

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 1604067**

Courtney Forrest

Employee / Claimant,

Respondent,

vs.

ADS Waste Holdings, Inc.

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Employer,

and

OCT 05 2017

Arch Insurance Company,

SC Court of Appeals

Carrier,

Appellants.

Appellate Panel Decision and Order filed

Sept 6, 2017

APPEARANCES:

Employee / Claimant / Respondent represented by
Christopher J. Archer, Esquire
of Columbia, South Carolina

Employer / Carrier / Appellants represented by
R. Daniel Addison, Esquire
of Columbia, South Carolina

STATEMENT OF THE CASE

This matter came before the South Carolina Workers' Compensation Commission for review of the Decision and Order of the Honorable T. Scott Beck, filed in this matter on October 25, 2016.

The Claimant in this case contends that he sustained injuries to his left ankle and left leg on April 12, 2016 as a result of an accident arising out of and in the course of his employment with Employer. He further contends that he is entitled to payment of temporary total compensation and payment of medical expenses incurred as a result of his injury. He also asserts that he has not reached the point of maximum medical improvement with regard to his injury and is entitled to receive additional medical treatment.

The Defendants deny that the Claimant sustained any injury arising out of and in the course of his employment. The Defendants further deny that the Claimant is entitled to any compensation and benefits under the Act.

The Parties were heard by Commissioner T. Scott Beck on August 10, 2016 in Columbia, South Carolina. Following that hearing, Commissioner Beck issued his Decision and Order finding the Claimant satisfied his burden of proving a compensable injury to his left ankle and awarding Claimant causally related medical care and temporary total disability benefits from the date of the injury to the present and continuing.

Within the statutory period, Counsel for the Employer/Carrier filed an Application for Review, a copy of which was furnished to all interested parties prior to oral argument presented before an Appellate Panel on June 19, 2017 and comprised of Commissioners Aisha Taylor, Avery B. Wilkerson, Jr., and Susan S. Barden. All proffered testimony had been taken. Such,

together with all documentary evidence, was delivered by oral argument to the individual members of the Appellate Panel convened on the aforesaid date.

By appeal, the Employer/Carrier/Appellants respectfully submitted the following issues:

1. Did the Single Commissioner err in finding that the Claimant sustained the burden of proving a compensable injury to his left ankle?
2. Did the Single Commissioner err in finding the medical evidence compelling?
3. Did the Single Commissioner err in awarding continuing temporary total disability in the face of no evidence of continuing disability and in light of the testimony of the Claimant?
4. Did the Single Commissioner err in allowing the limited medical evidence to outweigh the video, the surveillance, the testimony of the witnesses and the numerous inconsistencies in the testimony of the Claimant?
5. Did the Single Commissioner err in finding the Claimant entitled to continuing temporary total benefits where there was no credible evidence of any medical care since April 2016?
6. Did the Single Commissioner err in finding the Claimant entitled to continuing temporary total benefits where there was no credible evidence to establish that the Claimant was physically unable to return to work after April 2016?

In an Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1976), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

After careful review of the record for this matter, and listening to and considering the statements and arguments of Counsel, a majority of the Appellate Panel hereby affirms the decision and order of the Single Commissioner with amendments as follows below.

EVIDENCE IN THE CASE

The Claimant in this matter is 57 years old and resides in Columbia, South Carolina. He is married and has three children. He has worked as a heavy equipment mechanic most of his adult life.

The Claimant alleges that he injured his left ankle and left leg when he fell while walking on uneven gravel at the Employer's facility on April 12, 2016. He testified that he immediately felt pain in his left leg.

The Claimant submitted medical records at the hearing held before the Single Commissioner in this case. No medical records were submitted by the Defendants. The medical records submitted reflect that the Claimant sought treatment at Doctors Express on April 12, 2016 where he complained of left foot pain resulting from a fall at work. Dr. Michael Huncharek of Doctors Express diagnosed the Claimant with a sprain of unspecified ligament of the left ankle and placed the Claimant out of work through April 18, 2016.

The Claimant also sought treatment at William Jennings Bryan Dorn VA Medical Center on April 12, 2016 where he complained of left foot pain resulting from a fall at work. The radiology report from this visit revealed soft tissue swelling superficial to the lateral malleolus. The Claimant is diagnosed with a left ankle sprain, and placed out of work through April 15, 2016 with a recommendation that further diagnostic imaging be performed.

The Claimant returned to Doctors Express on April 18, 2016 for a scheduled follow-up appointment. On this date, Dr. Huncharek recommended a physical therapy evaluation and treatment and placed the Claimant out of work pending the physical therapy evaluation.

The Claimant visited Moncrief Hospital on April 20, 2016. This appointment was scheduled by Claimant prior to April 12, 2016 to address issues unrelated to his left leg. While there, the Claimant complained of a traumatic injury to his left leg. Claimant is diagnosed with ligament sprain in his left ankle and referred to physical therapy.

FINDINGS OF FACT

1. The Claimant alleges a work-related injury to his left ankle and left leg on April 12, 2016 within the course and scope of his employment.
2. Based primarily upon the medical evidence in the file and in spite of the video and surveillance, we find the Claimant satisfied his burden of proving a compensable injury to his left ankle.
3. Claimant was written out of work on April 12, 2016 (Claimant's APA Submissions Page 7) and April 18, 2016 (Claimant's APA Submissions Page 9) and we find no indication that these restrictions have been lifted.
4. Claimant is entitled to temporary total disability benefits from the date of injury to the present and continuing. While the video and surveillance are disturbing to us on this issue, we are persuaded by the medical evidence.
5. The Claimant's compensation rate is \$784.03 based upon an average weekly wage of \$1,103.81.

CONCLUSIONS OF LAW

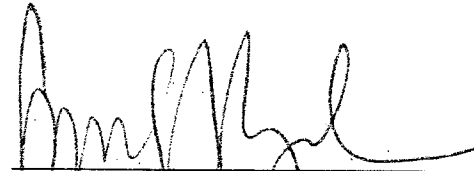
1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter.

2. Pursuant to S.C. Code Ann. § 42-1-160 (1976), and other applicable law and regulation, the Claimant did sustain an injury on April 12, 2016 as a result of an accident arising out of and in the course of his employment relationship with the Employer, and is thereby entitled to compensation and benefits under the Act.

ORDER

IT IS THEREFORE ORDERED that the Decision and Order of the Single Commissioner filed in this matter on October 25, 2016 is hereby affirmed by a majority of the Appellate Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

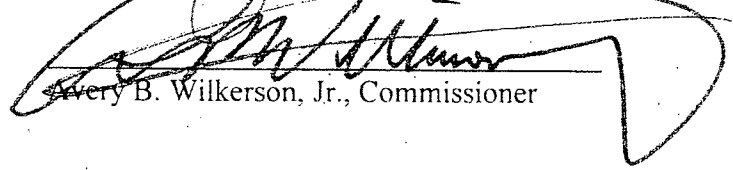
SO ORDERED:



Susan S. Barden, Commissioner
Appellate Panel Chairwoman



Aisha Taylor, Commissioner



Avery B. Wilkerson, Jr., Commissioner

9-6, 2017
Columbia, South Carolina

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 September 6, 2017