. The Defendants denied the claim. By Decision and Order dated November 30, 2015, the Single Commissioner ordered that 1) the Claimant is entitled to back owed temporary total disability benefits which have accrued since the Defendant Employer last paid the Claimant, and that the Employer and its carrier must provide evidence as to the date of the last payment made by the Employer; 2) the Claimant is entitled to be put on a running award until he is found to be at maximum medical improvement; 3) the Claimant is entitled to be provided ongoing medical treatment for injuries to the spine and both legs, and, specifically, the Defendants must provide treatment from a neurosurgical specialist of the Defendants' choosing and all

prior medical records be provided by the Defendants to the selected specialist; and 4) the Claimant be reimbursed for all causally-related out-of-pocket expenses.

The Defendants filed a Form 30 Application for Review on December 11, 2015. The parties presented oral arguments before the Appellate Panel on February 23, 2016. Following oral arguments, the Appellate Panel fully affirmed the Single Commissioner's Decision and Order in its entirety.

EVIDENCE SUMMARY

The following items were timely and properly submitted into evidence by the Claimant pursuant to the Administrative Procedures Act:

EXHIBIT A: South Carolina Workers' Compensation Commission R08 EDI Created/Updated First Report dated May 17, 2013, filed by the carrier, Palmetto Timber Fund (pg. 1).

1. Florence Neurosurgery & Spine, Dr. Andrew H. Rhea, March 18, 2013-May 22, 2014 (pgs.2-13).
2. Carolina Hospital Systems, February 6, 2013-February 14, 2013 (pgs. 14-228).
3. Williamsburg County EMS, February 3, 2013 (pgs. 229-230).
4. Williamsburg Regional Hospital, February 3, 2013 (pgs. 231-243).
5. McLeod Regional Medical Center, January 31, 2013 (pgs. 244-258).
6. David C. Rodriguez, M.D., January 17, 2013-May 22, 2013 (pgs. 259-263).
7. Clarendon Health Systems, January 11, 2013 (pgs. 264-305).

The Defendants submitted nothing at the time of the hearing and relied upon the Claimant's APA submissions.

At the time of the hearing on January 28, 2015, the Claimant was sixty-seven years old. He testified he left school in the sixth grade to go to work farming with his father, who had no other help. The Claimant testified he can't read, write, or do even simple math. He testified he could write "a little" but then admitted the only thing he could write was his name. He testified further he has never used a calculator and never been on a computer (Hr. Tr. pgs. 9-11).

The Claimant testified he farmed with his father for many years and eventually went to work clearing woods and fields which led to a career operating machinery in the logging industry, working for just two different employers in the thirty years prior to the accident, the last eleven years of which were spent with the Employer in this action, ACE Loggers (Hr. Tr. p. 12).

The Claimant testified he was injured on January 11, 2013 while operating the cutter machine in a row of trees (Hr. Tr. p. 14). Testimony revealed the cutter is a large tractor with oversized tires and on the front big blades for cutting down trees (Hr. Tr. p. 13), and with wheel wells large enough for a man to sit in (Hr. Tr. p. 47). The Claimant testified further the operator's cab was ten to twelve feet off the ground with steps or rungs to use for the climb up (Hr. tr. p. 13). He explained he was looking back going in reverse when he hit a tree on his blindside so hard his feet came off the floor and his head hit the frame of the cab. Stunned, he went to get out of the machine to check it and, having lost all strength and feeling in his legs, fell to the ground as he tried to lower himself down (Hr. Tr. pgs. 14-15).

The Claimant testified he was covered in sand and soil after he managed to pull and drag himself from the ground up into the wheel well, where he waited until he saw a co-worker, Leroy Davis, in another machine come nearby and waved him over with his cap (Hr. Tr. p. 16). Soon another co-worker, Clayton Fluitt, arrived and together he and Mr. Davis lifted the Claimant onto the blade of a tractor and drove him that way up to the loading deck where the Claimant told his supervisor, Rhodus McCutcheon, that he was hurt. The Claimant testified Mr. McCutcheon was clearly made aware the Claimant was injured and in great pain because Mr. McCutcheon ordered Mr. Fluitt to get the Claimant to the doctor (Hr. tr. p. 16-17).

The testimony revealed that Mr. Fluitt took the Claimant to the Claimant's home where the Claimant's wife and sister-in-law cleaned and changed the Claimant before taking him to the hospital in Manning (Hr. Tr. pgs. 17, 47-49 and Claimant's APA # 7 pgs. 264-265). He testified that at Clarendon Memorial in Manning he was told by the doctor his leg pain was due to arthritis and that he had high blood pressure, was given medicine, instructed to follow up with his primary care physician, and

discharged. The Claimant testified that he had not been to a doctor for anything for thirty years prior to his accident and, therefore, did not have a primary care physician (Hr. Tr. p. 19). The medical evidence in the record, specifically the records from the initial emergency room visit to Clarendon Memorial on January 11, 2013, reveal that no x-rays were taken nor were any other diagnostic imaging tests performed (Claimant's APA # 7 pgs. 264-265).

On January 17, 2013 the Claimant was treated for the first time by Dr. David C. Rodriguez, a primary care physician in Lake City (Claimant's APA # 6 p. 260). Following up from the diagnoses given the week before at Clarendon Memorial, Dr. Rodriguez at first treated the Claimant with medication for high blood pressure, as well as pain medication for bilateral leg pain, and then at the January 22, 2013 second follow up appointment Dr. Rodriguez began to treat the Claimant for back pain (Claimant's APA # 6 p. 260). The Claimant further testified that following several more emergency visits to various hospitals due to pain and inability to ambulate, including one visit to McLeod Regional Medical Center on January 31, 2013 (Hr. Tr. pgs. 18-19 and Claimant's APA # 5 pgs. 244-258) and another one on February 3, 2013 that required transportation by ambulance to Williamsburg Regional Hospital in Kingstree (Claimant's APA # 3 p. 229-230 and Claimant's APA # 4 pgs. 231-243), he was finally treated by a specialist who quickly determined surgery was necessary to treat the Claimant's injured cervical spine (Hr. Tr. p. 19).

The Claimant testified that his cervical spine was so swollen he remained hospitalized and underwent a treatment of steroid shots over several days to lower the swelling enough for surgery to be performed (Hr. Tr. p. 20). On February 8, 2013 Dr. Andrew H. Rhea of Florence Neurosurgery and Spine performed several procedures, including an anterior cervical disc excision, allograft fusion, and internal fixation of C3-C4 and C4-C5 (Claimant's APA # 2 pgs. 29-20). In a signed medical opinion letter dated May 22, 2014, Dr. Rhea opined to a reasonable degree of medical certainty that the Claimant's injuries were caused by the work accident of January 11, 2013 while operating the cutter, including the radicular symptoms the Claimant experienced in his lower extremities. Furthermore, Dr. Rhea opined the Claimant

was not at maximum medical improvement and would require significant future medical care (Claimant's APA #1 pgs. 2-3). The Defendants did not offer a medical opinion contrary to that of Dr. Rhea's.

The Claimant testified that at the time of the hearing he was very limited in what he can do. He testified he has major difficulty ambulating and spends most of his time in a recliner at home or sitting under a tree in his yard on warm days (Hr. Tr. pgs. 24-25). He testified his pain keeps him from sleeping comfortably (Hr. Tr. p. 23). He testified further that there is nothing he can do to help out with chores around the house, and, although he can get himself a glass of water or make a simple sandwich, he cannot tie his shoes and sometimes has difficulty getting himself dressed and on such occasion must rely upon his son for help (Hr. tr. p. 23).

On cross-examination, the Claimant was asked why the initial emergency room records from the date of the accident do not reflect back pain but instead only leg pain and in response he testified that he indeed reported leg and back pain (Hr. Tr. p. 29). His explanation of why the record did not reveal complaints other than leg pains was that the doctors told him his problem was arthritis in his legs and his complaints of back pain were simply ignored by the emergency room physicians (Hr. Tr. p. 29). He also testified that he told the personnel at the hospital during that initial January 11th visit that he fell off a piece of machinery at work. When asked by defense counsel why there was no fall mentioned in the medical notes from that initial visit, the Claimant reiterated that he told the hospital personnel about the fall and couldn't explain why they didn't do a thorough job (Hr. Tr. p. 29). On re-direct examination, the Claimant testified that his supervisor, Rhodus McCutcheon, never asked him how he was injured (Hr. Tr. p. 35).

Rhodus McCutcheon was called as a witness by the Claimant and testified that he was the Claimant's supervisor on the date of the accident, January 11, 2013. He testified that he remembered on that day the Claimant being carried hurt on the blade of a machine up to him and that the timber buyer was there and they immediately told the Claimant to go seek medical attention and that he ordered one of the other employees to take the Claimant to the doctor (Hr. Tr. p. 42). Mr. McCutcheon admitted he

never asked the Claimant how the injury occurred after the Claimant said he was hurt (Hr. Tr. p. 44) and he acknowledged the Claimant was a quiet person who did not usually say too much or express himself vocally (Hr. Tr. p. 41). He also testified that he personally never filled out any paperwork for any accident at any time in the past because he never remembered anyone getting hurt on the job before the Claimant did, but he testified that he definitely alerted the insurance carrier "within a day" of the Claimant's January 11, 2013 accident (Hr. Tr. p. 39) and it was his understanding the carrier was supposed to do the paperwork. Mr. McCutcheon further testified that he had no idea why the paperwork reporting the accident wasn't filed for four months following the accident nor did he understand why the paperwork when it was finally filed said the Claimant was injured in a plane crash because he never said anything to the workers' compensation insurance carrier about a plane crash (Hr. Tr. p. 40). At the hearing, Mr. McCutcheon acknowledged and repeated his previous deposition testimony in which he testified he had no reason to doubt the veracity or truth of the Claimant's explanation and description of how the accident happened on January 11, 2013 (Hr. Tr. p. 38).

Mr. McCutcheon additionally testified that following the accident he continued to pay the Claimant \$800.00 each week for months and months for a total of about \$28,000.00 because he believed it was the right thing to do (Hr. Tr. p. 41); the Claimant confirmed that he was paid weekly by Mr. McCutcheon for about nine months following the accident until the checks abruptly stopped without explanation (Hr. Tr. pgs. 21-22).

Co-worker Clayton Fluitt was called as a witness by the Defendants. Mr. Fluitt testified that on the day of the accident he was operating a machine in the same area of the Claimant and was waved over by Leroy Davis to where the Claimant's machine was stopped and where he found the Claimant sitting in the large wheel well (Hr. Tr. pgs.46-47). He testified he did not ask the Claimant how he got hurt and the Claimant did not tell him anything except that he could not move. Mr. Fluitt testified he moved the skidder blade over and he and Mr. Davis managed to lift the Claimant onto the blade and then transported him up to where they found Mr. McCutcheon at the loading deck the (Hr. Tr. p. 47). Mr. Fluitt further

testified that he drove the Claimant to the Claimant's home where he dropped him off and left because the Claimant wanted to clean up before going to the doctor (Hr. Tr. p. 48).

Co-worker Leroy Davis testified on behalf of the Defendants that on the day of the accident he was operating machinery in the same area as the Claimant and he saw the Claimant sitting in the wheel well of the stopped machine waving at him and he immediately went to the Claimant and found him sitting there in great distress and in obvious pain (Hr. tr. p. 52). Mr. Davis testified that he had an opportunity earlier in the day and before work to notice that the Claimant was fine and in no distress before the accident (Hr. tr. p. 53). Mr. Davis testified the Claimant reported falling while getting out of the cab to go to the bathroom "or something like that" when his legs gave out on him and he fell (Hr. Tr. p. 52); however, Mr. Davis also admitted that the Claimant was very quiet, not much of a talker, a man of few words. (Hr. Tr., p. 52).

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. The Claimant sustained injuries to the cervical spine and lower extremities within the course and scope of his employment on January 11, 2013.
3. The Claimant is entitled to past due and ongoing benefits under the Act.
4. The Claimant is not at maximum medical improvement.
5. A determination of permanency is premature.
6. The Claimant is entitled to all causally-related medical treatment, including medical treatment by a neurosurgical specialist of the Defendants' choosing.
7. All prior medical records must be provided by the Defendants to the selected specialist.

8. The Claimant is entitled to a running award of temporary total disability benefits from the date of the last payment by the Employer.

9. The Claimant is entitled to be reimbursed for all causally-related out-of-pocket expenses.

RULINGS OF LAW

1. Under S.C. Code Ann. §42-1-130, the Claimant was a covered employee and under S.C. Code Ann. §42-1-140, ACE Loggers was a covered employer at all relevant times.

2. Under S.C. Code Ann. §42-1-160, the Claimant sustained injuries to his cervical spine and both legs as a result of the January 11, 2013 accident, and ACE Loggers is responsible for benefits for the same.

3. Under S.C. Code Ann. §42-15-60, the Claimant is entitled to additional medical care and treatment that will tend to lessen his period of disability.

4. Under S.C. Code Ann. §42-9-10, the Claimant is entitled to be paid temporary total disability benefits during the period of total disability.

ORDER

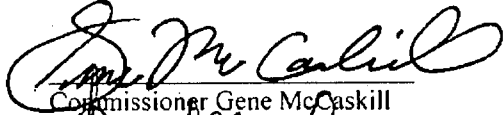
IT IS, THEREFORE, HEREBY ORDERED that the Defendants shall pay to the Claimant back temporary total disability benefits which have accrued since the Employer last paid the Claimant, and that the Employer and its carrier must provide evidence as to the date of the last payment made by the Employer.

IT IS, THEREFORE, HEREBY ORDERED that the Defendants shall also pay the Claimant temporary total disability benefits on a running award until the Claimant is found to be at maximum medical improvement.

IT IS, THEREFORE, HEREBY ORDERED that the Defendants provide the Claimant with ongoing medical treatment for injuries to the spine and both legs, specifically, that the Defendants provide treatment from a neurosurgical specialist and that all prior related medical records be provided to the selected specialist.

IT IS, THEREFORE, HEREBY ORDERED that the Defendants reimburse the Claimant for all prior causally-related out-of-pocket expenses.

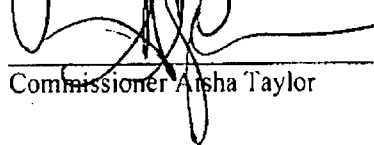
IT IS SO ORDERED!



Commissioner Gene McCaskill



Commissioner Susan Barden



Commissioner Aisha Taylor

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 27, 2016