

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Reginald Evans, Employee,)
Claimant,)
-vs-)
Exel Inc.,)
Employer,)
New Hampshire Insurance)
Company,)
Carrier,)
Defendants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1502120

ORDER

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SC Court of Appeals

HEARING: ROCK HILL, SOUTH CAROLINA
DATE: March 27, 2016
APPEARANCES: ANDREW W. CREECH OF ELROD POPE LAW FIRM FOR CLAIMANT
KATIE GROVE OF MGC
PURPOSE OF HEARING: TO DETERMINE ALL ISSUES RAISED BY FORM 21
COMMISSIONER: HONORABLE AISHA TAYLOR

STIPULATIONS

Prior to the commencement of the hearing the following stipulations were entered into between the parties:

1. The purpose of the hearing is to determine the issues as set forth in the Form 21.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. South Carolina Workers' Compensation Commission has jurisdiction of this proceeding and venue in Richland County is proper.
4. The Industrial Commission's file are made part of the record.
5. Parties stipulate that Claimant's AWW is \$714.24 and his CR is \$476.18.

6. The Parties stipulate that Claimant sustained a compensable injury to his right leg in the Course and scope of his employment

7. The parties stipulate that Claimant is at maximum medical improvement as of January 8, 2016 and is entitled to a determination of permanent partial disability.

MEDICAL EVIDENCE SUBMITTED BY CLAIMANT:

Exhibit 1. Job description containing four (4) pages.

APA 1. The medical records of Shiland Family Medicine, dated 7-15-14 - 11-24-14, containing fourteen (14) pages.

APA 2. The medical records of Piedmont Medical Center, dated 2-21-15 - 6-2-15, containing twenty-six (26) pages.

APA 3. The medical records of Carolina Orthopaedic Surgery Associates, dated 2-24-15 - 1-8-16, containing ninety-one (91) pages.

APA 4. The medical records of Benchmark Rehab Partners, dated 3-25-15 - 7-26-15, containing one hundred twenty (120) pages.

APA 5. The medical records of Shiland Family Medicine, dated 4-7-15, containing one (1) page.

APA 6. The medical records of Metrolina Neurological Associates, dated 5-27-15 - 7-31-15, containing fourteen (14) pages.

APA 7. The medical records of Steele Creek Physical Therapy, dated 12-16-15, containing nine (9) pages.

APA 8. The medical records of Metrolina Neurological Associates, dated 7-27-15, containing one (1) page.

MEDICAL EVIDENCE SUBMITTED BY DEFENDANTS:

APA 1. The medical records of Carolina Orthopaedic Surgery Associates, dated 2-24-15 - 1-8-16, containing twenty-one (21) pages.

APA 2. The medical records of Piedmont Medical Center, dated 4-21-15 - 6-2-15, containing twenty-one (21) pages.

APA 3. The medical records of Metrolina Neurological Associates, dated 6-12-15, containing five (5) pages.

APA 4. The medical records of Steele Creek Physical Therapy & Balance Center Inc., dated 12-16-15, containing nine (9) pages.

POSITION OF THE PARTIES

Defendants filed a Form 21 seeking termination of temporary total benefits and a determination of permanent partial disability pursuant to 42-9-30. Defendants maintain that Claimant reached maximum medical improvement on January 8, 2016 and seek a credit of any temporary benefits paid since the date of MMI.

Claimant agrees he is a maximum medical improvement as of January 8, 2016. Claimant states that a 15% impairment was assigned to Claimant's right leg and permanent light duty restrictions were assigned. As a result of Claimant's permanent work restrictions he is no longer able to perform his job as fork lift driver and states that a proper disability award would be in far excess of his impairment rating.

Testimony of Claimant

Claimant is 53 years old, single, and has no children. Claimant graduated high school and later got a 4-year degree in business from Claflin University. Claimant served almost 20 years in the military. He was first in the United States Marine Corp. and then later in Army National Guard from which he was honorably discharged around 2001. Following his service in the military, Mr. Evans did consulting work - putting together various contracts for the federal government. Mr. Evans did the consulting work

until 2011 at which point all the work dried up. He then went to work with Excel Inc. in 2012 in Allentown, Pennsylvania. He later transferred to an Excel site in York County, SC. Excel is a warehouse distribution facility for Energizer batteries. Mr. Evans worked as a Fork Lift operator and was tasked with picking orders. He described his job as heavy in nature - requiring the lifting of 75 lbs. to 100 lbs. The job also required him to be on his feet all day.

On February 21, 2015, Mr. Evans was working at Excel driving a forklift when a fellow fork lift driver accidentally crashed his fork lift into Mr. Evans' with metal fork lift prongs crushing into Mr. Evan's right leg. Following the injury, Mr. Evans' sought treatment at the emergency room. In the emergency room it was noted that Mr. Evans had a sizeable open wound, which they decided to let heal before proceeding further with additional treatment. During the healing the process the wound became infected and Mr. Evans had to seek treatment at a wound center which include debridement of the infected area.

On the record, Mr. Evans showed Commissioner Taylor his scar from the injury and subsequent infection. Commissioner Taylor noted that the scar was on the inside of his right leg, and was approximately 6 or 7 inches in length, and approximately 2 inches in width.

Mr. Evans testified that once the wound healed, he then sought treatment with orthopedic doctor, Dr. James. Dr. James prescribed physical therapy which Mr. Evans did twice a week for approximately 6 to 8 months. Dr. James also prescribed him nerve pain and ordered an EMG - which confirmed Mr. Evans had permanent nerve damage. Eventually, on January 8, 2016 Dr. James released Mr. Evans at maximum medical improvement. Dr. James assigned a 15% impairment to the right leg, and gave permanent work restrictions of light duty. Those restrictions prevent Mr. Evans from

returning to work as a fork lift driver.

At present, Mr. Evans continues to have pain and problems with his leg. The pain comes and goes, but occurs every day. He states the pain starts if he stands or walks for a period of time. Mr. Evans approximates he could walk for approximately a half mile before having to sit down due to the pain. When the pain occurs he rates it a 6 or 7 on a scale of 0 to 10. Mr. Evan's testified that he can no longer play basketball or do other physical activities. He no longer coaches baseball - as it hurts for him to stand up for that long of time. Mr. Evan's testified he often uses a cane - as it help him keep weight off the right leg. Mr. Evans testified that as a result of this injury - he has lost 50 % to 60% use of his leg.

FINDINGS OF FACT

1. I find Claimant sustained an admitted right leg crush injury on February 21, 2016.
2. As a result of the injury, Claimant suffered an open wound which became infected. Claimant now has a 6 to 7 inch scar on the right leg which is approximately 2 inches in width.
3. Claimant underwent an EMG study on July 8, 2015 which confirmed permanent nerve damage in the right leg. (APA pg. 270).
4. Dr. James released Claimant at MMI on January 8, 2016 and issued a 15% impairment rating. Pursuant to Claimant's FCE - Dr. James opined Claimant has permanent light duty restrictions, which also include restrictions of no lifting over 20 lbs., no sitting for more than 2 hours, and no standing for more than 2 hours.
5. Claimant testified credibly at the hearing. Although Claimant has a college degree, he has worked heavy duty work since 2011, which required him to lift 75 to 100 lbs. daily. Claimant states he currently takes Gabapentin as prescribed by his neurologist; however, he still has pain off and on all day long.
6. Claimant has looked for work online and even began an application with Chester Tire Company, but has been unable to find work within his restrictions.
7. I find Claimant is at maximum medical improvement as January 8, 2016 per Dr. James. See Gadson v. Mikasa Corp. 368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006).

8. This claim is governed by Section 42-9-30.

9. Based on the evidence as a whole, I find Claimant sustained a 35% permanent partial disability to his right leg as a result of his work injury. This finding is based on the medical evidence including Claimant's impairment rating and permanent work restrictions, which I find severely limits his ability to return to work given his work history. I did consider Claimant's educational achievements and prior self-employment in making this finding. I find Claimant's physical condition and current prescriptions outweigh his educational and business history.

10. Claimant was seen by a neurologist in July 2015. Claimant was referred to a neurologist by Dr. James. Claimant initially saw the neurologist on his own without authorization for the carrier; however, the carrier later paid for his appointment. The neurologist prescribed Gabapentin and Claimant has been taking Gabapentin daily.

11. I find Claimant is entitled to causally related future medical treatment in the form of Gabapentin or any other equivalent nerve pain medication as prescribed by his neurologist at Metrolina Neurology, or any authorized physician. This medical treatment is to be provided at the direction of Defendants pursuant to S.C. Code Ann. Section 42-15-60.

12. Claimant is entitled to a lump sum award.

13. Defendants are entitled to a stop payment of benefits as of May 13, 2016.

14. Defendants are entitled to a credit of overpayment of TTD benefits paid after January 8, 2016 - date of MMI - through May 16, 2016.

15. Claimant has an AWW of \$714.21 and a CR \$476.18.

16. Claimant is entitled to James v. Anne proration language.

RULINGS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, Section 42-17-40 it is the determination of the Commissioner that:

1. Under Section 42-1-130 the Claimant is a covered employee at all times stated above.

2. Under Section 42-1-140 the Defendant employer was a covered employer under the Act.

3. Under Section 42-1-160, the Claimant did sustain a compensable injury in the course and scope of his employment to the right leg.

4. Under Section 42-15-60, carrier will authorize all ongoing

prescription meds prescribed for Claimant's permanent nerve damage to specifically include Gabapentin.

5. Under Section 42-9-30, Carrier will pay Claimant 35% permanent partial disability to the leg, minus credit of overpayment of TTD.

ORDER

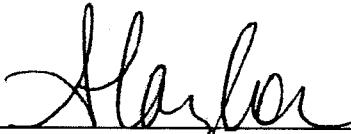
IT IS ORDERED as follows:

1. That as of May 13, 2015 - Defendants shall terminate temporary total benefits.
2. Defendants shall be given a credit of overpayment of TTD benefits paid from January 8, 2016 through May 13, 2016 equaling 18 weeks totaling \$8,571.25.
3. Defendants shall pay Claimant a lump sum award made payable to Reginald Evans, by and through his attorney Andrew W. Creech at PO Box 11091 Rock Hill, SC 29732 in the amount of **\$23,928.05**: (.35% x 195 = 68.25 weeks x \$476.18 = \$32,499.28 - \$8,571.24 in overpayment = \$23,928.05). The award will be distributed as follows: Seven Thousand One Hundred Seventy-eight and 42/100 (\$7,178.42) Dollars to Andrew W. Creech, attorney at law, as attorney's fees of 30%; Six Hundred Five and 94/100 (\$605.94) Dollars to Andrew W. Creech, attorney at law, as reimbursement of costs and expenses; and Sixteen Thousand One Hundred Forty-three and 69/100 (\$16,143.69) Dollars to Reginald D. Evans in compromise settlement of future disability benefits commencing as of May 1, 2016 for a period of 1,379.04 weeks, the life expectancy of claimant (26.52 years - DOB: 4/19/63) at the rate of \$11.71 Dollars per week, pursuant to Social Security Act, 42 U.S.C. §424a and Section 42-9-10 and 42-9-20 of the S.C. Code of Laws and as interpreted by the South Carolina Supreme Court in the decision of Allie James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

4. Defendants shall pay for causally related future medical treatment in the form of Gabapentin or any other equivalent nerve pain medication as prescribed by his neurologist, or any authorized physician.

AND IT IS SO ORDERED

May 12, 2016



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).

May 16, 2016

By: Renee Smith, Administrative Assistant to Commissioner Taylor