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APPELLATE PANEL DECISION AND ORDER

MAR 13 2017

OF THE

SC Court of Appeals

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1215417

Jefferson Taylor

**EMPLOYEE,
CLAIMANT/APPELLANT**

VS.

Wildcat Steel & Fabricating, LLC

EMPLOYER,

AND

**Guarantee Insurance
Company/Patriot Risk Services c/o
Patriot Risk Services, Inc.**

**CARRIER,
DEFENDANTS/APPELLANT,**

**Appellate Panel Review held in Columbia, South
Carolina, on October 18, 2016 per notices timely
and properly served upon all parties of interest.**

Appellate Panel Decision and Order Filed:

February 8, 2017

APPEARANCES:

**Claimant appeared and represented by William G. Jenkins,
Jr., Esquire, of Jenkins & Esquivel, P.A. of Hilton Head,
South Carolina.**

**Defendants represented by Erin L. Hantske, Esquire, of
McAngus Goudelock & Courie, L.L.C. of Charleston,
South Carolina.**

STATEMENT OF THE CASE

Claimant's date of accident is November 5, 2012. This claim was heard by the Single Commissioner on January 13, 2016, in Yemassee, South Carolina pursuant to Defendants' Form 21 to determine whether Defendants may stop the payment of benefits and whether Claimant was entitled to any further benefits. Defendants also requested a credit for the overpayment of temporary total disability benefits. Additionally, the Single Commissioner made a post-trial ruling based on the submitted APA records regarding the compensability of Claimant's alleged back injury.

On July 25, 2013, Claimant filed a Workers' Compensation Commission Form 50, Request for Hearing, asserting that he sustained compensable injuries to his left leg/ankle/foot and back in a work-related accident on November 5, 2012. Claimant asserted that he sustained the aforementioned injuries when he fell off of a ladder during the course and scope of his employment with Defendant, Wildcat Steel & Fabricating, LLC, on November 5, 2012. As a result of this accident, Claimant asserted that he was permanent and totally disabled, and that he had not reached maximum medical improvement in regards to the injuries he sustained in his November 5, 2012, accident. Defendants filed a timely Workers' Compensation Commission Form 51 on August 21, 2013, in which they admitted that Claimant suffered a compensable injury by accident to his left foot and ankle in the course and scope of his employment on or about November 5, 2012. Additionally, Defendants denied compensability for all other body parts alleged by Claimant. The claim proceeded to a hearing on October 1, 2013, at which time Claimant raised the issue of the effect of the back. The Hearing Commissioner ruled on various issues at the hearing on October 1, 2013, and although Claimant pled his back injury, the Hearing Commissioner held that her Order dated November 11, 2013, should not be construed to

be a determination of the compensability of Claimant's back injury. The Hearing Commissioner of the October 1, 2013, hearing ultimately held that Claimant had suffered a compensable work injury to his left ankle and left foot on November 5, 2012.

Following the October 1, 2013 hearing, Claimant continued to treat for his left foot and ankle injuries, and was ultimately released at maximum medical improvement by Dr. Kaplan as of May 11, 2015. Defendants subsequently filed a Workers' Compensation Commission Form 21 requesting a hearing to stop the payment of compensation on November 17, 2015, and a hearing was set for January 13, 2016. On January 11, 2016, two days before the hearing, Claimant filed a Workers' Compensation Commission Form 22 and amended his Form 58 to add the back as an alleged body part.

At the January 13, 2016 hearing, Defendants contended that Claimant was at maximum medical improvement for his admitted left lower extremity and his R.S.D. Additionally, Defendants asserted that they were entitled to a credit from Claimant's date of maximum medical improvement, which they argue is May 11, 2015. Defendants further contended that Claimant amended his Form 58 two days prior to the scheduled hearing, and as such the issue of Claimant's alleged back injury was not timely pled and should not be heard. It was Claimant's position that in addition to his left lower extremity and R.S.D., he sustained a compensable injury to his back in his November 5, 2012 accident. At the hearing before the Single Commissioner, Claimant argued that he is permanently and totally disabled as a result of his November 5, 2012 accident. Additionally, it was Claimant's contention that he has not reached maximum medical improvement for his back, and as such he needs to be evaluated and treated for his alleged back injury. Claimant also asserted that the claim was subject to mandatory mediation per Regulation 67-1802.

STIPULATIONS AT THE SINGLE COMMISSIONER LEVEL

The parties stipulated to the following matters:

1. The claim was heard before the undersigned Commissioner pursuant to notices timely and properly served on all parties.
2. The South Carolina Workers' Compensation Commission had jurisdiction of the parties and subject matter of this claim.
3. Claimant's average weekly wage is \$581.58, resulting in a compensation rate of \$387.74.
4. Venue was proper in Jasper County, South Carolina.

APA EVIDENTIARY SUBMISSIONS AT THE SINGLE COMMISSIONER LEVEL

The following items were timely and properly submitted into evidence by Defendants at the January 13, 2016 hearing pursuant to the Administrative Procedures Act:

APA #	FACILITY OR PHYSICIAN	DATES	PAGES
1.	Coastal Carolina Medical Center	11/5/12	1-37
2.	Dr. Steven Storick	11/7/13	38-41
3.	Coastal Neurology	6/4/13	42-46
4.	Optim Healthcare	11/8/12 – 4/22/14	47-84
5.	WVU Healthcare	10/28/14 – 1/19/15	85-92
6.	Kaplan Rehab and EMG	5/11/15 – 8/21/15	93-96

The Claimant submitted the following exhibits and medical records:

APA #	FACILITY OR PHYSICIAN	DATES	PAGES
7.	Christopher W. Nicholson, MD (Optim Healthcare)	11/12/12 – 03/13/14	1-13
8.	Andrew B. Pandya, MD (Optim Healthcare)	1/27/14 – 5/2/14	14-17
9.	Nicholas E. Mihelic, MD	09/04/15 – 09/09/15	18-21

	(The Sport & Spine Institute)		
10.	MRI at Belfair	04/07/14	22

EVIDENCE OF THE CASE

At the January 13, 2016 hearing, Defendants relied upon the medical evidence and reserved the right to cross-examine Claimant's witnesses. The Claimant, Jefferson Taylor, was the first witness to testify on his behalf. The Claimant testified that he was a fifty-four-year-old male at the time of the hearing, who resided at 660 Mulberry Avenue, Clarksburg, West Virginia. (Hr'g Tr. p. 9 ll. 11-14). His post-education employment has included working with heavy equipment, timbering, roofing, logging, and construction. (Hr'g Tr. p. 10 ll. 6-8). Claimant testified that the subject of this claim is an accident that occurred when he was working on a steel building in Hardeeville, South Carolina. (Hr'g Tr. pp. 10-11). He was climbing a ladder when the ladder twisted, and he was forced to jump from ladder, at which time he fell injuring his left leg. Following his accident, he was immediately transported to Coastal Carolina Medical Center, and he testified that Dr. Nicholson informed him that his left heel was crushed, his left ankle was broken, and that he had fractured his left fibula. (Hr'g Tr. pp. 11-12). He subsequently underwent two surgeries on his left leg. (Defendants' APA #1).

With regards to his back pain, Claimant testified that he had an MRI of his lumbar spine, and he began to feel back pain seven to eight months after the accident. (Hr'g Tr. p. 13 ll. 18-23). Following his complaints of back pain, he was referred for a nerve conduction test by Dr. Nicholson. (Hr'g Tr. p. 14 ll. 3-11). With regards to his R.S.D., Claimant testified that he is constantly in pain and experiences a shooting pain to his hip. He was referred to Dr. Pandya for further treatment for his R.S.D. pain. (Hr'g Tr. p. 14 ll. 18-20). Shortly after he began treating with Dr. Pandya, he moved to West Virginia and began treating with Dr. Vaglianti. (Hr'g Tr. p.

15 ll. 20-22). In addition to his treatment with Dr. Vaglianti, he reported to Dr. Kaplan for an independent medical examination on May 11, 2015. (Hr'g Tr. p. 16 ll. 18-25). Following his IME, Dr. Kaplan completed a Workers' Compensation Form 14B indicating that Claimant had sustained a 3% permanent impairment to his left lower extremity and a 0% permanent impairment to other alleged body parts. (Defendants' APA #6, p. 96).

At the hearing, Claimant testified that he is still experiencing problems with his back and left leg and would like further examination of his injuries. He stated that he discussed his back issues with Dr. Pandya and Dr. Kaplan in addition to Dr. Nicholson. (Hr'g Tr. p. 18 ll. 9-15). Claimant further testified that due to his back pain he feels that he would be unable to perform any type of job. (Hr'g Tr. p. 19 ll. 3-13). Claimant presented at the hearing with a walker and noted that he uses the walker to assist him with walking when he gets tired. (Hr'g Tr. pp. 19-20). He further testified that his back problems prevent him from sleeping and sitting down. He stated that he experiences back pain four to five days per week. (Hr'g Tr. pp. 20-21).

On cross-examination, Claimant admitted that he treated with Dr. Storick on November 7, 2013, in relation to back pain. (Hr'g Tr. p. 23 ll. 7-12). He reported to Dr. Steve Storick on November 7, 2013, for an independent medical examination. At this visit, Claimant indicated that he experiences occasional back pain but no frequent symptoms. Additionally, it was noted that Claimant did not report any pain radiating from his back down to his legs. (Defendants' APA #2 p. 39). At the conclusion of his evaluation, Dr. Storick opined that because Claimant did not report any significant low back pain or what he describes as an active radicular component, he did not believe that an MRI of Claimant's lumbar spine was necessary. (Defendants' APA #2 p. 41).

Defendants further presented evidence from Claimant's independent medical examination

with Dr. Kaplan from May 11, 2015. Dr. Kaplan's notes reveal that Claimant stated that he did not wish to pursue a spinal cord stimulator. He was subsequently released at maximum medical improvement by Dr. Kaplan and assessed a 3% permanent medical impairment to his left lower extremity. Additionally, he was assessed a 0% permanent medical impairment to all other affected body parts. ((Defendants' APA #6 p. 96). In reference to his recommended lumbar nerve block injections, Claimant stated that he was actually recommended for the injections prior to undergoing a lumbar MRI on April 7, 2014. (Hr'g Tr. pp. 24-25). Additionally, he stated that the cane that he presented to the hearing with was not prescribed by a doctor. (Hr'g Tr. p. 24 ll. 17-18). On re-direct examination, Claimant further testified that his left leg and back pain has been constantly getting worse since the accident. (Hr'g Tr. p. 26 ll. 16-21). Following his testimony, Claimant showed his left ankle to the Single Commissioner and it was noted that he had surgical hardware in his left foot/ankle. (Hr'g Tr. pp. 27-28).

The Claimant's wife, Walda Jo Taylor, was the second witness to testify on the Claimant's behalf. Mrs. Taylor testified that she has been married to the Claimant since 1991. (Hr'g Tr. p. 30 ll. 10-11). She stated that Claimant's injuries have affected his ability to sleep, and his ability to walk long distances. She further testified that he complains of low back pain that radiates into his leg. (Hr'g Tr. pp. 31-32). Additionally, she testified that Claimant has never had prior back problems, and that his current problems prevent him from hunting and performing other tasks that he could do prior to his accident. (Hr'g Tr. p. 32 ll. 5-12).

Following the testimony, the Single Commissioner addressed Defendants' objection to the timeliness of the back being raised. Defendants confirmed their position that the record speaks for itself with regard to Claimant's alleged back injury, and as a result, Defendants contend that the record does not support a back injury. Claimant's attorney then requested 30

days to depose one of the two doctors. The Single Commissioner stated she would take Claimant's request under advisement, but that it's the Claimant's burden to produce evidence of the back. Defense counsel objected to the request. The Single Commissioner stated "The question with regards to the Defendants is because it was raised to them late. Now, I understand both of you have indicated to me that there's been a prior hearing where this has been raised, so it may be that both parties had notice of that." The Single Commissioner subsequently informed the parties that she would examine the issue of the compensability of Claimant's alleged back injury post-trial. (Hr'g Tr. p. 34, l. 6 – p. 36, l. 18).

SINGLE COMMISSIONER'S FINDINGS OF FACT

Based on a review of the evidence presented, the Single Commissioner issued the following Findings of Fact, pursuant to the Order dated July 22, 2016:

1. Claimant sustained an admitted injury to his left leg on November 5, 2012. The injuries were primarily to the left ankle, left calcaneus, left fibula, and left syndesmotoc ligaments. Claimant underwent multiple surgeries as a result of these injuries.
2. It is admitted that subsequent to the injury, the Claimant developed RSD in his left leg. The RSD was clinically diagnosed by Dr. Bettle (neurologist) and Dr. Pandya (physiatrist), and confirmed by the IME of Dr. Michelic (orthopedist). Dr. Pandya treated the RSD, including performing lumbar sympathetic injections. (Medical records including Claimant's APA #14).
3. The Claimant submits that he now has an injury to his back by "affect."
4. The issue of the effect of the back was raised at a prior hearing on October 1, 2013.
5. Following the October 1, 2013, hearing, the Hearing Commissioner (Commissioner Taylor) ruled on various issues, and found that her Order should not be construed to be a

determination of compensability of the back. Although Claimant pled his back injury at the October 1, 2013, hearing, Commissioner Taylor found that only his left ankle and left foot were compensable.

6. The Claimant has not met his burden of proving that his back injury is related to his November 5, 2012, accident. The MRI of Claimant's lumbar spine was initially recommended during the diagnosis of the RSD, in order to "rule out" a radicular component to the symptoms that Dr. Nicholson suspected might be RSD. (Defendants' APA #4 p.73).
7. Dr. Bettle, the neurologist, who performed the nerve conduction studies, indicates that his findings were supportive for a clinical diagnosis of RSD with associated neuropathy. He did state an alternative diagnosis of lumbo-sacral plexopathy, that indicated to "correlate with the mode of injury." (Defendants' APA #3 p.46). There is no indication, even from the Claimant's testimony, that that initial injury was to his back. This statement falls short of a causal link. It is an alternative diagnosis. Both Dr. Pandya, as the treating physician, and Dr. Mihelic, as an IME physician, indicate that the Claimant's diagnosis is RSD.
8. Dr. Storick of Palmetto Pain Management performed an IME on November 7, 2013. His notes report that the Claimant had occasional back pain, but no frequent symptoms, and that there was no report of pain radiating from the back into the legs. (Defendants' APA #2 p.40-41). Dr. Storick did not believe that an MRI was necessary.
9. A lumbar MRI was eventually performed on April 7, 2014. The "assessment" in Dr. Paynda's note of April 11, 2014, indicates that the Claimant has back pain related to facet involvement, disk bulging and spinal stenosis with grade 1 spondylolisthesis of L5 on S1

“complicated by left lower extremity RSD and hepatitis C.” The report does not indicate a causal relationship of the leg and/or RSD and the back. It is only listed as a complication. Dr. Pandya indicated in the same sentence that the back pain was also complicated by the Claimant’s hepatitis C. This not equivalent to causation. Other than the potential alternate diagnosis by Dr. Bettle and the note of Dr. Paynda that RSD is a complication, there is no further mention of any possible relationship between the leg, RSD, and the back, causal or otherwise.

10. The Defendants’ IME with Dr. Kaplan does not indicate a causal relationship to the back. The Form 14B indicates that the body part injured is the left lower extremity and that the body part affected is the left lower extremity. (Defendants’ APA #6 pp. 93 and 96).

11. The Claimant’s IME with Dr. Mihelic of September 4, 2015, and subsequent report of September 9, 2015, do not provide that the back is an affected member. The report contains no mention of the back, and no mention of any possible causal relationship. (Claimant’s APA #9 p.18). The Form 14B filled out by Dr. Mihelic indicates that the left lower extremity is the injured body member, and he makes a statement that the whole body is affected. (Claimant’s APA #9 p.21). The statement that the whole body is affected in filling out the Form 14B cannot be considered to be a causal link to the back or any particular body member. Both typed reports of Dr. Mihelic are detailed, and do not contain a causal statement. (It is noted that the example of impairment given by Dr. Mihelic on page 553 gives a whole person rating of 39% for a leg injury with causalgia, before it is converted to the left lower extremity in the tables.)

12. The Commission cannot act as a physician in providing a medical opinion. Burnette v. City of Greenville. The undersigned cannot determine that what is listed as a

complication is actually causative.

13. The Claimant is at MMI for the related injuries to his left leg. (Dr. Mihelic and Dr. Kaplan). Dr. Kaplan indicates that the Claimant is at MMI as of May 11, 2015; however he does not issue the report of MMI until August 21, 2015. (APA 95).
14. The Claimant has disability of eighty-five (85%) percent to his left leg. The Claimant has calf wasting of at least 3cm decrease. There are color changes from the RSD. There is substantial lack of ROM in the foot and ankle. The Claimant is also hyperesthetic. The Claimant has desquamation of the lower leg. The restrictions include no standing or walking up to 15 minutes continuously or 1 hour cumulatively per day. (APA 96).
15. The Defendants are entitled to credit from the filing of the Form 21, November 17, 2015. The Defendants' requested credit from the date of MMI from Dr. Kaplan; however, as indicated above, his report of MMI was not issued until August 21, 2015.
16. Claimant is entitled to future medical treatment in the form of pain management as indicated in the Form 14B from Dr. Kapan. (pursuant to both Dr. Kaplan and Dr. Mihelic)

SINGLE COMMISSIONER'S CONCLUSIONS OF LAW

Upon the foregoing Findings of Fact, the Single Commissioner issued the following Conclusions of Law, pursuant to the Order dated July 22, 2016:

1. The Single Commissioner's Findings of Fact are incorporated herein as Conclusions of Law, to the extent applicable.
2. The South Carolina Workers' Compensation Commission has jurisdiction over these matters and venue is proper in Hampton County, South Carolina.
3. There is no medical evidence to support a finding that Claimant's alleged back injury is

causally related to his work accident of November 5, 2012. As such, the Claimant has not met his burden of proving that his back injury is related to his November 5, 2012, accident.

4. The Commission cannot act as a physician in providing a medical opinion. Burnette v. City of Greenville. The undersigned cannot determine that what is listed as a complication is actually causative.
5. Claimant's alleged back injury is not causally related to his work related accident of November 5, 2012, and therefore; is not compensable.
6. The Defendants are entitled to credit from the filing of the Form 21, on November 17, 2015.
7. Claimant is at MMI for the related injuries to his left leg. Claimant has sustained a disability of eighty-five (85%) percent to his left leg as a result of this accident.
8. Without in anyway affecting the overall terms of this settlement insofar as the Employer/Carrier is concerned, the Claimant and his attorney hereby request the Commission to approve the award proceeds of Fifty One Thousand Eight Four and 75/100ths (\$51,084.75) Dollars as follows:
 - a. Thirty One Thousand Three Hundred Fifty and 03/100ths (\$31,350.03) Dollars in future disability benefits at the rate of Twenty Three and 50/100ths (\$23.50) Dollars for a period of One Thousand Three Hundred Thirty Three and Eight Tenths (1,333.8) weeks pursuant to Sections 42-9-10 and 42-9-20 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of Utica Mohawk Mills v. Orr, 227 S.C. 226, 87 SE2d 593; Sciarotta v. Bowen, 837 F2d 135; Lemire v. Secretary of Health and Human Services, 682 F.Supp 102

- (D.C.N.H. 1988) and Hatch v. Heckler, 626 F. Supp 1367 (N.D. California 1986);
- b. Two Thousand Seven Hundred Six and 47/100ths (\$2,706.47) Dollars in disbursements and expenses;
 - c. Seventeen Thousand Twenty Eight and 25/100ths (\$17,028.25) Dollars as attorneys' fees pursuant to a written agreement between the Claimant and his attorney.

SINGLE COMMISSIONER'S DECISION AND ORDER

IT WAS THEREFORE ORDERED on July 22, 2016, that Claimant sustained an eighty-five (85%) percent permanent disability to his left leg.

IT WAS FURTHER ORDERED, that Claimant did not sustain a compensable injury to his back during his work-related accident of November 5, 2012.

IT WAS FURTHER ORDERED, that the greater weight of the evidence supports a finding that Claimant's work related accident of November 5, 2012 did not aggravate his pre-existing back condition.

IT WAS FURTHER ORDERED, that the greater weight of the evidence supports a finding that Claimant is not entitled to an award of permanent partial disability benefits in relation to his back injury.

IT WAS FURTHER ORDERED, that the greater weight of the evidence supports a finding that Claimant is not entitled to additional medical treatment in regards to his back injury.

IT WAS FURTHER ORDERED, that Defendants are entitled to a credit of benefits paid since the filing of Defendants' Form 21 on November 21, 2015.

APPEAL TO THE FULL COMMISSION

Within the statutory period, Claimant filed a Form 30, Request for Commission Review, on August 1, 2016. To support his Form 30, Claimant submitted an Appellants' Brief to the Full Commission dated August 25, 2016, in which he contends that the Single Commissioner erred in ruling on the compensability of Claimant's back injury given the fact that Claimant has made a claim that he is permanent and totally disabled. It was Claimant's position on Appeal that the Single Commissioner erred in ruling on the compensability of his alleged back injury as Regulation 67-1802 requires that such claims be mediated prior to a hearing. Additionally, Claimant took the position that the Single Commissioner abused her discretion in failing to allow Claimant to supplement the record with depositions of Doctors' Nicholson and/or Pandya concerning the causal connection between Claimant's November 5, 2012 accident and his alleged back problems.

Defendants also filed a timely Form 30, Request for Commission Review, on August 3, 2016. To support their Form 30, Defendants submitted an Appellants' Brief to the Full Commission dated September 19, 2016, in which they took the position that the Single Commissioner erred in finding that Claimant had sustained 85% disability to his left leg as the greater weight and preponderance of the substantial evidence of the record does not support such a finding. Defendants further asserted that the Single Commissioner erred in finding as a fact that Defendants are entitled to a credit from the filing of their Form 21 on November 21, 2015 regarding the overpayment of temporary total disability benefits when such a finding is against the greater weight and preponderance of the substantial evidence in the record. Defendants argued that their credit should date back to Claimant's date of maximum medical improvement, which was May 11, 2015. Additionally, Defendants took the position that the Single

Commissioner did not err in ruling on the compensability of Claimant's back injury as Claimant failed to respond to Defendants' Form 21 within 10 days and did not allege a back injury and entitlement to permanent and total disability until two days prior to the hearing before the Single Commissioner. Defendants further took the position that the Single Commissioner did not err or abuse her discretion by not allowing Claimant to supplement the record with the deposition of Dr. Nicholson and/or Dr. Pandya as Claimant did not make a Motion to Postpone the hearing in order to obtain these depositions. Also, these depositions were not in existence at the time of the hearing, and there was no reasonable basis for Claimant to have not subpoenaed or obtained the deposition of an authorized treating physician prior the hearing should he have wished to do so. Lastly, Defendants contended on Appeal that the Single Commissioner did not err in concluding that Claimant had failed to carry his burden of proof to establish a causal connection between his alleged low back injury and his work accident of November 5, 2012.

Based on a review of the foregoing, and after careful consideration of all of the evidence, testimony and oral arguments in this matter, the undersigned Panel of Commissioners, **AFFIRM IN PART AND REVERSE IN PART** the Decision and Order of the Single Commissioner.

FULL PANEL'S FINDINGS OF FACTS

Based on the oral arguments, APA Submissions and Record on Appeal, the Appellate Panel makes the following Findings of Fact:

1. All parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to Section 42-17-50 of the Act, a review and full rehearing by the Full Commission shall be given upon an application for review made to the Commission within fourteen days from the date when notice of the award shall have been given.

3. Based on the substantial evidence, including the medical records and exhibits, Claimant sustained an admitted injury to his left leg on November 5, 2012. The Injuries were primarily to the left ankle, left calcaneus, left fibula, and left syndesmotoc ligaments.
4. Based on the substantial evidence, including the medical records and exhibits, we find that it is admitted that subsequent to the injury, the Claimant developed RSD in his left leg. The RSD was clinically diagnosed by Dr. Bettle (neurologist) and Dr. Pandya (physiatrist), and confirmed by the IME of Dr. Michelic (orthopedist). Dr. Pandya treated the RSD, including performing lumbar sympathetic injections. (Medical records including Claimant's APA #14).
5. We find that the issue of the effect of the back was raised at a prior hearing on October 1, 2013; however, following the October 1, 2013, hearing, the Hearing Commissioner (Commissioner Taylor) ruled on various issues, and found that her Order should not be construed to be a determination of compensability of the back. Although Claimant pled his back injury at the October 1, 2013, hearing, the Hearing Commissioner found that only his left ankle and left foot were compensable.
6. Based on the substantial evidence, including the medical records and exhibits, we find that the Claimant has not met his burden of proving that his back injury is related to his November 5, 2012 accident. The MRI of Claimant's lumbar spine was initially recommended during the diagnosis of the RSD, in order to "rule out" a radicular component to the symptoms that Dr. Nicholson suspected might be RSD. (Defendants' APA #4 p.73).
7. We affirm the Single Commissioner's finding from the January 13, 2016 hearing, that there is no indication, even from the Claimant's testimony, that that initial injury was to

his back. This statement falls short of a causal link. It is an alternative diagnosis. Both Dr. Pandya, as the treating physician, and Dr. Mihelic, as an IME physician, indicate that the Claimant's diagnosis is RSD.

8. Dr. Storick of Palmetto Pain Management performed an IME on November 7, 2013. His notes report that the Claimant had occasional back pain, but no frequent symptoms, and that there was no report of pain radiating from the back into the legs. (Defendants' APA #2 p.40-41). Dr. Storick did not believe that an MRI was necessary.
9. A lumbar MRI was eventually performed on April 7, 2014. The "assessment" in Dr. Paynda's note of April 11, 2014, indicates that the Claimant has back pain related to facet involvement, disk bulging and spinal stenosis with grade 1 spondylolisthesis of L5 on S1 "complicated by left lower extremity RSD and hepatitis C." The report does not indicate a causal relationship of the leg and/or RSD and the back. It is only listed as a complication. Dr. Pandya indicated in the same sentence that the back pain was also complicated by the Claimant's hepatitis C. This not equivalent to causation. Other than the potential alternate diagnosis by Dr. Bettle and the note of Dr. Paynda that RSD is a complication, there is no further mention of any possible relationship between the leg, RSD, and the back, causal or otherwise.
10. The Defendants' IME with Dr. Kaplan does not indicate a causal relationship to the back. The Form 14B indicates that the body part injured is the left lower extremity and that the body part affected is the left lower extremity. (Defendants' APA #6 pp. 93 and 96).
11. The Claimant's IME with Dr. Mihelic of September 4, 2015, and subsequent report of September 9, 2015, do not provide that the back is an affected member. The report contains no mention of the back, and no mention of any possible causal relationship.

(Claimant's APA #9 p.18). The Form 14B filled out by Dr. Mihelic indicates that the left lower extremity is the injured body member, and he makes a statement that the whole body is affected. (Claimant's APA #9 p.21). The statement that the whole body is affected in filling out the Form 14B cannot be considered to be a causal link to the back or any particular body member. Both typed reports of Dr. Mihelic are detailed, and do not contain a causal statement. (It is noted that the example of impairment given by Dr. Mihelic on page 553 gives a whole person rating of 39% for a leg injury with causalgia, before it is converted to the left lower extremity in the tables.)

12. The Commission cannot act as a physician in providing a medical opinion. Burnette v. City of Greenville. The Appellate Panel cannot determine that what is listed as a complication is actually causative.
13. Based on the substantial evidence, including the medical records and exhibits, we find that the Claimant is at MMI for the related injuries to his left leg. (Dr. Mihelic and Dr. Kaplan). Dr. Kaplan indicates that the Claimant is at MMI as of May 11, 2015; however he does not issue the report of MMI until August 21, 2015. (APA 95).
14. Based upon the foregoing, we reverse the Single Commissioner's finding that the Claimant has disability of eighty-five (85%) percent to his left leg. In the alternative, we find that based on the substantial evidence, including the medical records and exhibits the Claimant has sustained forty-five (45%) percent permanent partial disability to the left leg.
15. Based on the substantial evidence, including the medical records and exhibits we affirm the Single Commissioner's ruling that Defendants are entitled to credit from the filing of the Form 21, November 21, 2015. The Defendants' requested credit from the date of

MMI from Dr. Kaplan; however, as indicated above, his report of MMI was not issued until August 21, 2015.

16. Based on the substantial evidence, including the medical records and exhibits we find that the Claimant is entitled to future medical treatment in the form of pain management as indicated in the Form 14B from Dr. Kapan. (pursuant to both Dr. Kaplan and Dr. Mihelic)

FULL PANEL'S CONCLUSIONS OF LAW

1. The scope of review of the Full Commission is not limited. The Full Commission can, like the Single commissioner, consider all of the evidence and reach its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C. Ct. App. 1984).
2. The Full Commission is not necessary bound by the Single Commissioner's Findings of Fact, and is empowered to make its own Findings of Fact and to reach its own Conclusions of Law consistent or inconsistent with those of the Single Commission. Green v. Raybestos-Manhattan, Inc., 250 S.C. 58, 64, 156 S.E.2d 318, 321 (S.C. 1967). See also Muir v. C.R. Bard, Inc., 336 S.C. 266, 281, 519 S.E.2d 583, 591 (S.C. Ct. App. 1999).
3. Regulation 67-709 provides the procedures under which the Full Commission may review the decisions of a Single Commissioner, including the authority for full reversal and/or remand with further instructions.
4. Based on the substantial evidence, including the medical records and exhibits we affirm the Single Commissioner's finding that there is no medical evidence to support a finding that Claimant's alleged back injury is causally-related to his work accident

of November 5, 2012. As such, we affirm the finding that Claimant's alleged back injury is not causally-related to his work-related accident of November 5, 2012, and therefore; is not compensable. (See Decision and Order of Single Commissioner Conclusions of Law #3 and #5).

5. Based on the substantial evidence, including the medical records and exhibits we reverse and amend the Single Commissioner's Conclusion of Law #7 finding that Claimant had sustained eighty-five (85%) percent impairment to his left leg, to reflect a Conclusion of Law that Claimant has sustained forty-five (45%) percent impairment to his left leg as a result of this accident.

ORDER

IT IS HEREBY ORDERED, by the Full Panel that the Decision and Order of the Single Commissioner is

HEREBY REVERSED IN PART, and it is ordered that Claimant sustained a forty-five (45%) percent permanent disability to his left leg as a result of his November 5, 2012 accident.

IT IS HEREBY AFFIRMED, that the greater weight of the evidence supports a finding that Claimant did not sustain a compensable injury to his back as a result of his work-related November 5, 2012 accident.

IT IS FURTHER AFFIRMED, that the greater weight of the evidence supports a finding that Claimant's work-related November 5, 2012 accident did not aggravate his pre-existing back condition.

IT IS FURTHER AFFIRMED, that the greater weight of the evidence supports a finding that Claimant is not entitled to an award of permanent partial disability benefits in relation to his back injury.

IT IS FURTHER AFFIRMED, that the greater weight of the evidence supports a finding that Claimant is not entitled to additional medical treatment in regards to his back injury.

IT IS FURTHER AFFIRMED, that Defendants are entitled to a credit of temporary total disability benefits paid since the filing of Defendants' Form 21 on November 21, 2015.

The Single Commissioner's ruling is hereby **AFFIRMED IN PART AND REVERSED IN PART with Amendments**.

IT IS HEREBY ORDERED.

S.C. WORKERS COMPENSATION COMMISSION



Commissioner Scott T. Beck
For the Appellate Panel

WE CONCUR:



Commissioner Gene McCaskill



Commissioner Mike Campbell

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 February 8, 2017