

APPELLATE PANEL DECISION AND ORDER  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0906486

SHAWN E. PAULING

EMPLOYEE.  
CLAIMANT/APPELLANT

VS.

PEOPLEASE CORPORATION

EMPLOYER.

AND

ARCH INSURANCE COMPANY C/O  
GALLAGHER BASSETT SERVICES, INC.,

CARRIER.  
DEFENDANTS/RESPONDENTS.

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Appellate Panel Review held in Columbia, South  
Carolina, on August 28, 2012, per notices timely  
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

11-16-12

APPEARANCES: Claimant/Appellant represented by Gene Stockholm,  
Esquire of Oswalk Law Firm of West Columbia, South  
Carolina.

Defendants/Respondents represented by George D. Gallagher,  
Esquire of McAngus Goudelock & Courie, LLC of Columbia,  
South Carolina.

### STATEMENT OF THE CASE

Claimant was involved in an admitted motor vehicle accident arising out of and in the course of his employment in Indianapolis, Indiana on May 13, 2009. Specifically, Claimant was coming around a bend in his 18-wheeler truck when the truck rolled over. Claimant was provided initial medical evaluation and treatment at Wishard Hospital in Indianapolis following the accident. Thereafter, Claimant returned to South Carolina where his employment was terminated since he was determined to be at-fault in the accident. Claimant did not request any medical evaluation/treatment from the employer or the workers' compensation carrier at that time.

Claimant then retained his current counsel, who referred him for further medical evaluation and treatment with Dr. Gal Margalit, a primary care physician with Sunset Family Practice in West Columbia. Dr. Margalit referred Claimant for an MRI of his left knee, as well as physical therapy at Columbia Rehabilitation Clinic. Ultimately, Dr. Margalit released Claimant at maximum medical improvement on or about June 1, 2010. Dr. Margalit assigned Claimant impairment ratings of 5% to the knee and 5% to the back.

Claimant's Form 50 requests a finding of compensable injury to Claimant's left knee and lower back, an award of temporary total disability benefits from May 14, 2009 until reaching maximum medical improvement per Dr. Margalit as of June 1, 2010. Claimant also seeks payment/reimbursement for medical care he received by and through Dr. Margalit, including an MRI and physical therapy prescribed by him. Finally, Claimant seeks an award of permanent partial disability compensation for specific loss of use of the left leg and back based on Dr. Margalit's permanent partial impairment ratings of 5% to the back 5% to the knee.

Defendants admit that Claimant sustained compensable injuries arising out of and in the course of his employment but deny the extent of on injuries alleged. Specifically, Defendants deny that Claimant sustained a compensable back injury, noting that his initial complaints to the emergency room in Indianapolis were only related to his knee. Further, Defendants submit they are not liable for any unauthorized medical care Claimant has incurred through Dr. Margalit, including physical therapy at Columbia Rehabilitation and an MRI scan of his left knee. Defendants point out that Claimant never complained of pain and problems to the employer after returning to South Carolina following his accident, nor did he specifically request medical evaluation and treatment for any alleged injuries prior to his termination. As such, Defendants deny liability for medical bills from Dr. Margalit, CRC, and Inmed Diagnostics.

Defendants further deny Claimant's entitlement to temporary total disability benefits for any period alleged, noting that neither Dr. Margalit nor any other provider specifically and/or contemporaneously wrote Claimant out of work and/or restricted his activities in any way following the accident. Finally, Defendants admit that Claimant is entitled permanent partial disability compensation for his left knee injury based on a 5% impairment rating from Dr. Margalit, but deny that Claimant sustained compensable injury to his back.

By order dated May 7, 2012, Commissioner Wilkerson found, inter alia, that (1) Claimant sustained compensable injuries, (2) Defendants shall pay for Claimant's hospital visit in Indianapolis, (3) Defendants are not liable for subsequent medical bills, (4) Claimant did not request any medical treatment from employer, (5) Claimant is not entitled to temporary total disability benefits because he was not written out of work, (6) Claimant sustained a 5% permanent partial specific loss of use to the left leg, and (7) Claimant did not present enough testimony to be entitled to an award for permanent partial disability.

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. Claimant timely appealed the Commissioner's Order by contending the Single Commissioner erred by (1) not awarding temporary total disability benefits, (2) not ordering payment of all medical care administered by Dr. Margalit, (3) failing to award Claimant permanent partial disability for his back, and (4) failing to award greater permanent partial disability for Claimant's knee injury.

#### **EVIDENCE OF THE CASE**

Claimant testified regarding his accident, subsequent course of medical treatment, current work status and restrictions on activities of daily living, subjective complaints of pain, impairment, and disability. Claimant testified that he was physically unable to work following his termination and up until approximately August 2011 when he began working in his father's convenience store.

Medical records from Dr. Margalit confirmed that he initially presented via referral from his attorney on May 13, 2009 complaining of mild neck sprain, lumbar sprain, and contusion to the left knee. Claimant was seen in follow-up with Dr. Margalit on August 12, 2009 following x-rays of his cervical and lumbar spine. Dr. Margalit notes there was "no significant segmental dysfunction" per the x-rays. He also notes that Claimant can rotate his neck and back approximately 80% of normal. Thereafter, Dr. Margalit referred Claimant for an MRI of his left knee. The MRI noted a small tear of the medial meniscus and degenerative arthritic changes. Dr. Margalit referred Claimant to Columbia Rehabilitation Clinic for physical therapy. Ultimately, Dr. Margalit released Claimant at maximum medical improvement on June 1, 2010, noting "I would estimate a physical impairment function loss of 5% to the left knee and 5% to

the low back secondary to injuries received a year ago in a motor vehicle accident on May 13, 2009." Dr. Margalit did not impose any specific work restrictions.

Defendants referred Claimant for an evaluation of his knee with Dr. Robert DaSilva on December 16, 2010. Dr. DaSilva's impression was moderately severe compartment arthritis in the left knee with medial meniscus tear. Dr. DaSilva stated that arthroscopic surgery repair of the meniscus tear may be an option for Claimant, but cautioned Claimant may not obtain a good result secondary to his size and weight. Dr. DaSilva noted that Claimant would have 3% impairment rating for the medial meniscus tear if he did not elect surgery. Dr. DaSilva did not impose any specific work restrictions.

#### **FINDINGS OF FACT**

After careful consideration of Claimant's testimony and review of the medical and documentary evidence presented, the Appellate Panel makes the following findings:

1. Claimant sustained compensable injuries to his lower back and left leg as a result of his compensable work accident on May 13, 2009.
2. Defendants shall pay/reimburse causally related medical bills incurred by Claimant via Wishard Hospital in Indianapolis following the accident.
3. Defendants are not liable for medical bills incurred by and through Dr. Gal Margalit, including the MRI scan Dr. Margalit referred Claimant for at Inmed Diagnostics and physical therapy with Columbia Rehabilitation Clinic.
4. Claimant did not request medical evaluation and treatment from the employer/carrier after returning to South Carolina following his accident. Claimant was referred to Dr. Margalit by his attorney without securing the

carrier's consent and designation of Dr. Margalit as the authorized provider under S.C. Code Ann. §42-15-60.

5. Claimant is not entitled to temporary total disability benefits for any period alleged on the grounds that Dr. Margalit, nor any other provider, specifically and/or contemporaneously with the injury, or in close proximity to the date of injury, wrote Claimant out of work or otherwise specifically restricted him in from working. As such, Claimant has failed to meet his burden of proving that he was "disabled" during the period alleged.
6. Claimant has sustained a 5% permanent partial specific loss of use of left leg secondary to his compensable knee injury.
7. Notwithstanding Dr. Margalit's 5% permanent partial impairment rating to the back, Claimant presented very little testimony regarding permanent pain or symptoms from his back. Therefore, Claimant is not entitled to an award of permanent partial disability for loss of use of the back.

#### CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-1-160 governs compensability and scope of compensable injuries.
2. S.C. Code Ann. §42-15-60 governs employer/carrier's liability for medical treatment.
3. S.C. Code Ann. §42-9-10 governs Claimant's entitlement to temporary total disability.
4. S.C. Code Ann. §42-1-120 defines "disability" as inability to earn same or pre-accident wages in the same or similar employment due to injury.

5. S.C. Code Ann. §42-9-30 governs permanent partial disability compensation for specific loss of use of scheduled members.

**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Order of the Single Commissioner is affirmed as modified.

**IT IS FURTHER ORDERED** that Defendants are not required to pay/reimburse any medical bills incurred by and through Dr. Gal Margalit, including, but not limited to, medical bills from Columbia Rehabilitation Clinic; and/or Inmed Diagnostics.

**IT IS FURTHER ORDERED** that Claimant's claim for temporary total disability benefits for any period alleged is hereby **DENIED**.

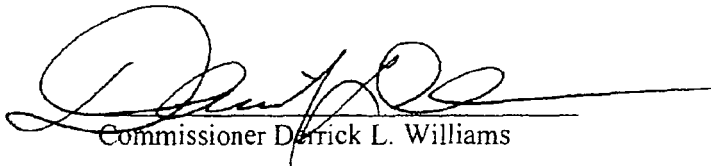
**IT IS FINALLY ORDERED** that Defendants shall pay Claimant 9.75 weeks of compensation at the stipulated compensation rate for permanent partial disability compensation based 5% specific loss of use of the leg.

**AND IT IS SO ORDERED.**

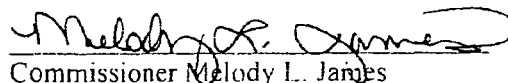


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Commissioner T. Scott Beck  
For the Appellate Panel

**WE CONCUR:**



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Commissioner Derrick L. Williams



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Commissioner Melody L. James

**CERTIFICATE OF SERVICE**

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

**By Valerie Deller on November 16, 2012**