

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1403985

RENEE ROBLES,
Employee/Claimant,
vs.
PARTY REFLECTIONS, INC.,
Employer,
and
EMPLOYERS ASSURANCE
COMPANY,
Carrier/Defendants.

DECISION AND ORDER
OF THE APPELLATE PANEL

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SC Court of Appeals

HEARING: Held in Columbia, South Carolina on June 21, 2016

APPEARANCES: Mark R. Calhoun, Esquire represented Claimant.
Collins & Lacy, PC represented Party Reflections, Inc. and
Employers Assurance Company with Ashley R. Kirkham,
Esquire, appearing at the Appellate arguments.

PURPOSE OF HEARING: To determine issues as set forth in the Form 30 of the
Employer/Carrier.

DECISION & ORDER: The Honorable Scott Beck, The Honorable Gene
McCaskill, and the Honorable Melody James

FILED: September 2, 2016

STATEMENT OF THE CASE

This matter was heard by the single commissioner in Columbia, South Carolina on September 25, 2014. By Order dated March 8, 2016, the single commissioner found an average weekly wage of \$1,059.61 with a resulting compensation rate of \$706.33. The single commissioner further awarded temporary total disability benefits from April 7, 2014 and continuing until Robles was placed at maximum medical improvement.

Single Commissioner Findings of Fact

Based upon the evidence received are the following findings of fact:

1. That all parties to the proceeding are subject to and bound by the terms and provisions of the South Carolina Workers Compensation Act, as amended, with Renée Robles, as employee, Party Reflections Inc., as employer, and Employers Assurance Company, as carrier.
2. The South Carolina Worker's Compensation Commission has jurisdiction in this case and that venue was proper in Richland County.
3. The Claimant's average weekly wage at the time of his injury by accident on March 16, 2014 was \$1059.61, resulting in an applicable weekly compensation rate of \$706.33.
4. On March 17 and March 24, 2014 the Claimant treated with Doctors Care for his work related lumbar injury. Both of these visits were paid for by the employer supervisor Adam Vance. Adam Vance sent the Claimant to Doctors Care on Garners Ferry Road and paid for each of these visits with the Employers company credit card. The employer complied with the work restrictions issued to the Claimant after these visits.
5. On April 7, 2014 the Claimant received treatment with Doctors Care and was continued

on restrictions until April 14, 2014 at which time he could return to full duty "if not better." The Claimant was to return to Doctors Care on April 14, 2014 if he did not feel better. The Claimant cannot read english, there was no interpreter at Doctors Care, and Adam Vance testified he did not inform Robles he could return to Doctors Care on April 14, 2014. The record is clear that the Claimant was not aware that he was allowed to return to Doctors Care on April 14, 2014 if he was unimproved. The Claimant was also required to pay for the April 7, 2014 doctors appointment out of his own pocket and was not reimbursed by the Employer. The Claimant was placed on full duty on April 14, 2014 because he was not aware that he was allowed to return to Doctors Care and medical treatment was terminated by the Employer.

6. On June 2, 2014 an IME was performed by Dr. Daniel Westerkam of Rehabilitation and Geriatrics Services who stated to a reasonable degree of medical certainty the Claimant suffered a back injury on March 16, 2014. Dr. Westerkam opines he has a lumbar injury and left leg radiculopathy with numbness and tingling. He ordered muscle relaxer and anti-inflammatory medications of Flexeril and Lidoderm, along with physical therapy.
7. The Claimant and his supervisor Adam Vance each testified that the Claimant's last day of working for the Employer was April 7, 2014. The Claimant was not allowed to return to work for the Employer after that day. Both Robles and Vance testified the Claimant had been an employee of the Employer for at least 12 years and was sent home on April 7, 2014 after presenting a return to work form to Adam Vance. Mr. Robles has not been asked to return to work since that date. Adam Vance also testified he forwarded the Doctors Care receipt for April 7, 2014 to HR and was unaware the Claimant had not been reimbursed for it yet did not know why the Claimant paid for the appointment out of

pocket. Vance also testified he would have paid for the Claimants April 14, 2014 doctor's appointment had the Claimant asked him to do so. However, the record is clear that Vance testified he did not read the April 7, 2014 return to work form to the Claimant, the Claimant could not read this form/medical report, and there was no interpreter at Doctors Care for the Claimant's appointment. The Claimant was not aware he could return to Doctors Care on April 14, 2014 if he was unimproved.

8. The Claimant sustained a compensable injury to his back with radiculopathy arising out of and in the course and scope of his employment on March 16, 2014.
9. The Claimant was 39 years old at the time of accident with limited grade school education in the country of Mexico.
10. His job duties for the 12 years he worked for the Employer before being fired included the loading, unloading and set up of tents, tables, umbrellas, chairs, silverware, etc., for large commercial parties and social events.
11. Mr. Robles had no prior problems with his lumbar spine or radiculopathy.
12. Under *Dodge v. Brucolli, Clark, Layman, Inc.* 334 S.C. 574, 514 S.E. 2nd 593 (S.C. App. 1999), Defendants shall provide and be financially responsible for all reasonable and necessary causally related medical evaluation and treatment that tends to lessen the period of disability of the Claimant. The Claimant is entitled to an evaluation and treatment by an orthopedic physician, with a specialty to the back, of the Defendants choosing.
13. The Claimant is not at MMI.
14. The Claimant is entitled to reimbursement for his out-of-pocket expenses and mileage for his April 7, 2014 doctor's appointment.

15. The Claimant shall be paid for TTD starting from April 7, 2014 and forward, until he is placed at MMI.

Single Commissioner Conclusions of Law

Upon the foregoing Findings of Fact and under the Code of Law of South Carolina, as amended, it is concluded that:

1. Under §42-1-160, Claimant sustained an injury by accident arising out of and in the course of his employment, said injuries being to the Claimant's back with radiculopathy on March 16, 2014.
2. Under §42-15-20 proper notice of the injury was given to the Employer.
3. Under §42-15-40, the claim was properly filed.
4. I find and conclude that under §42-1-10, the appropriate average weekly wage is \$1059.61 resulting in an applicable weekly compensation rate of \$706.33.
5. Under §42-15-60, Claimant is entitled to received causally related medical care for his back, left lower extremity as recommended by physician Daniel Westerkam, by a physician of the Defendants choosing until at maximum medical improvement.
6. Under §42-9-10 and §42-1-120, Claimant is entitled to receive compensation for the unpaid temporary total disability due to the Claimant beginning April 7, 2014 until terminated in accordance with the South Carolina Workers' Compensation Act.

The Employer and Carrier timely filed a Form 30 Request for Commission Review seeking a review of the hearing commissioner's determination of the average weekly wage and compensation rate and the hearing commissioner's award of temporary total disability benefits from April 7, 2014 and continuing. The parties submitted their briefs and the case was set for argument

before the Appellate Panel on June 21, 2016. After review of the record and hearing arguments of counsel, the Appellate Panel affirms in part and reverses in part the Order of the single commissioner. The Appellate Panel makes the following:

APPELLATE PANEL FINDINGS OF FACT

Based upon the evidence submitted and the arguments presented, the Appellate Panel finds the following facts based upon the preponderance of the evidence:

1. Renee Robles suffered a minor back injury on March 16, 2014 while employed by Party Reflections. (Hearing Transcript p. 42: 2-5).
2. Following his injury, Robles was provided treatment with Doctor's Care.
3. On April 7, 2014, Robles was given a Return to Work Form stating: "Work Status: May return to full duty activity as of 4-14-14 without accommodations. May work with the following accommodations as of 4-7-14: No lifting more than 45 lbs., ground level work only, no ladders or heights, no repetitive bending, stooping, squatting, pushing, jerking, twisting, or bouncing when he feels discomfort. Return for re-evaluation at this office on 4-14-14 if not better." (Clmt. APA p. 48).
4. Robles never asked his employer to return to the doctor after the April 7, 2014 visit. (Hearing Tr. 22: 1-4).
5. Robles had two prior workers' compensation injuries with Palmetto Party Rental, which was purchased by Party Reflections, the employer in this case. (Hearing Tr. 42: 2-5).
6. Robles maintains that he did not understand that he could return to Doctor's Care and did not understand the medical treatment plan. However, Robles answered all

questions asked in a deposition without the help of an interpreter, understood Doctor's Care's explanation of medical bills and temporary work restrictions, and signed the same Return to Work form agreeing he understood the form. (Clmt. APA p. ; Deposition of the Claimant taken September 2, 2014).

7. Robles was released to full duty on April 14, 2014. (Clmt. APA)
8. There is no evidence in the record that Robles missed any time from work with Party Reflections as a result of his two prior workers' compensation injuries.
9. The average weekly wage is \$786.03 resulting in a compensation rate of \$524.05. This is based on his actual earnings with Party Reflections. This average weekly wage is a fair reflection of Claimant's earnings and there are no exceptional circumstances upon which to deviate from the calculation methods provided in the statute.
10. The Claimant is entitled to reimbursement for his out of pocket expenses and mileage for April 7, 2014 doctors appointment.
11. The Claimant is not at maximum medical improvement. The Defendants shall provide and be financially responsible for an evaluation by an orthopedic physician with a specialty to the back of the Defendant's choosing.

APPELLATE PANEL CONCLUSIONS OF LAW

1. Calculation of the average weekly wage is governed by S.C. Code Ann. Section 42-1-40. The hearing commissioner erred as a matter of law by using an average weekly wage and compensation based on Claimant's earnings from a prior workers' compensation claim while working for this employer's predecessor company. This is not a method allowed under the statute.

2. Claimant's actual earnings while working for Party Reflections is an accurate reflection of his earnings and fair to all parties. Pursuant to S.C. Code Ann. Section 42-1-40, the average weekly wage is \$786.03 with a compensation rate of \$524.05.
3. Claimant missed less than eight days of work as a result of his March 16, 2014 work-related injury and is not entitled to temporary total disability compensation pursuant to §42-9-10.

AWARD

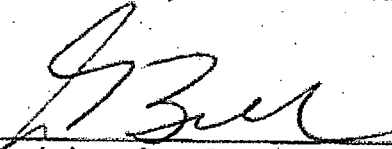
BASED ON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Appellate Panel orders as follows:

IT IS ORDERED the average weekly wage is \$786.03 with a compensation rate of \$524.05.

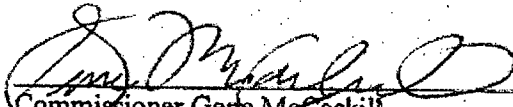
IT IS FURTHER ORDERED Claimant's request for temporary total disability benefits from April 7, 2014 and continuing is denied.

IT IS FURTHER ORDERED the Defendants shall provide the Claimant with evaluation and treatment with an orthopedist of their choice to determine if Claimant is in need of any additional medical treatment as a result of his March 14, 2104 work related accident.

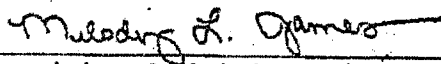
AND IT IS SO ORDERED.



Commissioner Scott Beck



Commissioner Gene McCaskill



Commissioner Melody James

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).