

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Herbert Randall,)
)
Employee/)
Claimant)
)
Vs.)
)
Palmetto State Transportation,)
&)
Cherokee Insurance Company)
)
Employer and)
Carrier (defendants).)
)

BEFORE
THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

ORDER OF
FULL COMMISSION
W.C.C. File No.: 1516896

AFFIRM WITH AMMENDMENTS

Date of Hearing: April 19, 2017

Location of Hearing: Columbia, SC

Claimant/Cross-Appellant/
Respondent represented by: Jeffrey D. Ezell
Attorney at Law
Greenville, SC

Defendants/Cross-Respondent/
Appellant represented by: George Gallagher
Attorney at Law
Columbia, SC

Purpose: To determine issues as appealed by the parties
from the Order of Commissioner Campbell

Decision and Order: Commissioners James, McCaskill, and Taylor
South Carolina Workers' Compensation
Commission
(Order Assigned to Commissioner Taylor)

RECEIVED

JUL 17 2017

SC Court of Appeals

This matter came before the Full Commission upon appeals by both parties. The matter was originally heard by Commissioner Campbell who made the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. *Claimant sustained an admitted injury by accident to his back, cervical spine, and wrist arising out of and in the course and scope of his employment on 10/31/15. The Claimant was driving an 18-wheel tractor/trailer truck in Texas. The time was approximately 1:30 A.M. and the weather was rainy. He was travelling eastbound on Interstate 10 going toward Beaumont, Texas. There had been an accident on the eastbound side, causing traffic to come to a stop. The Claimant was completely stopped in the right lane, and put on his four-way flashers because of the stopped traffic. He was stopped approximately 20 feet from the vehicle in front of him. When the Claimant looked in his mirror he saw another vehicle stopped behind him. Within just a few seconds, he was violently struck in the rear end of the truck by the vehicle that was stopped behind him. The driver of another vehicle struck the vehicle behind the Claimant, continuing into the truck/trailer driven by the Claimant. The impact was so severe, the vehicle behind the Claimant (which was a pickup truck) was totally destroyed, and the force of the impact caused the frame on the Claimant's trailer to break. The police investigating the accident charged the driver with DUI. The impact was so sudden and sharp the Claimant became pinned against the dash of the semi-truck, thus resulting in the injury to his low back, cervical spine, and wrist.*
2. *Claimant alleges additional injuries to his lower back, left leg, left arm, and psyche. The existence of these injuries is uncontroverted. The impact was so severe that he was thrown about and pinned inside his vehicle.*
3. *The Claimant underwent a Cervical MRI on November 23, 2015 which showed prominent disc bulges and hypertrophy at C5/6 and C6/7 resulting in moderate to severe*

spinal stenosis with contact with the spinal cord. (See Claimant's APA #5, p. 55 – emphasis added)

4. *In support of his claim for a low back injury, Claimant's APA 5, an MRI of the lumbar spine, shows that he had multi-level disc bulging, most prominent at L4/5 with stenosis and subannular fissuring and severe inferior neural foraminal encroachment. (See Claimant's APA #5, pp. 52 – 53) I find that the Claimant's claim for low back injury is valid and find said claim for low back injury to be compensable.*
5. *The Claimant's TTD benefits were terminated on 12/06/2015 based on a post-accident drug test as reflected on the Form 15(II) filed with the Commission on 12/17/2015. There is no evidence that this Form 15 was ever served on the Claimant as required by Reg. 67-504(A), as such, the Claimant contends that benefits were improperly stopped and he is entitled to back benefits from the 12/06/2015, as well as a 25% penalty. (See Claimant's APA #10, p. 77)*
6. *There is no evidence whatsoever that the Claimant was intoxicated at the time of the accident, nor is there any evidence that any alleged intoxication was the proximate cause of the accident. As stated hereinabove, the Claimant's truck was struck from behind while he was at a complete stop. As such, there is nothing the Claimant could have done to avoid the accident.*
7. *Claimant underwent various evaluations and treatments for his admitted and alleged work-related injuries.*
8. *On 02/22/16, Dr. Philip Hodge of Greenville Health System Neurosurgery – Cross Creek opined the Claimant's MRI of the lumbar spine shows an annular tear and disc protrusion without neurologic compression at L4-5 and MRI of the cervical spine shows C5-6 broad-based disc protrusion without neurologic compression and C6-7 broad-based disc protrusion osteophyte lacking neural compression. In addition, Dr. Hodge opined these findings likely represent a combination of chronic disease and acute injury or at the very least, a chronic condition that was exacerbated by his injury. Dr. Hodge further opined Claimant would not benefit from surgery for any of his symptoms and recommended continued non-operative treatment. (Claimant's APA #6, p.59)*

9. *On 08/11/2016 FNP Jennifer F. Turner of Upstate Spine and Neurosurgery Center, PC opines MRI of lumbar spine is unremarkable and no surgical recommendation based on this. In addition, FNP Turner opines there is C5-6 and C6-7 broad-based disc bulging with spinal cord compression and this may be result of accident. FNP Turner also notes Dr. Chittum recommends a C3-7 ACDF surgery. (Claimant's APA #8, p. 72)*
10. *On 10/16/2016, in a psychiatric evaluation for the Claimant, Dr. Patrick B. Mullen of Poinsett Psychiatric Group opined to a reasonable degree of medical certainty that all of Claimant's problems are due to his wreck – both his spinal problems and his depression. (Claimant's APA #9, p. 76)*
11. *The Defendants submitted no evidence or testimony to controvert the findings and conclusions of Dr. Mullen.*
12. *On 11/01/2016, in an IME for the Defendants, Dr. Michael N. Bucci of Piedmont Spine and Neurosurgical Group, PA opined Claimant would likely benefit from Pain Management and epidural steroid injections greater than he (would) from surgery at this time. (Claimant's APA #10, p. 79)*
13. *On 11/22/2016, on a questionnaire for the Claimant, Dr. Bucci opined to a reasonable degree of medical certainty that Claimant is not capable of working at this time in any capacity, nor has he been capable of working since his pain and problems began in his neck and low back following the rear end collision on 10/31/2015. (Claimant's APA #10, p. 81 – emphasis added)*
14. *On 12/07/2016, at the Hearing before the Single Commissioner, Defendants stipulated to providing Claimant with pain management as recommended by Dr. Bucci.*
15. *The Claimant is not at MMI.*
16. *Claimant is entitled to an evaluation and medical treatment by a pain management specialist of the Defendants' choosing, as stipulated to by Defendants at the Hearing. Defendants are to arrange this evaluation and treatment immediately.*
17. *Claimant's severe psyche issues are causally related to his work-related accident and are; therefore, compensable. Claimant is entitled to an evaluation by psychiatrist of the Defendants' choosing for determination of treatment and Defendants are to arrange this evaluation and treatment immediately.*

18. *Claimant's request for an award of TTD based on Defendants not following proper procedure with the filing for Form 15, pursuant to Commission Regulation 67-504, lacks merit as the regulation does not provide for any entitlement to TTD for failing to follow proper procedure pursuant to the regulation.*
19. *The Defendants provided no evidence that either of the purported Forms 15 (12/10/17 or 6/3/16) were ever properly served on the Claimant or his attorney.*
20. *Upon review of the Commission's file, which is a part of the record, I hereby find that the Defendant's filing of the Form 15(II) on 12/17/2015 was timely for the termination of TTD on 12/06/2015. Therefore, defendants were in compliance and are not subject to an assessment of a penalty for failing to file a form, pursuant to 42-19-30 and 42-3-105.*
21. *On 12/07/2016, at the Hearing before the Single Commissioner, the employer testified that Claimant was terminated for not following up on a federally required substance abuse program (SAP) to regain his commercial driver's license, subsequent to his failed drug test, and but for the fact that he was terminated, light duty would have been provided. In addition, the employer testified they sent an SAP package certified mail to the Claimant, but it's the driver's responsibility to follow through with the program. However, the employer failed to provide any evidence that Claimant ever received the information and Claimant testified he was never approached or informed by the employer about completing an SAP. Furthermore, the employer failed to provide any evidence or sworn testimony regarding the company's policy as to the timeframe the Claimant must have completed the SAP by to avoid termination. Therefore, I hereby find Claimant is entitled to an award of TTD on this basis from the date of termination (12/6/15) through the present and continuing at the Compensation Rate of \$766.05 per week.*
22. *Claimant's request for a 25% penalty assessment is hereby denied, as defendants were in compliance with 42-9-260.*

CONCLUSIONS OF LAW

1. *Pursuant to § 42-1-160, the Claimant has sustained a compensable injury by actions arising out of and in the course and scope of his employment with the Defendant, Palmetto State Transport.*

2. Pursuant to § 42-1-120, the Claimant suffers disability and continues to suffer from same.
 3. There is no evidence that the Claimant was ever served with a copy of either of the Forms(s) 15 as required by Reg. 67-504(A).
 4. Upon review of the Commission's file, which is a part of the record, I hereby find that the Defendant's filing of the Form 15(II) on 12/17/2015 was timely for the termination of TTD on 12/06/2015. Therefore, defendants were in compliance and are not subject to an assessment of a penalty for failing to file a form, pursuant to 42-19-30 and 42-3-105.
- Based upon those Findings of Fact and Conclusions of Law, Commissioner Campbell
Ordered as follows:

ORDER

The Claimant is entitled to back payment of Temporary Total Disability Benefits in the amount of \$45,196.95. Further, the Claimant is entitled to continuing Temporary Total Disability Benefits of \$766.05 per week until such time as these benefits are properly terminated in accordance with the South Carolina Workers' Compensation Act.

The Claimant is entitled to pain management and steroid injections as per the stipulation of the Defendants. The Claimant is also entitled to psychiatric evaluation and treatment.

The Findings of Fact and Conclusions of Law set forth hereinabove are hereby incorporated by reference as if repeated verbatim.

Both Parties timely filed Forms 30 and appropriate Exceptions. Briefs and Reply Briefs were likewise submitted by both Parties and duly and thoroughly considered by this Panel. This matter was heard on Oral Argument on April 19, 2017. Based upon the Forms 30, the Briefs of the Parties, and the Oral Arguments of counsel for both Parties, this Panel AFFIRMS the Order of Commissioner Campbell with the following AMMENDMENTS:


FINDING OF FACT No. 22 shall be amended to read as follows:

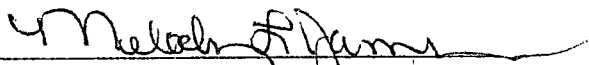
22. Claimant's request for a 25% penalty assessment is hereby denied, as defendants were in compliance with 42-9-260. The Claim was initially denied in good faith as Claimant

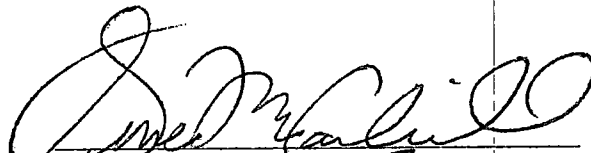
failed a post-accident drug test and contemporaneous medical treatment records placed
Claimant on modified duty.

IT IS SO ORDERED.

5/31/2017
Date


Commissioner Aisha Taylor
Appellate Panel Chair


Commissioner Melody L. James


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 Valerie Deller on June 9, 2017