

STATE OF SOUTH CAROLINA)
Stanley H. Starnes,)
)
Claimant/Respondent,)
)
-vs-)
)
Senn Freight Lines,)
)
Employer,)
)
-and-)
)
Guarantee Insurance Company,)
)
Carrier,)
Defendants/Appellants.)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION
COMMISSION

WCC FILE NO: 1320397

DECISION AND ORDER OF THE
WORKERS' COMPENSATION
COMMISSION APPELLATE PANEL

RECEIVED

JAN 23 2017

SC Court of Appeals

Appellate Panel Review
Columbia, South Carolina
October 17, 2016

Appellate Panel Decision and Order filed
December 21, 2016

APPEARANCES:

Defendants/Appellants represented by David H. Keller, Esquire, of Turner, Padgett,
Graham & Laney P.A.

Claimant/Respondent represented by Thomas P. Bellinger, Esquire, of McWhirter,
Bellinger & Associates, P.A.

The parties were heard by The Honorable Aisha Taylor, Commissioner, on November 19,
2015, in Columbia, South Carolina, and an Order was filed on July 13, 2016.

Defendants appealed the decision to the Appellate Panel of the South Carolina Workers'
Compensation Commission following the filing of the Single Commissioner's Order. The Single
Commissioner found as follows:

FINDINGS OF FACT

1. Claimant incurred an aggravation of his pre-existing syrx and back condition on August 7, 2013, within the course and scope of his employment after he was involved in a rollover accident while driving an 18-wheeler for his employer. This finding is supported by the preponderance of the medical evidence, including the medical opinion of Dr. Brett Gunter. Claimant's APA pgs. 206 – 217. Further this compensability finding is supported by the rollover photographs, the consistent histories given to the medical providers, the testimony of the seatbelt looping around Claimant's neck, the symptoms stated to the medical providers, and his 13 month work history of driving a truck prior to this accident.
2. Furthermore, I find that Claimant's pre-existing condition was latent in that he had no symptoms in at least thirteen (13) months leading up to this accident wherein he was working full time without any restrictions. Claimant's APA pgs. 1-217.
3. I find that Claimant's continued complaints of pain and stiffness in his neck as well as pain and needle sensation in his left arm and hand are new symptoms directly related to the work injury. Claimant's APA pgs. 3-4 and APA p. 45.
4. Claimant testified credibly at the hearing. I find Claimant's testimony that he tried to avoid medical treatment directly after the accident out of fear of losing his job to be persuasive. Hrg. Tr. pg. 28.
5. Claimant is not at Maximum Medical Improvement for his August 7, 2013, work injury. Claimant is entitled to continued medical treatment at the direction of Defendants until he is placed at maximum medical improvement. S.C. Code Ann. Regs. 67-509; S.C. Code Ann. Regs. 67-1601.
6. Defendants are liable for all previously incurred causally-related medical treatment to be paid pursuant to the South Carolina Workers' Compensation Fee Schedule.
7. By stipulation of the parties, Claimant has an average weekly wage of \$471.00, which yields a compensation rate of \$314.00. S.C. Code Ann. § 42-1-40.
8. Claimant is entitled to temporary total disability benefits from April 30, 2014, through the present and continuing until he is placed at maximum medical improvement. *See Stipulations.*

9. All back-payments of Temporary Total Disability benefits are to be paid in a lump-sum.
10. No hearing costs are assessed.

CONCLUSIONS OF LAW

1. Under S.C. Code Ann. § 42-1-160, Claimant has carried the burden of proof in exhibiting that he suffered an injury by accident arising out of and in the course and scope of his employment. Said burden of proof was met by the severity of the accident depicted by the rollover photographs, the consistent histories given to the medical providers, the testimony depicting the seatbelt looping around Claimant's neck, the symptoms stated to the medical providers, Claimant's 13 month work history prior to the accident, and the opinion of Dr. Gunter.
2. Under S.C. Code Ann. § 42-9-10, Claimant is entitled to temporary total disability compensation from April 30, 2014, to present.
3. Under S.C. Code Ann. § 42-15-60, Claimant has received and is still receiving medical care for his injuries that is needed to lessen his period of disability. Defendants are responsible for all causally related medical care, involving the aggravation of his syrinx and back and the new symptoms pertaining to his neck, left arm, and left hand, past and future.
4. Under S.C. Code Ann. § 42-9-35, Claimant is entitled to benefits due to his preexisting condition being aggravated by an injury as defined in S.C. Code Ann. § 42-1-160.
5. Under S.C. Code Ann. § 42-1-140 and S.C. Code Ann. Regs. 67-1603, Claimant's average weekly wage is \$471.00, yielding a compensation rate of \$314.00.
6. Under S.C. Code Ann. § 42-9-301, Claimant is entitled to a lump sum payment for all back payments of total temporary disability compensation owed.

AWARD

It is therefore ordered Claimant has a compensable aggravation of his pre-existing syrinx and stenosis in his back, pursuant to S.C. Code Ann. § 42-9-35. Additionally, Claimant injured his neck which has caused pain and needle sensation in his left arm and hand. Claimant has not yet reached maximum medical improvement. Claimant is temporarily disabled pursuant to S.C.

Code Ann. § 42-9-10, and Defendants are responsible for all causally-related medical care, past and future. I further find that Claimant is entitled to temporary total disability benefits from April 30, 2014, through the present and continuing until he is placed at maximum medical improvement. Lastly, Defendant is ordered to pay a lump sum to Claimant for all back payments for his temporary total disability.

STATEMENT OF THE CASE

Commissioner Aisha Taylor heard this matter on November 19, 2015. Respondent was injured in a rollover tractor-trailer accident on August 7, 2013. Respondent filed a Form 50 on March 4, 2014, seeking additional medical treatment and temporary total disability benefits. Appellants, in turn, filed a Form 51 on April 28, 2014, asserting Respondent was not entitled to any additional medical treatment or temporary total disability benefits. Because the first scheduled hearing was continued, Respondent filed a second Form 50 on August 17, 2015, again requesting additional medical treatment and temporary total disability benefits.

The Hearing Commissioner ruled in favor of Respondent in her July 13, 2016, Order. She determined Respondent incurred an aggravation of his pre-existing syrx and back injuries within the course and scope of his employment, that the pre-existing conditions were latent, that his continued complaints of pain and stiffness in his neck as well as pain and needle sensation in his left arm and hand were new symptoms and related to his work injury, that Respondent was not at MMI, that Respondent was entitled to continued medical treatment, and that Respondent was entitled to temporary total disability benefits from April 30, 2014, until he was placed at maximum medical improvement. Appellants filed a Form 30 challenging this decision, asserting the Hearing Commissioner's determinations were not supported by the preponderance of the evidence.

FORM 30 QUESTIONS PRESENTED

1. Finding as a fact that the claimant incurred an aggravation of his pre-existing syrx and back on August 7, 2013, the error being the preponderance of the evidence fails to support such a finding. [sic]
2. Finding as a fact that the testimony of Dr. Gunter supports claimant's contention of an aggravation the error being the preponderance of the evidence fails to support such a finding. [sic]

3. Finding as a fact that “rollover” photographs support the claimant’s contention the error being such findings are unsupported by expert evidence or the preponderance of the evidence. [sic]
4. Finding as a fact that the claimant’s pre-existing syring was a condition that was latent and had no symptoms, the error being the preponderance of the evidence fails to support such a finding. [sic]
5. Finding as a fact that the claimant’s stiffness in his neck and pain in his left arm and hand are symptoms directly related to his work injury, the error being the preponderance of the evidence fails to support such a finding. [sic]
6. Finding that the claimant testified credibly, the error being that the claimant’s testimony was irrelevant to the issue of causal connection which required expert testimony. [sic]
7. Finding as a fact that the claimant did not initially seek medical treatment out of fear of losing his job, the error being there is no evidence anywhere in the record to support such a finding, and the error being the preponderance of the evidence fails to support such a finding. [sic]
8. Finding as a fact that the claimant is not at maximum medical improvement, the error being the claimant did not suffer any compensable injuries related to his alleged truck related injury of August 7, 2013. [sic]
9. Finding as a fact that the defendants are responsible for all previously incurred causally related medical care and treatment the error being that there is no evidence anywhere in the record to support that the claimant received any medical treatment for the syring condition and, therefore, there was a failure of proof on part of the claimant. [sic]
10. Finding as a fact that the defendants are responsible for causally related medical care and treatment the error being that there is no evidence to support medical care and treatment having been received for the claimant’s stenosis in his neck, and, therefore there is a failure of proof on the part of the claimant. [sic]
11. Finding as a fact that the defendants are responsible for causally related medical care and treatment, the error being that the Commissioner failed to name any medical care or treatment which is related to the conditions she found compensable and the error

being the preponderance of the evidence fails to support that there are such medical bills. [sic]

12. Finding as a fact that the claimant is entitled to temporary total disability compensation from August 30, 2014 through the present and continuing, the error being the preponderance of the evidence fails to support such a finding. [sic]
13. Finding as a fact that the claimant is entitled to a lump sum payment of temporary total disability compensation the error being the preponderance of the evidence fails to support such a finding. [sic]
14. In concluding as a matter of law that the claimant carried the burden of proof in exhibiting that he suffered an injury by accident arising out of and in the course and scope of employment, the error being the preponderance of the evidence fails to support such a conclusion. [sic]
15. In concluding as a matter of law that the claimant met the burden of proof merely by the "severity of the accident" and various photographs, the error being the preponderance of the evidence fails to support such a conclusion. [sic]
16. In concluding as a matter of law that the claimant met his burden of proof, the error being that this is a medically complex condition and requires expert testimony and the claimant has a total lack of proof of the same. [sic]
17. In concluding as a matter of law that the claimant is entitled to temporary total disability compensation the error being the preponderance of the evidence fails to support such a conclusion. [sic]
18. In concluding as a matter of law that the claimant is entitled to medical care and treatment for his injuries, the error being the only conditions found to be compensable are syring and stenosis and there is no evidence the claimant has received any medical care and treatment for either of these conditions, or to what, if any, degree. [sic]
19. In concluding as a matter of law that the defendants are responsible for causally related medical care involving aggravation of syring and new symptoms pertaining to the claimant's neck, the error being the preponderance of the evidence fails to support such a conclusion. [sic]
20. In concluding as a matter of law that the claimant is entitled to causally related medical care and treatment for syring and aggravated spinal stenosis, the error being

there is failure of proof on the part of the claimant as to what, if any, medical bills the claimant has incurred as a result thereof; and, therefore, the preponderance of the evidence fails to support such a conclusion. [sic]

21. In concluding as a matter of law that the claimant exacerbated a pre-existing condition pursuant to Section 42-9-35, the error being the preponderance of the evidence fails to support such a conclusion. [sic]
22. In concluding as a matter of law that the claimant exacerbated a pre-existing condition pursuant to Section 42-9-35, the error being the same constitutes an error of law. [sic]
23. In concluding as a matter of law that the claimant is entitled to a lump sum payment of temporary total disability compensation, the error being the preponderance of the evidence fails to support such a conclusion. [sic]
24. In finding as a fact and concluding as a matter of law that the claimant is entitled to temporary total disability compensation, the error being that there is no evidence to support that the conditions which Commissioner Taylor found compensable are the cause of his being out of work. [sic]
25. In Ordering that claimant suffered an aggravation of pre-existing syrnix and stenosis in his back, the error being the preponderance of the evidence fails to support such an Order. [sic]
26. In Ordering that the claimant injured his neck as a result of a work-related injury, the error being the preponderance of the evidence fails to support such an order. [sic]
27. In Ordering that the claimant has not yet reached maximum medical improvement, such a finding is irrelevant based on the fact that there is no proof of an injury by accident arising out of or in the course of employment. [sic]
28. In Ordering that the claimant is temporarily totally disabled as a result of syrnix and stenosis, the error being the preponderance of the evidence fails to support such an Order. [sic]
29. In Ordering that the claimant is temporarily totally disabled as a result of syrnix and stenosis, the error being that there was no evidence presented by any medical doctor as to why the Claimant is currently out of work other than for a non-compensable idiopathic condition. [sic]

30. In Ordering that the defendants are responsible for causally related medical care and treatment, the error being there is no testimony anywhere in the record to support that the claimant has received medical care and treatment for the conditions that the Commissioner found compensable. [sic]
31. In Ordering that the defendants are responsible for causally related medical care and treatment, the error being the preponderance of the evidence fails to support such an Order. [sic]
32. In Ordering that the claimant is entitled to temporary total disability compensation, the error being the preponderance of the evidence fails support such an Order. [sic]
33. In Ordering that the defendants pay the claimant a lump sum for temporary total disability compensation, the error being the preponderance of the evidence fails to support such an Order. [sic]

EVIDENCE SUMMARY

Respondent's Testimony

Respondent began working at Senn Freight Lines on July 9, 2012, and had been working there for approximately thirteen (13) months prior to the rollover accident on August 7, 2013. Hr'g Tr. pg. 13-15. Respondent was traveling in West Virginia when he saw a bad spot in the road and tried to avoid it, causing the tractor-trailer to roll over onto its side. Hr'g Tr. pgs. 14-15. As the tractor-trailer was tumbling, his seat belt got looped around his neck, and he had to cut the seatbelt from around his neck some ten minutes later after someone broke out the glass and handed him a knife. Hr'g Tr. pg. 17.

As of the hearing date, Respondent was still using a walker. Hr'g Tr. pgs. 21-22. Respondent continued to have neck pain and stiffness, difficulty turning his neck, dizziness, difficulty swallowing, difficulty driving, left arm/hand weakness, right hand weakness, and weakness/numbness in his left leg, Hr'g Tr. pgs. 23-27.

Cross-Examination

On cross examination, Respondent admitted he did not tell his employer about his medical problem because he was trying to keep his job. He also agreed his employer did not authorize his medical treatment.

Summary of the Medical Evidence

Respondent was first seen at MedExpress Wheeling in West Virginia on August 8, 2013, where Respondent was given a drug test. APA pg. 1. Once he returned to South Carolina, he was seen at Lexington Medical Center Swansea, for neck pain and tingling to his left arm since his accident on August 7, 2013. APA pg. 3. Respondent's cervical spine X-ray showed mild cervical spondylosis at C4-5, C5-6, and C6-7. APA pg. 6. Respondent was diagnosed with cervical spondylosis with radiculopathy, neck pain, and paresthesia of the left arm. APA pg. 4. The nurse practitioner prescribed Respondent Cyclobenzaprine, Hydrocodone, and Prednisone. APA pg. 4-5.

Respondent returned to Lexington Medical Center Swansea on February 25, 2014 for neck pain that radiated into both shoulders. APA pg. 11. Dr. Steve Waldrop noted that Respondent had no past pertinent medical history. APA pg. 11. Dr. Waldrop prescribed Hydrocodone and Naproxen. APA pg. 12.

On February 28, 2014, Respondent sought treatment at Lexington Medical Center Swansea for neck pain with numbness and tingling in his legs. APA pg. 14. Respondent was diagnosed with paresthesia, neck pain, and low back pain. APA pg. 15. The nurse practitioner prescribed Tramadol. APA pg. 15. Respondent was provided an out of work excuse for two (2) days as a result of this visit. APA pg. 17.

Respondent returned to Lexington Medical Center Swansea on March 11, 2014, for numbness and soreness in the left back down his calf and felt like there were needles sticking into his arm. APA pg. 18. The nurse practitioner noted tenderness to the cervical spine and left cervical paraspinal muscles during Respondent's physical exam; she also noted decreased strength and grip to the left hand, left radiculopathy, and tenderness of the lumbar spine and left paraspinal muscles. APA pg. 18-19. The nurse practitioner diagnosed Respondent with cervical radicular pain, neck pain, lumbar radiculopathy, low back pain, arthritis, cervical spondylosis with radiculopathy, and neck pain. APA pg. 19. The nurse practitioner prescribed Hydrocodone, Prednisone, and Cyclobenzaprine. APA pg. 19.

On March 28, 2014, Respondent sought treatment at Columbia Neurological Associates with Dr. Frank Pusey, for paresthesia in his left arm. APA pg. 27. Dr. Pusey diagnosed Respondent with spinal stenosis of the cervical region and ordered an MRI of Respondent's C spine. APA pg. 29.

Respondent's MRI of his cervical spine was conducted at South Carolina Diagnostic Imaging on April 2, 2014. APA pg. 40. The MRI showed possible Chiari malformation, likely

Type I, and moderate central canal stenosis at C6-7, and, to a lesser degree at C5-6, with central disc protrusions at both levels. APA pg. 40. Respondent's MRI also showed mild bilateral C7 neural foraminal stenosis. APA pg. 40.

Respondent saw Dr. Pusey again on April 4, 2014, for a follow-up; Dr. Pusey diagnosed him with spinal stenosis in the cervical region and Chiari malformation type 1. APA pgs. 27, 30.

An MRI of Respondent's lumbar spine was conducted at South Carolina Diagnostic Imaging on April 7, 2014. APA pg. 42. The MRI suggested shallow left posterolateral disc osteophyte complex at L3-4 with mild flattening of the exiting L3 nerve root and moderate degeneration at L4-5. APA pg. 42.

On April 12, 2014, Respondent returned to Lexington Medical Center Swansea for persistent pain in the left face, neck, and arm. APA pg. 21. Dr. David C. Winn diagnosed Respondent with neck pain and cervical radicular pain and prescribed Carisoprodol and Meloxicam. APA pg. 21.

Respondent was seen at Lexington Medical Center Swansea on April 26, 2014, for dizziness. APA pg. 22. Dr. Dale Blizzard diagnosed Respondent with dizziness and Labyrinthitis and prescribed Meclizine, Ondansetron, and Promethazine. APA pgs. 23-24.

On April 29, 2014, Respondent returned to Dr. Pusey's office; Dr. Pusey referred Respondent to a neurosurgeon. APA pg. 36.

On April 30, 2014, Respondent saw Dr. Ryan Kellogg at MUSC Health for his neurologic symptoms. APA pg. 49. Respondent had several diagnostic tests performed on this date, including a brain MRI, an MRI of the cervical spine, an MRI of the thoracic spine, and a chest X-ray. The brain MRI showed Chiari type I malformation with partially visualized cervical syringohydromyelia. APA pg. 59. The cervical spine MRI also showed Chiari type I malformation with extensive associated syringohydromyelia extending into the cervicomedullary junction and inferiorly into the thoracic spine. APA pg. 60. The cervical spine MRI also showed mild to moderate degenerative changes in the cervical spine, worse at C6-7. APA pg. 76. The MRI of Respondent's thoracic spine showed syringomyelia of the upper thoracic spinal cord extending from the level of the inferior endplate of T5 vertebral body related to Chiari malformation and T2 signal abnormality within the cord along the T6 vertebral level. APA pgs. 62.

Respondent saw Dr. Andrews at MUSC on May 1, 2014 due to neck and back pains and left upper extremity loss of sensation. APA pg. 45. Dr. Andrews diagnosed Respondent with syrinx of the spinal cord with motor weakness and ordered an MRI of Respondent's head,

C-spine, and T-spine. APA pg. 47-48. Dr. Andrews noted Respondent had no past pertinent surgical history or family history. That same day, Respondent had a modified barium swallow which showed intratracheal aspiration with thin and nectar thick barium. APA pg. 86. Dr. Istvan Takacs at MUSC performed this procedure due to Respondent's difficulty swallowing. APA pg. 91. On May 1, 2014, Respondent also had an occupational therapy evaluation. APA pgs. 94-96.

Dr. Alejandro Spiotta performed a Chiari Decompression on Respondent on May 2, 2014. APA pg. 52.

On May 3, 2014, Respondent had two (2) X-rays conducted of his abdomen and one (1) X-ray conducted of his chest. The abdomen X-rays showed left basilar opacity, likely atelectasis and effusion. APA pg. 110. The chest X-ray showed left basilar opacity, likely atelectasis, small right pleural effusion, and likely small left pleural effusion. APA pg. 111.

Anne Powell completed an Occupational Therapy Report for Respondent on May 7, 2014, for upper extremity and lower extremity weakness and numbness and limited range of motion. APA pg. 131. Respondent participated in therapy two times per week for four weeks and engaged in functional mobility training, therapeutic exercise, patient/family education, DME recommendations, and adaptive equipment. APA pg. 131. On the same date, physical therapist Shannon Weaver diagnosed Respondent with hemiplegia and determined that Respondent needed physical therapy 4-5 times per week which would include transfer training, education, gait training, therapeutic exercise, and balance training. APA pg. 133.

A second modified barium swallow was performed on May 8, 2014, showing intratracheal aspiration and laryngeal penetration. APA pg. 141. Dr. Takacs saw Respondent after the procedure and determined Respondent had increased pharyngeal residue and aspiration/penetration. APA pg. 144. The next day, during physical therapy, Respondent communicated that his left arm was very weak. APA pg. 153.

Respondent had another chest X-ray on May 13, 2014, which showed bilateral lower lobe airspace opacities, left basilar opacity which may represent atelectasis, and right basilar opacity, which may exhibit pneumonia. APA pg. 167.

On May 28, 2014, Respondent saw Dr. Alejandro Spiotta at MUSC Health. Dr. Spiotta diagnosed Respondent with Chiari malformation s/p decompression, cervical/thoracic syrinx, left-sided weakness, and neck and back pain. APA pg. 197. Dr. Spiotta's discharge summary states, "acute worsening of neurologic symptoms following a remote history of rollover tractor-trailer accident in Aug[ust] of 2013." APA p.54. Dr. Spiotta was deposed January 29, 2015. During this deposition he opined there are ways Respondent's condition could be exacerbated by

a traumatic event. Spiotta Deposition pg. 8. He opined it was plausible that a bruised spinal cord could have exacerbated things. Spiotta Deposition pg. 22. He also agreed Respondent's medical history to Lexington Medical Center Swansea, Dr. Pusey, and MUSC were all consistent in that his symptoms began within a few days post-accident in August of 2013. Spiotta Deposition pgs. 13-14. He goes on to say it is hard to know when the syrinx progressed. Spiotta Deposition pg. 20. Also he says it is impossible for him to know and he cannot tell whether Respondent's accident in August of 2013, would have aggravated his cervical discs. Spiotta Deposition pg. 18. Lastly, he opines all of the Respondent's symptoms in the neck, arm, and leg (sensory and motor) are attributable to the syrinx. Spiotta Deposition pg. 22. It was Dr. Spiotta's opinion despite the statements above that his treatment to a reasonable degree of medical certainty was not likely related to a traumatic event. Spiotta Deposition pg. 12.

Respondent sought treatment with Dr. Brett Gunter of Columbia Neurosurgical Associates on May 26, 2015, for an independent medical evaluation. Dr. Gunter noted Respondent's current symptoms were vertigo (2-3 times per day), sensation of choking and difficulty swallowing, numbness along the left side of his body, needle-like pain in his hands, and unsteadiness of gait. APA pgs. 211-212. Dr. Gunter's report noted Respondent denied any similar symptoms prior to the rollover accident and ordered an MRI of Respondent's cervical spine to evaluate for canal stenosis. APA pg. 213.

An MRI of Respondent's cervical spine was conducted again on June 10, 2015, at South Carolina Diagnostic Imaging. APA pg. 44. This MRI showed gliosis of the cord, disc bulge at C5-6, C6-7, and to a moderate degree to C4-5, and suboccipital craniotomy. APA pg. 44.

Respondent had a follow-up visit with Dr. Gunter on August 4, 2015, for passing out, weakness, numbness, and tingling. APA pg. 214. Dr. Gunter noted in his assessment that Respondent's syrinx/stenosis condition was aggravated by the tractor-trailer roll-over incident. APA pg. 215. In October of 2015, Dr. Gunter completed a questionnaire to the same effect. APA pgs. 216-217.

Following Dr. Gunter's opinion, Defendants had a peer review performed by Dr. Vidyadhar Chitale on October 29, 2015. He agreed with Dr. Spiotta's testimony.

ARGUMENT PRESENTED BEFORE THE APPELLATE PANEL

Claimant argued that the documentary evidence presented before the Single Commissioner demonstrated that Claimant exacerbated his asymptomatic syrinx/stenosis condition in the tractor-trailer rollover on August 7, 2013. Claimant consistently complained of symptoms that relate to spinal cord trauma, including neck pain and tingling, radiculopathy, paresthesia of the left arm, numbness and tingling in his legs, decreased strength and grip in his

left hand, lower extremity weakness, passing out, and pain throughout his body. APA pgs. 1-217. A detailed review of Claimant's medical records showed Claimant did not have any significant medical history prior to the collision.

Although Appellant's wish to rely on Dr. Spiotta's testimony, Dr. Spiotta testified at his deposition that Claimant's medical records were consistent with his symptoms starting within a few days of the rollover incident. Spiotta Deposition pgs. 12-14. His testimony affirmed that the rollover incident could have progressed Claimant's injuries.

Appellants questioned Dr. Gunter's opinions contained within his questionnaire. Dr. Gunter is a distinguished neurologist who puts his expertise and reputation at risk any time he completes a questionnaire. As such, Dr. Gunter made explanations where he felt necessary in his questionnaire but did not elaborate where it was not necessary.

Dr. Gunter opined, to a reasonable degree of medical certainty, Respondent's syrinx/stenosis condition most probably caused his left side and left leg weakness and numbness; that, to a reasonable degree of medical certainty, the aggravation of Respondent's syrinx/stenosis condition most probably caused a needle sensation in his hands; that, to a reasonable degree of medical certainty, the aggravation of Respondent's syrinx/stenosis condition most probably caused him to have an unsteady gait; and that, to a reasonable degree of medical certainty, the aggravation of Respondent's syrinx/stenosis condition most probably caused his need for a Chiari decompression surgery. APA pgs. 216-217. Similarly, Dr. Spiotta opined Claimant's neck pain, arm pain, leg & gait problems, and sensory and motor problems were all attributable to the syrinx. Hr'g Tr. Pgs. 22 and 11.

Because the treatment for the syrinx and stenosis conditions was so similar, there was no need to separate the conditions, and Claimant was treated for both conditions at each visit. Claimant's attorney argued an aggravation of stenosis would also aggravate the syrinx. As the syrinx is impacted as the canal narrows.

Unlike Dr. Gunter, who had a relationship with Claimant, Appellants attempted to rely on the report of Dr. Vidyaehar Chitale. This doctor provided a peer review only, as he never met the Claimant.

Claimant continues to experience pain, stiffness, dizziness, difficulty swallowing, weakness, and numbness. Hr'g Tr. pgs. 23-27.

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FULL PANEL'S FINDINGS OF FACT

Based upon briefs and oral arguments, APA submissions, the record on appeal and the Commission file the Appellate Panel makes the following Findings of Fact.

1. Claimant incurred an aggravation of his pre-existing syrinx and back condition on August 7, 2013, within the course and scope of his employment after he was involved in a rollover accident while driving an 18-wheeler for his employer. This finding is supported by the preponderance of the medical evidence, including the medical opinion of Dr. Brett Gunter. Claimant's APA pgs. 206 – 217. Further this compensability finding is supported by the rollover photographs, the consistent histories given to the medical providers, the testimony of the seatbelt looping around Claimant's neck, the symptoms stated to the medical providers, and his 13 month work history of driving a truck prior to this accident.
2. Furthermore, we find that Claimant's pre-existing condition was latent in that he had no symptoms in at least thirteen (13) months leading up to this accident wherein he was working full time without any restrictions. Claimant's APA pgs. 1-217.
3. We find that Claimant's continued complaints of pain and stiffness in his neck as well as pain and needle sensation in his left arm and hand are new symptoms directly related to the work injury. Claimant's APA pgs. 3-4 and APA p. 45.
4. Claimant testified credibly at the hearing. We find Claimant's testimony that he tried to avoid medical treatment directly after the accident out of fear of losing his job to be persuasive. Hrg. Tr. pg. 28.
5. Claimant is not at Maximum Medical Improvement for his August 7, 2013, work injury. Claimant is entitled to continued medical treatment at the direction of Defendants until he is placed at maximum medical improvement. S.C. Code Ann. Regs. 67-509; S.C. Code Ann. Regs. 67-1601.
6. Defendants are liable for all previously incurred causally-related medical treatment to be paid pursuant to the South Carolina Workers' Compensation Fee Schedule.
7. By stipulation of the parties, Claimant has an average weekly wage of \$471.00, which yields a compensation rate of \$314.00. S.C. Code Ann. § 42-1-40.

8. Claimant is entitled to temporary total disability benefits from April 30, 2014, through the present and continuing until he is placed at maximum medical improvement. *See Stipulations.*
9. All back-payments of Temporary Total Disability benefits are to be paid in a lump-sum.
10. No hearing costs are assessed.


CONCLUSIONS OF LAW

1. Under S.C. Code Ann. § 42-1-160, Claimant has carried the burden of proof in exhibiting that he suffered an injury by accident arising out of and in the course and scope of his employment. Said burden of proof was met by the severity of the accident depicted by the rollover photographs, the consistent histories given to the medical providers, the testimony depicting the seatbelt looping around Claimant's neck, the symptoms stated to the medical providers, Claimant's 13 month work history prior to the accident, and the opinion of Dr. Gunter.
2. Under S.C. Code Ann. § 42-9-10, Claimant is entitled to temporary total disability compensation from April 30, 2014, to present.
3. Under S.C. Code Ann. § 42-15-60, Claimant has received and is still receiving medical care for his injuries that is needed to lessen his period of disability. Defendants are responsible for all causally related medical care, involving the aggravation of his syrinx and back and the new symptoms pertaining to his neck, left arm, and left hand, past and future.
4. Under S.C. Code Ann. § 42-9-35, Claimant is entitled to benefits due to his preexisting condition being aggravated by an injury as defined in S.C. Code Ann. § 42-1-160.
5. Under S.C. Code Ann. § 42-1-140 and S.C. Code Ann. Regs. 67-1603, Claimant's average weekly wage is \$471.00, yielding a compensation rate of \$314.00.
6. Under S.C. Code Ann. § 42-9-301, Claimant is entitled to a lump sum payment for all back payments of total temporary disability compensation owed.

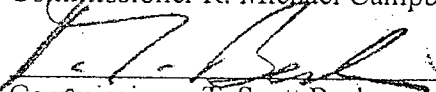
ORDER OF THE APPELLATE PANEL

It is therefore ordered Claimant has a compensable aggravation of his pre-existing syrinx and stenosis in his back, pursuant to S.C. Code Ann. § 42-9-35. Additionally, Claimant injured his neck which has caused pain and needle sensation in his left arm and hand. Claimant has not yet reached maximum medical improvement. Claimant is temporarily disabled pursuant to S.C. Code Ann. § 42-9-10, and Defendants are responsible for all causally-related medical care, past and future. I further find that Claimant is entitled to temporary total disability benefits from April 30, 2014, through the present and continuing until he is placed at maximum medical improvement. Lastly, Defendant is ordered to pay a lump sum to Claimant for all back payments for his temporary total disability.

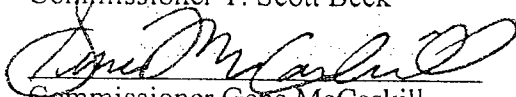
South Carolina Workers' Compensation Appellate Panel.



Commissioner R. Michael Campbell, II



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 December 21, 2016