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SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1318928

JAMES A. ASHFORD, EMPLOYEE CLAIMANT/RESPONDENT

VS.

PRYSMIAN POWER CABLES & SYSTEMS, USA, EMPLOYER,

AND

SENTRY INSURANCE COMPANY, CARRIER DEFENDANTS/APPELLANTS.

Appellate Panel Review Hearing
held in Columbia, South Carolina,
on August 15, 2016, per notices
timely and properly served upon
all parties of interest.

Appellate Panel Decision and Order

filed, November 1, 2016

APPEARANCES: CLAIMANT/RESPONDENT represented by David N. Truitt, Esquire, of
Columbia, South Carolina; and

DEFENDANTS/APPELLANTS represented by Nicolas L. Haigler, Esquire, of
Columbia, South Carolina.

STATEMENT OF THE CASE

This is an appeal by Prysmian Power Cables & Systems, USA, and Sentry Insurance Company ("Appellants" or "Defendants") from the Decision and Order of Commissioner R. Michael Campbell, II, filed on May 4, 2016.

By way of background, this claim was before the South Carolina Workers' Compensation Commission pursuant to the Form 21 filed by the Defendants on April 30, 2015. It is the position of the Defendants that the Claimant reached maximum medical improvement (MMI) with regard to his right wrist on February 13, 2015, per the corresponding report of Dr. David B. Fulton. As such, temporary total disability (TTD) benefits should be terminated pursuant to Section 42-9-260 of the Act. The Defendants also requested credit for all TTD benefits paid after the date of MMI, and requested a determination as to the extent of permanent partial disability (PPD) sustained to the right arm under Section 42-9-30. The Defendants further requested a determination as to whether the Claimant is entitled to further medical treatment pursuant to Section 42-15-60 of the Act.

Claimant alleged that he is not at maximum medical improvement and needs additional medical care. Claimant was still having problems with his right upper extremity on his last visit with the authorized treating physician, Dr. Fulton; as a result, Claimant asked Dr. Fulton for a referral for a second opinion. Inexplicably, Dr. Fulton refused to recommend a second opinion and released Claimant with no work restrictions or future medical care. Consequently, Claimant had to seek medical care on his own with Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine and Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute. Both Dr. Patel and Dr. Gabr recommended that an EMG/NCS be performed on Claimant's right upper extremity. Defendants received the recommendation from Dr. Patel for an EMG/NCS and authorized the EMG/NCS performed by Dr Timothy Zgleszewski of Palmetto Spine Sports Medicine on June 3, 2015. The EMG/NCS was abnormal, corroborating Claimant's complaints to Dr. Fulton. There are multiple

possible reasons for the abnormal test. However, instead of following through with authorizing another orthopaedist besides Dr. Fulton to review and opine what the positive EMG/NCS means in relation to Claimant's admitted right wrist injury, Defendants chose to proceed with a Form 21 hearing. Claimant respectfully requested that the undersigned Commissioner authorize additional medical care with another hand specialist so that hand specialist can review the abnormal EMG/NCS and treat Claimant appropriately. Claimant had no problems with his right upper extremity prior to this admitted work-related injury in which he suffered a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome. Claimant contended that he is not at maximum medical improvement as Dr. Patel and Dr. Gabr both recommended the EMG/NCS be performed and neither physician found Claimant at maximum medical improvement. Claimant also contended that the 5% impairment rating to the right upper extremity by Dr. David Fulton is premature as Claimant is not at maximum medical improvement. Claimant contended that the burden of proof is on Defendants at a Form 21 hearing and that Defendants failed to meet that burden of proof as Dr. Patel, Dr. Gabr, and the June 3, 2015, EMG/NCS overwhelmingly contradicted Dr. Fulton's opinion.

In the alternative, if Claimant is found to be at maximum medical improvement (MMI), Claimant asserted that he is permanently and totally disabled under the Act pursuant to S.C. Code Ann. §42-9-10 as a result of the totality of his combined injuries, and that he is entitled to any and all reasonable medical care which stems from the accident and resulting injuries in this claim. In addition, Claimant alleged that the Form 21 hearing is premature as mandatory mediation is required when Claimant alleges permanent and total disability in his Form 50 request for a hearing pursuant to SC Code of Regulation 67-1802.

The Hearing in this matter was held on June 23, 2015, in Columbia, South Carolina, before Commissioner R. Michael Campbell, II ("Hearing Commissioner"). Prior to the call of the case, the

Defendants objected to the admissibility of the reports and opinions of Todd Hanson, LMFT, submitted by the Claimant in support of the compensability of the alleged psychological condition. The Hearing Commissioner overruled the objection, but agreed to leave the record open to allow the Defendants an opportunity to depose Todd Hanson. That deposition occurred on July 27, 2015, and was subsequently submitted to the Hearing Commissioner for consideration.

By way of Decision and Order filed on May 4, 2016, the Hearing Commissioner made the following findings of fact:

1. All parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Ashford, as Employee, and Prysmian Power Cables, as Employer, and Sentry Insurance Mutual Group, as Carrier.
2. Jurisdiction and venue for the hearing are proper and agreed upon by the parties in Columbia, South Carolina.
3. Notice of the hearing was set on Defendants' Form 21 as it pertained to Claimant's right wrist injury.
4. Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me.
5. Claimant sustained an admitted injury to his right wrist arising out of and in the course and scope of his employment on October 30, 2013, when his right wrist and hand were crushed and caught in a machine for approximately five to eight minutes. Claimant suffered injuries to his right upper extremity including, but not limited to, a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome.
6. Claimant had no prior problems with his right upper extremity prior to the admitted work-related accident on October 30, 2013.
7. Claimant testified that he is 59 years old (Hearing Transcript page 17, Line 16) and that he has worked for the Employer for 26 years (Transcript page 22, Lines 23-25). Claimant testified that his hand got caught in the machine and was wedged between the reel and shaft. (Transcript page 18, Lines 17-18). Claimant further testified that his hand was stuck in the machine for 5 to 8 minutes before the service operator came and got him out. (Transcript page 18, Lines 19-23).

Claimant testified that immediately following the injury, he had numbness in his ring finger, little finger, and wrist with sharp pains going down into the elbow (Transcript page 19, Lines

3-6). Claimant testified that he continues to have the same symptoms today with no change in his symptoms (Transcript page 19, Lines 7-12). Claimant testified that despite the surgery performed by Dr. Fulton, he still continues to experience pain, is unable to sleep at night, and wakes up 3 to 4 nights a week even after taking sleep and pain medications (Transcript page 19, Lines 15-18). Claimant testified that he discussed his symptoms with Dr. David Fulton and asked Dr. Fulton for a second opinion that was not given to him (Transcript page 19, Lines 22-25 and page 20, Lines 1-5). Claimant testified that he went to Dr. Subhash Patel and Dr. Usama Gabr who both requested an EMG/Nerve Conduction Study (Transcript page 20, Lines 6-16). Claimant testified that he had the EMG/Nerve Conduction Study, but the results have not been interpreted by a physician (Transcript page 20, Lines 17-24). Claimant testified that he would like to have a hand specialist besides Dr. Fulton review the EMG/NCS to find out why the results are abnormal. (Transcript page 20, Lines 1-12; Transcript page 55, Lines 19-23).

Claimant testified that prior to this work-related injury, he did not have any problems with his right wrist or hand. Claimant further testified that since his work related injury, he has had continuous problems with his right hand and wrist. (Transcript page 23, Lines 4-25; Transcript page 24, Line 1).

Claimant testified that Defendants (worker's compensation carrier) authorized and paid for the June 3, 2015, EMG/Nerve Conduction study but have not authorized a physician to treat Claimant and review the abnormal EMG/NCS. (Transcript page 25, Lines 9-22).

8. On October 30, 2013, Claimant was evaluated by Donna Padgett, NP, who noted that he was injured at work when his right hand was caught in a machine and compressed. He was able to extract his hand, but was having significant pain, aching pain over his wrist and hand with swelling. He ranked his pain level as 8-9/10 and described it as a deep aching pain, with tingling in his hands, particularly the little finger and some in ring finger. He denied ever having any problems with his hands or wrists. He indicated that he was diabetic and took medicine for high blood pressure (Defendants' APA 5, page 104).
9. On December 12, 2013, Dr. Deanna Constable of Palmetto Orthopaedics noted right upper extremity injury secondary to getting caught in a reel after he thought the reel was stopped, pulling his wrist and arm up into the spool and was unable to remove it for several minutes. She further noted that he denied any previous injury to the hand but complains of discomfort, swelling and cool sensations of the hand, dysesthesias. Radiographs of the right hand showed a noted ulnar styloid fracture. (Defendants' APA 4, page 95). Diagnosis was right hand crush injury, right healed dorsal wound and right ulnar styloid fracture (Defendants' APA 4, page 96).
10. On December 26, 2013, an MRI of right wrist indicated non-united fracture of the ulnar styloid process noted with a tear of the ulnar insertion of the triangular fibrocartilage with mild reactive marrow edema of the distal ulnar head. Findings suggestive of a distal insertional tear of the flexor carpi ulnaris tendon distal to its insertion upon the anterior pisiform carpal bone (Defendants' APA 4, page 93).
11. On January 16, 2014, Dr. Deanna Constable noted that the MRI showed a nonunion of the ulnar styloid fracture and a triangular fibrocartilage complex (TFCC) tear. Diagnosis was 3

months status post crush injury, healed right dorsal wound, right ulnar styloid fracture, and right triangular fibrocartilage complex tear (Defendants' APA 4, page 91).

12. On February 20, 2014, Dr. Deanna Constable noted that he still has a moderate amount of pain and weakness with complaints of dysesthesias along the ulnar nerve distribution. She noted he complained of moderate hand weakness. Diagnosis was moderate amount of irritability, persistent ulnar nerve dysesthesias with hand weakness and recommended an EMG/Nerve Conduction Study (Defendants' APA 4, page 89).
13. On March 10, 2014, Dr. Devin Troyer performed an EMG/Nerve Conduction Study and made the following findings- 1. abnormal electrical study; 2. slowing of the median motor and sensory nerves at the right wrist segment most consistent with carpal tunnel syndrome; 3. no evidence of other nerve impingement; 4. additional evidence of mild diffuse slowing most consistent with a peripheral polyneuropathy; 5. no evidence of radiculopathy on needle exam of the tested right upper extremity (Defendants' APA 4, page 88).
14. On March 21, 2014, Dr. Deanna Constable noted a moderate amount of ulnar nerve dysesthesias and weakness in his hand. She further opined that nerve studies did not show any nerve involvement, although clinically, his hand was consistent with some ulnar nerve dysesthesias. Dr. Constable referred Claimant to Dr. Fulton. (Defendants' APA 4, page 83).
15. On July 1, 2014, Dr. Fulton saw Claimant for ongoing complaints of pain and numbness in the right hand and wrist as well as sharp pain over the ulnar aspect of the wrist. Claimant had a positive median nerve compression test of the right wrist. Claimant had pain over the TFCC and subtle swelling of the ulnar styloid. Dr. Fulton diagnosed Claimant with carpal tunnel syndrome and triangular fibrocartilage complex injury with ulnar styloid nonunion. Dr. Fulton recommended a right carpal tunnel release as well as excision of the ulnar styloid fragment and possible TFCC repair. (Defendants' APA 3, page 77).
16. On November 3, 2014, Dr. David Fulton performed a right carpal tunnel release, right wrist ulnar styloid excision, and repair of TFCC of right wrist (Defendants' APA 3, page 71).
17. On November 14, 2014, Jessamyn Bartley, PA, at Moore Orthopaedics, noted swelling and numbness and tingling in the ulnar nerve distribution, mainly into the small finger (Defendants' APA 3, page 68).
18. On January 16, 2015, Jessamyn Bartley, PA, at Moore Orthopaedics noted Claimant was previously written for light duty, but no light duty available, so he remained out of work. Ms. Bartley noted periods of numbness and tingling in the ring finger and small finger, which happens to be present a large majority of the time. On exam, she noted swelling ulnarly with difficulty making a composite fist, poor flexion in the ring and small finger, stiff wrist motion, and no full dorsal and palmar flexion. We will continue to monitor the numbness and tingling in the ulnar nerve distribution. Ms. Bartley thinks it is likely from the sensory branch down at the level of the surgery and caused by neuropraxia (Defendants' APA 3, pages 59-60).

19. On February 13, 2015, Dr. David Fulton, authorized treating physician, opined that Claimant was making slower progress than expected based on this time from injury, time from surgery and nature of the procedure. Dr. Fulton noted that Claimant requested a second opinion and that he had a problem with his hand with numbness and tingling in his ring and small finger. In addition, Dr. Fulton stated that this complaint has been persistent since Dr. Fulton met him, but Claimant did have a previous nerve conduction study that showed possible underlying neuropathy. Dr. Fulton placed Claimant at MMI, assigned a 5% medical impairment to the right upper extremity, which equated to 1% from the carpal tunnel release and 4% from the TFCC repair, and released him without work restrictions or future medical care. (Defendants' APA 3, pages. 54-55).
20. On March 9, 2015, Claimant went to Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine for a second opinion. Claimant's chief complaint was painful tingling and numbness with weakness of the right hand. Claimant sustained a crush injury at work in 2013. He underwent a carpal tunnel release along with excision of the spur from the dorsal aspect of the right hand and wrist. Dr. Patel noted that right hand has a healed scar from release of carpal tunnel syndrome, hypesthesia in the median nerve distribution compared to the left hand, and even more hypesthesia in the little and ring finger on the right hand. Motion of the wrist was very minimally restricted with parasthesia on palpation of the ulnar nerve and cubital tunnel. Claimant was diagnosed with cubital tunnel syndrome of the right elbow and persistent paresthesia with numbness following carpal tunnel release with pain. Dr. Patel recommended an EMG/Nerve Conduction Study. (Defendants' APA 2, page 51)
21. On March 18, 2015, in an IME for Claimant, Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute, opined Claimant presented with symptoms consistent with symptomatic tendonopathy of the wrist and recommended conservative therapy and then DeQuervains injections. In addition, Dr. Gabr recommended a EMG/NCS for carpal tunnel syndrome symptoms. Claimant has right hand weakness, right hand numbness, and tingling since October 30, 2013, as a result of a work injury when he got his hand caught in a machine at work. Claimant has a pertinent history of diabetes and hypertension which are well controlled. Claimant was having intermittent numbness and tingling of the fingers, especially the small and ring fingers on the right, worse with bending the wrist and certain positions. Claimant has occasional sleep interruptions secondary to pain, numbness and tingling. His assessment was ulnar neuropathy due to carpal tunnel syndrome. Carpal tunnel symptoms are worse at night and affecting hand function on many occasions; as a result, Dr. Gabr recommended an EMG/NCS of the upper limbs in order to evaluate the severity and the chronicity of the complaints. Based on the EMG/NCS results, further interventions or surgical release will be considered. Dr. Usama Gabr recommended DeQuervains injection, CTS injections, and an EMG/Nerve Conduction Study (Claimant's APA 1, pages 106-109).
22. On June 3, 2015, Dr. Timothy Zgleszewski of Palmetto Spine and Sports Medicine performed an EMG/NCS authorized by Defendants based on the recommendation of Dr. Patel. Prior to the EMG/NCS, Dr. Zgleszewski noted that Claimant's pain is secondary to a work accident when his hand was crushed by a machine. Claimant complains of right hand numbness, pain in the wrist extending into all five fingers with numbing and tingling sensations with average pain of 5/10 and during flare ups 8/10. Claimant reports nighttime

paresthesias. Claimant reports dropping objects. Examination revealed positive Tinel's sign on the right elbow and wrist (Claimant's APA 2, page 110-111). Claimant has continuous numbness of the right hand post crush injury. Dr. Zgleszewski performed the EMG/Nerve Conduction Study and made the following findings- 1. an abnormal electrodiagnostic examination; 2. possible right focal median neuropathy at the wrist (sensory/motor); 3. possible right ulnar neuropathy at the elbow; 4. possible Diabetes Mellitus neuropathy; 5. no evidence of cervical radiculopathy, brachial plexopathy, peripheral polyneuropathy or myopathic process. Dr. Zgleszewski further concluded that Claimant requires an EMG/NCS to the left upper extremity and one lower extremity for definite diagnosis. (Claimant's APA 2, page 112).

23. Defendants have not authorized a hand specialty physician to treat Claimant after the abnormal right upper extremity EMG/NCS performed by Dr. Timothy Zgleszewski on June 3, 2015.
24. Claimant is not at MMI for his admitted right upper extremity injury.
25. Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.
26. Defendants shall not choose a physician that has previously been authorized to treat Claimant nor shall Defendants choose a physician who is within the same practice of a physician who has previously been authorized to treat Claimant.
27. Defendants are not entitled to stop temporary total disability benefits (TTD) at this time.

In addition, the Hearing Commissioner made the following conclusions of law:

1. Under § 42-3-20 and § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, Claimant, James Ashford, is a covered employee.
3. Under § 42-1-140, Prysmian Power Cables is a covered employer.
4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of accident.
5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.
6. Under § 1-23-320 (b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.
7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.

8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.
9. Under § 42-1-40, the Claimant's average weekly wage is \$1,582.73 with a corresponding compensation rate of \$743.72.
10. Under § 42-1-160, the Claimant sustained a compensable injury to his right wrist.
11. Under §42-15-60, and per the evidence presented, the Claimant has not attained maximum medical improvement for his injury, and Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

Within the statutory period, the defendants filed an Application for Review in the case setting forth their reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Full Commission Appellate Panel ("Appellate Panel") on August 15, 2016. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the undersigned members of the Appellate Panel and has since been under study and consideration. Specifically, the defendants requested the Appellate Panel to reverse the Decision and Order of the Hearing Commissioner based upon the following grounds:

1. Did the Hearing Commissioner err in his Finding of Fact #4, wherein he found as a fact that "although evidence was presented at the hearing regarding [the alleged injuries to the psyche, right lower extremity and right side], I find they are not timely for the purposes of this hearing and are not properly before me"; said error being these issues were properly and timely before the Hearing Commissioner and, in fact, the Hearing Commissioner overruled the defendants' objection to excluding the claimant's expert psyche report and left the record open to allow the defendants to conduct discovery pertaining to these issues?
2. Did the Hearing Commissioner err in his Finding of Fact #4, wherein he found as a fact that "although evidence was presented at the hearing regarding [the alleged injuries to the psyche, right lower extremity and right side], I find they are not timely for the purposes of this hearing and are not properly before me"; said error being this finding constitutes a denial defendants' right to due process as to these issues?
3. Did the Hearing Commissioner err in his Finding of Fact #7, wherein he found as a "fact" portions the claimant's Hearing testimony; said error being this finding, specifically, the testimony of the claimant is inconsistent with the uncontroverted evidence in the record?

4. Did the Hearing Commissioner err in his Finding of Fact #7, wherein he found as a "fact" that the claimant requested Dr. Fulton provide a referral for a second opinion which Dr. Fulton denied; said error being this finding is based upon testimony by the claimant which is wholly contrary to uncontroverted report of Dr. Fulton?
5. Did the Hearing Commissioner err in his Finding of Fact #19, wherein he found as a "fact" an incomplete summary of Dr. Fulton's report from February 13, 2015; said error being summary fails to include and/or address Dr. Fulton's report that the claimant's symptoms may be causally-related to an underlying diabetic neuropathy, which the claimant refused to discuss with Dr. Fulton?
6. Did the Hearing Commissioner err in his Finding of Fact #22, wherein he found as a "fact" a summary of the results of the claimant's EMG/NCS performed by Dr. Zgleszewski on June 3, 2015; said error being the results of the EMG do not provide evidence of a condition causally-related to the admitted injury by accident, but instead provide numerous "possible" diagnosis and, as such, the claimant has not met his burden of proving, to a reasonable degree of medical certainty, that additional medical treatment for the causally-related condition will tend to lessen his period of disability?
7. Did the Hearing Commissioner err in his Finding of Fact #23 wherein he found "the defendants have not authorized a hand specialty physician to treat claimant after the abnormal right upper extremity EMG/NCS"; said error being the results of the EMG do not provide evidence of a condition causally-related to the admitted injury by accident, but instead provide numerous "possible" diagnosis and, as such, the claimant has not met his burden of proving, to a reasonable degree of medical certainty, that additional medical treatment for the causally-related condition will tend to lessen his period of disability?
8. Did the Hearing Commissioner err in his Finding of Fact #24 and Conclusion of Law #11 wherein he found as a fact and concluded as a matter of law that "claimant is not at MMI for his admitted right upper extremity injury"; said error being there is no evidence in the record indicating the claimant has not reached MMI and, as such, the only evidence in the record pertaining to MMI is from Dr. Fulton who opined the claimant reached MMI on February 13, 2015?
9. Did the Hearing Commissioner err in his Finding of Fact #24 and Conclusion of Law #11 wherein he found as a fact and concluded as a matter of law that "claimant is not at MMI for his admitted right upper extremity injury"; said error being the claimant failed to provide any evidence stated to a reasonable degree of medical certainty that additional medical treatment for his right upper extremity will tend to lessen his period of disability, as required by Section 42-15-60 of the Act?
10. Did the Hearing Commissioner err in his Finding of Fact #25 and Conclusion of Law #11, wherein he found as a fact and concluded as a matter of law that "claimant is entitled to all causally-related future medical treatment, as recommended by Dr. Gabr"; said error being the claimant failed to provide any evidence stated to a reasonable degree of medical certainty, including any evidence from Dr. Gabr, that additional medical treatment for his

right upper extremity will tend to lessen his period of disability, as required by Section 42-15-60 of the Act?

11. Did the Hearing Commissioner err in his Finding of Fact #25 and Conclusion of Law #11, wherein he found as a fact and concluded as a matter of law that "claimant is entitled to all causally-related future medical treatment, as recommended by Dr. Gabr"; said error being the very language of the finding violates the clear statutory requirement of Section 42-15-60 that defendants are only required to provide medical treatment, which to a reasonable degree of medical certainty, will tend to lessen the claimant's period of disability?
12. Did the Hearing Commissioner err in his Finding of Fact #27 wherein he found "defendants are not entitled to stop temporary total disability benefits"; said error being the only evidence in the record pertaining to MMI confirms the claimant has reached MMI and, therefore, the termination of TTD benefits is appropriate?
13. Did the Hearing Commissioner, by delaying the issuance of an Order for more than one year after the filing of the Form 21 by the defendants, and more than 10 months after the Hearing, violate defendants' right of due process?

After careful review in the instant case of all grounds raised, the evidence in the record, and oral arguments from both counsel, the Commission finds that, by unanimous vote, the Decision and Order of the Hearing Commissioner must be Affirmed in Part and Reversed in Part.

FINDINGS OF FACT

After careful review of the evidence presented by the parties, including the Hearing testimony of the claimant and the medical records and exhibits submitted through the APA, WE FIND AS A FACT THAT:

1. All parties are bound by and subject to the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with James Ashford, as Employee, and Prysman Power Cables, as Employer, and Sentry Insurance Mutual Group, as Carrier.
2. Jurisdiction and venue for the hearing are proper and agreed upon by the parties in Columbia, South Carolina.
3. Notice of the hearing was set on Defendants' Form 21 as it pertained to Claimant's right wrist injury.
4. Claimant has a pending Form 50 that alleged injuries to his psyche, right lower extremity and right side which are not timely for the purposes of this hearing and are not properly before me.

5. Claimant sustained an admitted injury to his right wrist arising out of and in the course and scope of his employment on October 30, 2013, when his right wrist and hand were crushed and caught in a machine for approximately five to eight minutes. Claimant suffered injuries to his right upper extremity including, but not limited to, a crush injury, right dorsal wound, right ulnar styloid fracture, right triangular fibrocartilage complex tear, and carpal tunnel syndrome.
6. Claimant had no prior problems with his right upper extremity prior to the admitted work-related accident on October 30, 2013.
7. Claimant testified that he is 59 years old (Hearing Transcript page 17, Line 16) and that he has worked for the Employer for 26 years (Transcript page 22, Lines 23-25). Claimant testified that his hand got caught in the machine and was wedged between the reel and shaft. (Transcript page 18, Lines 17-18). Claimant further testified that his hand was stuck in the machine for 5 to 8 minutes before the service operator came and got him out. (Transcript page 18, Lines 19-23).

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Claimant testified that Defendants (worker's compensation carrier) authorized and paid for the June 3, 2015, EMG/Nerve Conduction study but have not authorized a physician to treat Claimant and review the abnormal EMG/NCS. (Transcript page 25, Lines 9-22).

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aching pain, with tingling in his hands, particularly the little finger and some in ring finger. He denied ever having any problems with his hands or wrists. He indicated that he was diabetic and took medicine for high blood pressure (Defendants' APA 5, page 104).

9. On December 12, 2013, Dr. Deanna Constable of Palmetto Orthopaedics noted right upper extremity injury secondary to getting caught in a reel after he thought the reel was stopped, pulling his wrist and arm up into the spool and was unable to remove it for several minutes. She further noted that he denied any previous injury to the hand but complains of discomfort, swelling and cool sensations of the hand, dysesthesias. Radiographs of the right hand showed a noted ulnar styloid fracture. (Defendants' APA 4, page 95). Diagnosis was right hand crush injury, right healed dorsal wound and right ulnar styloid fracture (Defendants' APA 4, page 96).
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the TFCC and subtle swelling of the ulnar styloid. Dr. Fulton diagnosed Claimant with carpal tunnel syndrome and triangular fibrocartilage complex injury with ulnar styloid nonunion. Dr. Fulton recommended a right carpal tunnel release as well as excision of the ulnar styloid fragment and possible TFCC repair. (Defendants' APA 3, page 77).

16. On November 3, 2014, Dr. David Fulton performed a right carpal tunnel release, right wrist ulnar styloid excision, and repair of TFCC of right wrist (Defendants' APA 3, page 71).
17. On November 14, 2014, Jessamyn Bartley, PA, at Moore Orthopaedics, noted swelling and numbness and tingling in the ulnar nerve distribution, mainly into the small finger (Defendants' APA 3, page 68).
18. On January 16, 2015, Jessamyn Bartley, PA, at Moore Orthopaedics noted Claimant was previously written for light duty, but no light duty available, so he remained out of work. Ms. Bartley noted periods of numbness and tingling in the ring finger and small finger, which happens to be present a large majority of the time. On exam, she noted swelling ulnarly with difficulty making a composite fist, poor flexion in the ring and small finger, stiff wrist motion, and no full dorsal and palmar flexion. We will continue to monitor the numbness and tingling in the ulnar nerve distribution. Ms. Bartley thinks it is likely from the sensory branch down at the level of the surgery and caused by neuropraxia (Defendants' APA 3, pages 59-60).
19. On February 13, 2015, Dr. David Fulton, authorized treating physician, opined that Claimant was making slower progress than expected based on this time from injury, time from surgery and nature of the procedure. Dr. Fulton noted that Claimant requested a second opinion and that he had a problem with his hand with numbness and tingling in his ring and small finger. In addition, Dr. Fulton stated that this complaint has been persistent since Dr. Fulton met him, but Claimant did have a previous nerve conduction study that showed possible underlying neuropathy. Dr. Fulton placed Claimant at MMI, assigned a 5% medical impairment to the right upper extremity, which equated to 1% from the carpal tunnel release and 4% from the TFCC repair, and released him without work restrictions or future medical care. (Defendants' APA 3, pages. 54-55).
20. On March 9, 2015, Claimant went to Dr. Subhash Patel of Southeastern Orthopaedic and Sports Medicine for a second opinion. Claimant's chief complaint was painful tingling and numbness with weakness of the right hand. Claimant sustained a crush injury at work in 2013. He underwent a carpal tunnel release along with excision of the spur from the dorsal aspect of the right hand and wrist. Dr. Patel noted that right hand has a healed scar from release of carpal tunnel syndrome, hypesthesia in the median nerve distribution compared to the left hand, and even more hypesthesia in the little and ring finger on the right hand. Motion of the wrist was very minimally restricted with parasthesia on palpation of the ulnar nerve and cubital tunnel. Claimant was diagnosed with cubital tunnel syndrome of the right elbow and persistent paresthesia with numbness following carpal tunnel release with pain. Dr. Patel recommended an EMG/Nerve Conduction Study. (Defendants' APA 2, page 51)

21. On March 18, 2015, in an IME for Claimant, Dr. Usama Gabr of Columbia Clinic, Spine and Pain Institute, opined Claimant presented with symptoms consistent with symptomatic tendinopathy of the wrist and recommended conservative therapy and then DeQuervain's injections. In addition, Dr. Gabr recommended a EMG/NCS for carpal tunnel syndrome symptoms. Claimant has right hand weakness, right hand numbness, and tingling since October 30, 2013, as a result of a work injury when he got his hand caught in a machine at work. Claimant has a pertinent history of diabetes and hypertension which are well controlled. Claimant was having intermittent numbness and tingling of the fingers, especially the small and ring fingers on the right, worse with bending the wrist and certain positions. Claimant has occasional sleep interruptions secondary to pain, numbness and tingling. His assessment was ulnar neuropathy due to carpal tunnel syndrome. Carpal tunnel symptoms are worse at night and affecting hand function on many occasions; as a result, Dr. Gabr recommended an EMG/NCS of the upper limbs in order to evaluate the severity and the chronicity of the complaints. Based on the EMG/NCS results, further interventions or surgical release will be considered. Dr. Usama Gabr recommended DeQuervain's injection, CTS injections, and an EMG/Nerve Conduction Study (Claimant's APA 1, pages 106-109).
22. On June 3, 2015, Dr. Timothy Zgleszewski of Palmetto Spine and Sports Medicine performed an EMG/NCS authorized by Defendants based on the recommendation of Dr. Patel. Prior to the EMG/NCS, Dr. Zgleszewski noted that Claimant's pain is secondary to a work accident when his hand was crushed by a machine. Claimant complains of right hand numbness, pain in the wrist extending into all five fingers with numbing and tingling sensations with average pain of 5/10 and during flare ups 8/10. Claimant reports nighttime paresthesias. Claimant reports dropping objects. Examination revealed positive Tinel's sign on the right elbow and wrist (Claimant's APA 2, page 110-111). Claimant has continuous numbness of the right hand post crush injury. Dr. Zgleszewski performed the EMG/Nerve Conduction Study and made the following findings- 1. an abnormal electrodiagnostic examination; 2. possible right focal median neuropathy at the wrist (sensory/motor); 3. possible right ulnar neuropathy at the elbow; 4. possible Diabetes Mellitus neuropathy; 5. no evidence of cervical radiculopathy, brachial plexopathy, peripheral polyneuropathy or myopathic process. Dr. Zgleszewski further concluded that Claimant requires an EMG/NCS to the left upper extremity and one lower extremity for definite diagnosis. (Claimant's APA 2, page 112).
23. Defendants have not authorized a hand specialty physician to treat Claimant after the abnormal right upper extremity EMG/NCS performed by Dr. Timothy Zgleszewski on June 3, 2015.
24. Claimant is not at MMI for his admitted right upper extremity injury.
25. Claimant is entitled to all causally related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.
26. Defendants shall not choose a physician that has previously been authorized to treat Claimant; nor shall Defendants choose a physician who is within the same practice of a physician who has previously been authorized to treat Claimant.

27. Claimant has been released to return to work without restrictions by Dr. Fulton and, moreover, neither Dr. Patel nor Dr. Gabr opined regarding the claimant's ability to work.
28. Defendants are entitled to stop temporary total disability benefits (TTD) as of May 4, 2015, as the claimant has been released to return to work without restrictions and employment has been offered.
29. Defendants are entitled to a credit for all TTD benefits paid from May 4, 2015, through the date of this Decision and Order; this credit shall be applied to any prospective indemnity benefits paid in the claim, including but not limited to TTD benefits and any determination of permanent disability.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, and as provided by the Code of Laws of South Carolina, § 42-17-40, it is the determination of the Commission that:

1. Under § 42-3-20 and § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Under § 42-1-130, Claimant, James Ashford, is a covered employee.
3. Under § 42-1-140, Prysmian Power Cables is a covered employer.
4. Under § 42-1-150, there was an employer/employee relationship between the parties on the date of accident.
5. Under § 42-17-20, venue in Columbia, South Carolina was proper and agreed upon by the parties.
6. Under § 1-23-320 (b) and Regulation 67-607, notice of the hearing was timely and properly served upon all of the parties of interest.
7. Under § 42-15-20, the Claimant gave timely notice of his accident to his employer.
8. Under § 42-15-40, the claim for benefits was timely filed under the Workers' Compensation Act with the South Carolina Workers' Compensation Commission.
9. Under § 42-1-40, the Claimant's average weekly wage is \$1,582.73 with a corresponding compensation rate of \$743.72.
10. Under § 42-1-160, the Claimant sustained a compensable injury to his right wrist.
11. Under §42-15-60, and per the evidence presented, the Claimant has not attained maximum medical improvement for his injury, and Claimant is entitled to all causally

related future medical treatment, as recommended by Dr. Gabr, by a physician with a specialty to the hand of Defendants' choosing.

12. Under §42-9-260 and Regulation 67-506, defendants are entitled to terminate TTD benefits as of May 4, 2015, and defendants are entitled to a credit against prospective indemnity for all TTD benefits paid from May 4, 2015, through the date this Order is filed.

ORDER

IT IS, THEREFORE, ORDERED, that the Decision and Order of the Hearing Commissioner filed in the above-captioned matter on May 12, 2015, is hereby Reversed in part. Specifically, it is Ordered that the defendants are entitled to terminate TTD benefits as of May 4, 2015, as the claimant has been released to return to work without restrictions. Moreover, the defendants are entitled to a credit for TTD benefits paid from May 4, 2015, through the filing date of this Order. Nothing in this Order shall prohibit an award of prospective temporary benefits.

IT IS FURTHER ORDERED that, with the exception of the correction of a minor and non-substantive clerical errors, the remainder of the Decision and Order of the Hearing Commissioner is Affirmed in its entirety.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Susan S. Barden
For the Appellate Panel



Commissioner T. Scott Beck



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).

By Eugenia Hollmon on November 1, 2016

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