

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

W.C.C. FILE NO: 1106789

Victor G. Benjamin

VS.

Rexam Beverage Can Company d/b/a
Rexam Beverages

AND

Hartford Insurance Company of the
Midwest c/o Sedgwick CMS

EMPLOYEE,
CLAIMANT/APPELLANT

EMPLOYER,

CARRIER,
DEFENDANTS/ RESPONDENTS,

RECEIVED

MAY 24 2018

SC Court of Appeals

Appellate Panel Review held in Columbia, South
Carolina, on October 16, 2017 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

April 24, 2018

APPEARANCES:

Claimant/Appellant represented by Jeffrey C. Chandler, Esquire

Defendants/Respondents represented by Jason W. Lockhart, Esquire

STATEMENT OF THE CASE

A Hearing was previously conducted on May 5, 2014 pursuant to a Form 50, filed by Claimant's attorney, who sought an order from Commissioner Barden designating Dr. Poletti of the Southeastern Spine Institute as the Claimant's authorized treating physician. In response, Defendants maintained, in light of the fact that the Claimant sustained an admitted injury to the neck; they were entitled to direct medical treatment pursuant to Section 42-15-60 of the Act. More specifically, Defendants maintained that the medical records of Claimant's physicians did not substantiate the Claimant's attorney's contention that the Claimant's need for medical treatment, which resulted in the Claimant undergoing surgery in February 2014, was the result of an emergency medical need. During the pre-hearing conference, Commissioner Barden stated that she would like to receive an opinion from Dr. Lozanne with regards to the issue of whether the Claimant's need for surgery in February 2014 was the result of an emergency medical need.

Following Dr. Lozanne's deposition, a Hearing was re-scheduled before Commissioner Barden for June 23, 2014. Commissioner Barden issued a Decision and Order on September 17, 2014 denying Claimant's request that Dr. Poletti be designated as Claimant's authorized treating physician. Commissioner Barden indicated that the substantial evidence, including the medical records of Claimant's treating physicians and the deposition testimony of Dr. Lozanne, did not support Claimant's contention that Claimant needed surgery on an emergency basis or even on an imminent need basis. Commissioner Barden also indicated that the substantial evidence indicated that the Employer/Carrier was providing Claimant with authorized causally-related medical treatment on a timely basis, and, therefore, Claimant did not satisfy his burden of proving, pursuant to Section 42-15-60, that the Employer/Carrier had failed to provide Claimant with authorized causally-related medical treatment. Claimant appealed the Decision and Order of Commissioner Barden. The Full Commission affirmed the Decision and Order of Commissioner Barden in its entirety on April 23, 2015.

A hearing was held before Commissioner Taylor on August 18, 2016 pursuant to a Form 50 filed by the Claimant's attorney on May 3, 2016. Claimant's attorney alleged that Claimant sustained multiple

injuries while in the course and scope of Claimant's employment with the Defendants on June 15, 2011. More specifically, Claimant's attorney alleged that Claimant sustained physical brain damage and/or incomplete quadriplegia as a result of the Claimant's work related accident and that, therefore, the Claimant was entitled to an award of lifetime compensation. In response, the Defendants admitted that Claimant sustained a compensable injury to the neck, psyche and/or right upper extremity, but denied that Claimant sustained physical brain damage and/or incomplete quadriplegia. Furthermore, Defendants asserted that the greater weight of the evidence of the record did not support that Claimant could sustain his burden of proving entitlement to lifetime benefits under the Act pursuant to Section 42-9-10(C).

Defendants also maintained that, if Commissioner Taylor were to determine that Claimant sustained a compensable injury to the lower back, Claimant had not reached maximum medical improvement for the lower back and, therefore, any award of permanent disability benefits would be premature. Claimant's attorney was also requesting a partial lump sum payment of any award of permanent disability benefits, and Defendants informed Commissioner Taylor that Defendants opposed any partial lump sum payment based on the lack of evidence to support Claimant's request for a partial lump sum payment.

On July 21, 2017, Commissioner Taylor issued a Decision and Order making the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is One Thousand Four Hundred Sixty One Dollars (\$1,461.40) and 40/100 with a corresponding compensation rate of Seven Hundred Four Dollars (\$704.92) and 92/100.
3. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find that Claimant sustained compensable injuries to his neck, right arm, brain (for initial closed head injury and resulting headaches and seizures), and psyche within the course and scope of his employment.

4. Claimant also alleges entitlement of lifetime benefits under the act based on a claim for incomplete paraplegia and brain damage as outlined in S.C. Code Ann. Section 42-9-10(C).
5. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Claimant has failed to meet his burden of proving entitlement to lifetime benefits on the basis of "incomplete paraplegia". This finding is based on the preponderance of the evidence as a whole, including the deposition testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim.
6. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find I find Dr. Lozanne testified the suffix "plegia" refers to a complete lack of movement and that "paraplegia" is the complete inability to move your legs. (Depo. of Dr. Lozanne pp. 5-6). After review of Dr. Poletti's medical note diagnosing Claimant with "incomplete quadriparesis or a form of incomplete quadriplegia", Dr. Lozanne testified the phrase "incomplete quadriplegia" was inappropriate in this instance and that Claimant suffered from cervical myelopathy – spinal cord dysfunction that has led to some symptoms – including difficulty with balance. (Depo. of Dr. Lozanne pp. 21).
7. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Dr. Lozanne went on to state unequivocally Claimant does not suffer from quadriplegia and it would be inappropriate to describe him as an incomplete quadriplegic. (Depo. of Dr. Lozanne pp. 21-22).
8. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I give greater weight to the testimony and medical opinions of Dr. Lozanne, who is the authorized treating neurosurgeon in the claim.
9. Based on a preponderance of the evidence including the medical records of the Claimant, and the testimony of Dr. Lozanne, I find Dr. Lozanne's analysis of Claimant's physical examinations as well as the diagnostic studies including the EMG nerve conduction studies (conducted in 2013 & 2015) and MRI (both cervical and lumbar) as outlined in his deposition to be very persuasive and I gave it great weight. (Claimant's APA p. 550-551, 572-573, 689-695, 733-734, 774-779)
10. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Claimant's motor functioning was tested by way of physical examinations throughout the

course of Claimant's medical treatment. During Claimant's initial treatment with Dr. Lozanne on January 22, 2013, Claimant was noted to have motor strength in all of his extremities and even had resistance strength. (Claimant's APA p. 677-679).

11. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find the physical examination performed by Claimant's own unauthorized physician revealed Claimant had motor strength in his lower extremities rated as 5 out of 5 with hip flexion and dorsiflexion, 4 out of 5 in knee flexion, extension and plantar flexion bilaterally. Claimant was also noted to have intact motor strength in the upper extremities. (Claimant's APA pp. 568-569).
12. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Claimant's lack of consistent complaints regarding bowel and/or bladder dysfunction, while not dispositive, to be weighted evidence in the present case. (*CITE TO APA*)
13. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Claimant has failed to meet his burden of proving entitled to lifetime benefits on the basis of having sustained permanent and severe physical brain damage. This finding is based on the preponderance of the evidence including:
 - a. Three brain scans performed by treating physicians including Dr. Meiere, Dr. Naso, and Dr. Sandoz (Claimant's APA pp. 91-92, 687-688, 660-661);
 - b. Claimant's appearance at and participation in two depositions;
 - c. Claimant's attendance at most of his medical appointments on his own to which he also drove himself on his own;
 - d. Claimant's service as treasurer of his union at the time of his injury and continued service as treasurer through 2012 (at the time of the hearing he was still a member of the union);
 - e. The lack of any medical evidence stated to a reasonable degree of medical certainty that Claimant sustained brain damage that was permanent and severe.
14. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find there is insufficient evidence in the medical record to support a finding that Claimant sustained an injury to his lower back (and any resulting radiculopathy to the legs) as a result of his work injury. This finding is based on the preponderance of the evidence as a whole, including the deposition testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim.

15. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find that Claimant's allegation of separate injuries to his bilateral shoulders and left arm are denied as they are not supported by a preponderance of the medical evidence. This finding is based on the preponderance of the evidence as a whole, including the deposition testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim.
16. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Claimant sustained an injury to his brain. This finding is based on Claimant's initial closed head injury and resulting headaches. Claimant's history of seizures weighed into this decision as well although Claimant is currently taking medication and having not had a seizure since February 19, 2012.
17. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find Claimant's injuries to his neck, right arm, brain (for initial closed head injury and resulting headaches and seizures) and psyche render him permanently and totally disabled. This finding is based on the medical evidence as a whole and the opinions on Claimant's employability offered by Dr. Sandoz, Dr. Poletti, Dr. Mills and Dr. Brabham. This finding is based on the preponderance of the evidence as a whole.
18. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find I find Claimant is entitled to lifetime causally-related medical treatment for his neck, right arm, brain (headaches & seizures) and depression.
19. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find I find Claimant is not entitled to a mobility scooter as there is insufficient evidence in the record causally-relating the need for the scooter to compensable injuries as outlined above. Specifically, Dr. Sandoz did not prescribe the mobility scooter until October 1, 2015 after Claimant alleged lower back and bilateral lower extremity symptoms associated with his 2011 work injury -- claims which have been denied as noted above.
20. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, I find I find Claimant's request for a mobility scooter as a result of causally-related medical treatment is not supported by a preponderance of the medical evidence and is denied.
21. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony

and the testimony of the Claimant's wife, I find Claimant is entitled to a lump-sum payment of the commuted value of 500 weeks of benefits less any amount previously paid to the Claimant in the form of temporary benefits. This finding is based on the preponderance of the evidence as a whole.

22. No hearing costs are assessed.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. Section 42-15-10 and Section 42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing
3. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
4. A workers' compensation claimant has the burden of proving facts that show the alleged injury arose out of and in the course and scope of employment. Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (S.C. 1998).
5. Only the facts and circumstances of the injury can determine whether it is compensable and, therefore, whether the employee's remedy is exclusively under the Compensation Law. Thompson v. J.A. Jones Const. Co., 199 S.C. 304, 19 S.E.2d. 226 (1942).
6. A "possibility" is not enough to show that a worker's injury arose out of and in the course and scope of his employment. Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960).
7. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller, 334 S.C. 333, 513 S.E.2d 843, rehearing denied (S.C. 1999).
8. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, Claimant sustained compensable injuries to his neck, right arm, brain (per Regulation 67-1101 for initial closed head injury and resulting headaches and seizures), and psyche within the course and scope of his employment.

9. Claimant also alleges entitlement of lifetime benefits under the act based on a claim for incomplete paraplegia and brain damage as outlined in S.C. Code Ann. Section 42-9-10(C).
10. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, I find Claimant has failed to meet his burden of proving entitlement to lifetime benefits pursuant to Section 42-9-10(C) on the basis of "incomplete paraplegia". This finding is based on the preponderance of the evidence as a whole, including the medical records of the Claimant, the testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim, the Claimant's testimony and the testimony of the Claimant's wife.
11. In Reed-Richards v. Clemson University, the Single Commissioner held that the claimant was a paraplegic as a result of her work accident and, therefore, entitled to lifetime benefits. 37 S.C. 304, 638 S.E.2d 77 (S.C. App. 2007). This finding was based in large part on the deposition and notes of Dr. David Shallcross, one of the claimant's treating physicians, who labeled her an incomplete paraplegic. The Full Commission upheld the Single Commissioner's Order, and the Court of Appeals eventually upheld the Full Commission's finding based on the substantial evidence standard. The claimant required the use of a walker and lost control of her bowel and bladder and developed urinary retention.
12. I find the Reeds-Richards case is distinguishable from the present case. In Reeds-Richards, the Court of Appeals affirmed Claimant's lifetime benefits based on the grounds that there was substantial evidence in the record to support the finding by the Commission. In that case, the only medical opinion in evidence was that of Dr. Shallcross, who opined Claimant had incomplete paraplegia. There were no other medical opinions on the issue in the record and as such, there were no other medical opinions on which the Commission or the Court could rely.
13. Expert medical testimony is designed to aid the South Carolina Workers' Compensation Commission in coming to the correct conclusion; therefore, Commission determines the weight and credit to be given to expert testimony. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999)
14. In the present case, I give greater weight to the testimony and medical opinions of Dr. Lozanne, the authorized treating neurosurgeon in the claim. I find Dr. Lozanne's analysis of Claimant's physical examinations as well as the diagnostic studies including the EMG nerve conduction studies (2013 & 2015) and MRI (cervical and lumbar) as outlined in his deposition to be very persuasive and I gave it great weight.
15. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, I find Claimant has failed to meet his burden of proving entitled to lifetime benefits pursuant to Section 42-9-10(C) on the basis of having sustained permanent and severe physical brain damage as

contemplated by S.C. Code Ann. Section 42-9-10(C) and the case law as outlined in Crisp and Sparks. This finding is based on the preponderance of the evidence including:

- a. Three brain scans performed by treating physicians including Dr. Meiere, Dr. Naso, and Dr. Sandoz (Claimant's APA pp. 91-92, 687-688, 660-661);
 - b. Claimant's appearance at and participation in two depositions;
 - c. Claimant's attendance at most of his medical appointments on his own to which he also drove himself on his own;
 - d. Claimant's service as treasurer of his union at the time of his injury and continued service as treasurer through 2012 (at the time of the hearing he was still a member of the union);
 - e. The lack of any medical evidence stated to a reasonable degree of medical certainty that Claimant sustained brain damage that was permanent and severe as required by case law and the Act.
16. Section 42-1-160 of the Act requires that, to be compensable, an injury by accident must be one "arising out of and in the course and scope of employment." Osteen v. Greenville County Sch. Dist., 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998).
17. For an injury to "arise out of" employment, the injury must be proximately caused by the employment. Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960). The injury arises out of employment when there is a causal connection between the conditions under which the work is required to be performed and the resulting injury. Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 140 S.E.2d 173 (1965).
18. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, I find there is insufficient evidence in the medical record to support a finding that Claimant sustained an injury to his lower back (and any resulting radiculopathy to the legs) as a result of his work injury. This finding is based on the preponderance of the evidence as a whole.
19. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, I find that Claimant's allegation of separate injuries to his bilateral shoulders and left arm are denied as I find they are not supported by a preponderance of the medical evidence. This finding is based on the preponderance of the evidence as a whole.
20. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, I find Claimant sustained an injury to his brain pursuant to Regulation 67-1101. This finding is based on Claimant's initial closed head injury and resulting headaches. Claimant's history of

seizures weighed into this decision as well although Claimant is currently taking medication and has not had a seizure since February 19, 2012.

21. Pursuant to Section 42-9-10 and based on the preponderance of the evidence as a whole, I find Claimant's injuries to his neck, right arm, brain (Regulation 67-1101) and psyche render him permanently and totally disabled pursuant to S.C. Code Ann. Section 42-9-10(A). This finding is based on the medical evidence as a whole and the opinions on Claimant's employability offered by Dr. Sandoz, Dr. Poletti, Dr. Mills and Dr. Brabham. This finding is based on the preponderance of the evidence as a whole.
22. Pursuant to Section 42-15-60 and based on the preponderance of the evidence as a whole I find Claimant is entitled to lifetime causally-related medical treatment for his neck, right arm, brain (headaches & seizures per Regulation 67-1101) and depression.
23. Pursuant to Section 42-15-60 and based on the preponderance of the evidence as a whole I find Claimant is not entitled to a mobility scooter as there is insufficient evidence in the record causally-relating the need for the scooter to compensable injuries as outlined above. Specifically, Dr. Sandoz did not prescribe the mobility scooter until October 1, 2015 after Claimant alleged lower back and bilateral lower extremity symptoms associated with his 2011 work injury - claims which have been denied as noted above.
24. Pursuant to Section 42-15-60 and based on the preponderance of the evidence as a whole I find Claimant's request for a mobility scooter as a result of causally-related medical treatment is not supported by a preponderance of the medical evidence and is denied.
25. Pursuant to Section 42-9-301 and based on the preponderance of the evidence as a whole, I find Claimant is entitled to a lump-sum payment of the commuted value of 500 weeks of benefits less any amount previously paid to the Claimant in the form of temporary benefits. This finding is based on the preponderance of the evidence as a whole.
26. Claimant is entitled to James v. Anne's apportionment language in the Order.
27. No hearing costs are assessed.

Following the Decision and Order, Claimant filed a Form 30 and asserted several exceptions to the Decision and Order. According to Claimant's Appellant's Brief, these exceptions were consolidated as follows:

- a. THE COMMISSIONER COMMITTED ERROR IN FINDING THAT THE CLAIMANT FAILED TO PROVE THAT HE IS ENTITLED TO

LIFETIME BENEFITS RELATED TO HIS SPINAL CORD INJURY DESPITE HIS DIAGNOSIS OF INCOMPLETE QUADRIPLÉGIA, PURSUANT TO §42-9-10(C) AND REED-RICHARDS V. CLEMSON UNIVERSITY, 37 S.C. 304, 638 S.E.2D 77(S.C. APP. 2007).

- b. THE COMMISSIONER COMMITTED ERROR WHEN SHE DETERMINED THAT THE CLAIMANT FAILED TO SUSTAIN HIS BURDEN OF PROVING THAT HE SUFFERED FROM PERMANENT AND SEVERE PHYSICAL BRAIN DAMAGE CONSISTENT WITH §42-9-10(C).
- c. THE COMMISSIONER COMMITTED ERROR WHEN SHE DETERMINED THAT THE CLAIMANT FAILED TO MEET HIS BURDEN OF PROVING THE MOBILITY SCOOTER ORDERED BY DR. SANDOZ WAS CAUSALLY RELATED TO HIS SPINAL CORD INJURY.

EVIDENCE OF THE CASE

The Claimant testified on his behalf. The Claimant stated that he is currently 54-years of age, and resides in Sumter, South Carolina with his wife and son. The Claimant indicated that he worked with the Defendants for approximately 29 years, and sustained multiple injuries while in the course and scope of his employment with the Defendants on June 15, 2011 when the Claimant was struck by a protective guard which fell from above the Claimant, striking the Claimant on the head and right shoulder. The Claimant, who was wearing a neck brace and utilizing a cane at the hearing, indicated that he had sought and received medical treatment for his work related injuries with a variety of physicians including Dr. Lozanne, Dr. Naso, Dr. Poletti, and Dr. Sandoz. The Claimant testified that he continues to receive treatment from Dr. Sandoz in the form of prescription medications due to a variety of ongoing problems, including dizziness and migraine headaches. The Claimant stated that he is also utilizing anti-seizure medication which was prescribed by Dr. Sandoz, but that he has not experienced a seizure in the last few years. The Claimant testified that he is also currently receiving psychological treatment with Dr. Bergmann of Post Trauma Resources and receives treatment from Dr. Bergmann in the form of counseling. Based on review of the medical records, Dr. Lozanne, who provided the Claimant with authorized causally related medical treatment with regards to the neck, determined that the Claimant

reached maximum medical improvement on July 22, 2016. The Claimant sought and received unauthorized medical treatment for the neck with Dr. Poletti.

The Claimant testified that he currently experiences a variety of physical and psychological problems as a result of his work related accident. The Claimant stated that his work related injuries have rendered the Claimant incapable of performing personal hygiene, including bathing, and that the Claimant's wife both bathes the Claimant on a daily basis as well as assists the Claimant with dressing. The medical records of the Claimant's authorized treating physicians do not indicate that the Claimant is in need of daily assistance with regards to bathing and/or dressing. The Claimant indicated he also currently experiences weakness in both hands, which prevent the Claimant from utilizing utensils without problem. The Claimant testified that he also experiences weakness in both his left lower extremity and right lower extremity that requires the Claimant to utilize a cane, which was prescribed by Dr. Sandoz. The Claimant indicated that Dr. Sandoz has also prescribed a motorized scooter for the Claimant due to Claimant's lack of mobility. The Claimant stated that he spends the majority of his day at home watching TV or sleeping, and that the Claimant is incapable of preparing meals on his behalf, requiring his wife to prepare meals each day prior to her leaving to go to work.

On cross-examination, the Claimant testified that he does engage in driving on an infrequent basis, and has driven to a medical appointment within the last 30 days. The Claimant stated that he was physically capable of driving an automobile and also mentally capable of driving an automobile, but did experience some problems performing the above-referenced activity. Most notably, the Claimant indicated that he was a member of a labor union while employed with the Defendants, and that he actually served as the treasurer of the local chapter of his labor union from 2011 to 2013, which would have been following the date of his work related accident. Most notably, the Claimant testified that, while serving as treasurer from 2011 to 2013, he signed checks on behalf of the local chapter of his labor union. The Claimant stated that, on the date of his work related accident, he also operated a towing business known as Benjamin & Sons, but that Benjamin & Sons has not generated income since the date of the Claimant's work related accident. The Claimant stated that he also sustained an injury to the lower back as a result of

his June 2011 work related accident, but was presented with medical records, which were contemporaneous with the date of the accident, that made no mention of the Claimant providing his treating physicians with complaints of lower back pain and problems. Claimant testified he had no explanation as to why the above-referenced medical records made no mention of his alleged lower back injury.

Leta Benjamin testified on behalf of the Claimant. Ms. Benjamin testified that she is the Claimant's wife, and currently resides with the Claimant in Sumter, South Carolina. Ms. Benjamin indicated that she is currently employed with Wells Fargo, and has taken FMLA leave since March 2016 in order to provide the Claimant with care in light of the Claimant work related injuries. Ms. Benjamin indicated that the Claimant's work related injuries have placed significant physical and psychological limitations upon the Claimant. More specifically, Ms. Benjamin testified that she is required to provide the Claimant with both personal hygiene on a daily basis as well as dressing the Claimant and preparing the Claimant's food. Ms. Benjamin stated that she attends most, if not all of the Claimant's medical examination. Ms. Benjamin indicated that she had observed the Claimant's psychological problems, including anger and depression, as well as the Claimant's physical limitations, such as instability and loss of strength of the right upper extremity.

Medical Evidence

The parties conducted the deposition of Dr. Lozanne on July 7, 2016. Dr. Lozanne testified that the primary criteria used to establish a diagnosis of paraplegia is physical examination. (Depo. of Dr. Lozanne p. 6). Dr. Lozanne also testified that diagnostic testing, including MRIs and/or EMG/NCS are also helpful in reaching a determination of whether a patient is a paraplegic. (Depo. of Dr. Lozanne pp. 6-8). Furthermore, Dr. Lozanne testified that, generally, a plegic condition will manifest itself rather quickly following an acute injury. (Depo. of Dr. Lozanne p. 17).

On the date of the June 15, 2011 work accident, Claimant presented to McLeod Regional Medical Center with a head injury. (APA p. 658). On physical examination, Claimant was well-developed and fit-appearing, was awake/alert/conversant/fluent speech, had normal affect, had intact extraocular

movement, had 5/5 strength in both upper extremities and lower extremities with normal bulk and tone. (APA p. 658). Claimant later underwent right hand extensor tendon repair with Dr. Welsch. Following surgery, Claimant treated with Dr. Welsch from September 23, 2011 through October 14, 2013. (APA pp. 669-676). The records of Dr. Welsch indicate that Claimant presented with no acute distress and was alert and oriented. (APA pp. 669-676).

Defendants initially conducted Claimant's deposition on March 2, 2012. Regarding his right arm, Claimant testified that he experiences pain and stiffness in all four fingers and right wrist pain. (Claimant's March 2, 2012 Depo. Tr. pp. 26-28). Regarding his neck, Claimant testified that he suffered from neck pain radiating into his right arm that comes and goes on a daily basis. (Claimant's March 2, 2012 Depo. Tr. p. 28). Claimant testified that he also experiences dizziness and headaches. (Claimant's March 2, 2012 Depo. Tr. pp. 29-30). Claimant complained of sharp pains in different parts of his body which occur from time to time. (Claimant's March 2, 2012 Depo. Tr. p. 44). Claimant also stated that he gets "lost in thought" and "lost in conversation" resulting in his inability to participate in a conversation because he can no longer remember what he was talking about. (Claimant's March 2, 2012 Depo. Tr. pp. 45-48). When asked if he felt capable of returning to work, Claimant testified that he did not believe he could return to work. (Claimant's March 2, 2012 Depo. Tr. p. 51). Claimant did not feel that he could lift because he doesn't have the strength that he used to have, and that he would not feel comfortable returning to work because he would not want to be around the machine for fear of suffering a panic attack. (Claimant's March 2, 2012 Depo. Tr. p. 51). Claimant did not mention his cognitive difficulties, dizziness, headaches, etc., as an impediment to returning to work; nor did Claimant describe any physical symptoms consistent with plegia (i.e. complete loss of sensory or motor function).

Claimant sought unauthorized treatment with Dr. Poletti at Southeastern Spine Institute on November 5, 2012. (APA pp. 718-719). A review of Claimant's symptoms was positive for eye pain with headaches, ringing in both ears, joint pain in his arms or his hands, headaches, seizures, anxiety and depression. (APA p. 718). However, Claimant denied any fevers, chills, night sweats, changes in weight, changes in appetite, chest pain, palpitations, shortness of breath, dyspnea, wheezing, kidney/bowel/bladder

dysfunction, paralysis, diabetes and hypothyroidism. (APA p. 718). A physical examination indicated that Claimant is a well-developed, well-nourished male alert and oriented and in no acute distress. (APA p. 719). Claimant also presented in an ambulatory fashion with a non-antalgic gait. (APA p. 719). Claimant had 5/5 strength and symmetry in the lower extremities. (APA p. 719).

Claimant underwent an initial evaluation with Dr. Lozanne on January 22, 2013. Claimant reported continued headaches, neck pain, right-sided intrascapular and shoulder pain radiating down the right arm, and also indicated that he had developed difficulties of balance and has had numbness and tingling worse on the right than the left. (APA p. 677). Claimant denied any urinary or bowel symptoms. (APA p. 677). His motor strength in the right deltoid, bicep, tricep and hand intrinsics were 4/5. (APA p. 677). However, all other muscle groups were 5/5 strength and his gait was normal. (APA p. 677). Dr. Lozanne diagnosed Claimant with cervical myelopathy and radiculopathy. (APA p. 677). Dr. Lozanne recommended, and later performed, an anterior cervical discectomy and plated fusion at the C4-5, C5-6 and C6-7 levels. (APA p. 679).

Claimant began treating with Dr. Sandoz on September 16, 2011. The initial report indicates that Claimant had no sensory loss, no motor weakness, intact coordination, intact balance and gait, and normal motor skills. (APA p. 742). Additional reports of Dr. Sandoz confirm these physical findings throughout Claimant's treatment. (APA pp. 745, 748, 749-750, 752, 754, 756, 769, 792).

Claimant followed up with Dr. Poletti on January 20, 2014. (APA p. 721). Claimant reported complaints of neck, shoulder and right arm pain, along with continued issues with difficulty walking and imbalance; however, he denied any bowel or bladder issues. (APA p. 721). Claimant continued to treat with Dr. Poletti's office from August 14, 2014 through December 17, 2015. (APA pp. 722-736). Most notably, there is no indication in the reports of Southeastern Spine Institute of a complete loss of sensory or motor function or any paralysis. Each of the reports of "Dr. Poletti" is signed off on by his physician's assistants. (APA pp. 722-736). As a result, it is unclear when, or if, Dr. Poletti actually examined Claimant. The only mention of an "incomplete quadriplegia" or "incomplete paraparesis" was contained in a written letter of Dr. Poletti addressed to the Claimant's attorney on May 27, 2015. (APA

pp. 729-730). Dr. Poletti indicated that Claimant has a form of spinal cord injury or “incomplete quadriplegia.” (APA p. 730).

Significantly, following the written letter of Dr. Poletti, on October 2, 2015, Claimant presented to Dr. Poletti’s office and denied any focal muscle deficits, paralysis or changes in bowel and bladder function. (APA p. 731). A physical examination classified Claimant as “well-developed, well-nourished. . . alert and oriented x3 and in no acute distress.” (APA p. 731). Furthermore, the physical examination indicated that Claimant was ambulatory with a slightly antalgic gait using the assistance of a cane primarily for fall prevention. (APA p. 731). Claimant had strength of the lower extremity between 4/5 and 5/5 and strength of the upper extremities was intact. (APA p. 731). Again, this visit was signed off on by a physician’s assistant. (APA pp. 731-732). On December 17, 2015, Claimant again denied loss of bowel and bladder function, any focal muscle deficits or paralysis. Again, this visit was signed off on by a physician’s assistant. (APA pp. 735-736). Finally, Claimant returned to Dr. Poletti’s office on April 21, 2016. (APA p. 577). Claimant was evaluated for 15 minutes by a physician’s assistant and denied any significant progression of his symptoms. (APA p. 577).

Defendants conducted the updated deposition of Claimant on March 31, 2014. Most notably, Claimant testified that, following the unauthorized surgery performed by Dr. Poletti, he experienced some improvement of his neck and upper extremity problems. (Claimant’s March 31, 2014 Depo. Tr. p. 13, 16, 40, 44). At the Hearing which was conducted on June 23, 2014 before Commissioner Barden, Claimant reiterated that the pain and numbness and symptoms improved following the unauthorized surgery performed by Dr. Poletti. (APA p. 865).

As mentioned above, Dr. Lozanne testified that a determination of paraplegia can be diagnosed via physical examination and/or diagnostic testing. (Dr. Lozanne’s Depo. Tr. pp. 6-8). Dr. Lozanne testified that, based on the physical examination contained in his initial January 22, 2013 report, for which the November 15, 2012 MRI of the cervical spine and the November 3, 2011 EMG/NCS were available for his review, Claimant is not a plegic. (Dr. Lozanne’s Depo. Tr. pp. 9-10). Dr. Lozanne then reviewed an EMG/NCS performed at Grand Strand Spine and Neurosurgery, performed on March 26, 2015 by Dr.

Sandoz. Upon review of the diagnostic study, Dr. Lozanne testified that he saw nothing in the study that would indicate plegia. (Dr. Lozanne's Depo. Tr. p. 11). Dr. Lozanne then reviewed an MRI of the cervical spine performed on April 13, 2015. Dr. Lozanne confirmed that nothing in the MRI would be consistent with a plegia. (Dr. Lozanne's Depo. Tr. p. 12). Dr. Lozanne was then presented with an MRI of the lumbar spine performed on October 19, 2015. Dr. Lozanne indicated that the report did not reveal any finding indicative of a plegia in Claimant. (Dr. Lozanne's Depo. Tr. p. 13). Dr. Lozanne was then presented with a copy of a report from Dr. Poletti's office, dated October 2, 2015, wherein Claimant underwent a physical examination performed by a physician's assistant. Again, Dr. Lozanne indicated that the findings present in the physical exam of Claimant on or about October 2, 2015 were not indicative or reflective of a plegia. (Dr. Lozanne's Depo. Tr. pp. 13-15). More specifically, Dr. Lozanne testified that a patient who has strength by definition cannot be plegic, and plegia is evidenced by lack of movement, specifically the movement of the extremities that are affected by the plegia, which was not evidenced in the physical examination. (Dr. Lozanne's Depo. Tr. pp. 14-15). Upon review of Dr. Poletti's letter to Claimant's attorney in which he references incomplete paraplegia on May 27, 2015, Dr. Lozanne testified that the above-referenced phrase is not appropriate to use in this instance. (Dr. Lozanne's Depo. Tr. p. 21). Dr. Lozanne explained that Claimant suffers from cervical myelopathy, including some difficulties with his balance because he had a spinal cord injury. (Dr. Lozanne's Depo. Tr. p. 21). However, Dr. Lozanne indicated that Claimant does not suffer from a quadriplegia and Dr. Lozanne has never heard a neurosurgeon use incomplete quadriplegia as a phrase. (Dr. Lozanne's Depo. Tr. p. 21). Dr. Lozanne further explained that Claimant suffers a spinal cord injury and has some weakness associated with that injury but is not a quadriparetic in the sense that he has normal motor strength in multiple extremities, though he has some decreased strength. (Dr. Lozanne's Depo. Tr. p. 22). Dr. Lozanne believed that Dr. Poletti was attempting to convey that Claimant has some weakness but felt it was inappropriate to label Claimant as an incomplete or complete quadriplegic in any kind of way. (Dr. Lozanne's Depo. Tr. pp. 22-23).

Dr. Lozanne performed an evaluation of Claimant on July 22, 2016. (APA pp. 681-684). A physical examination revealed 5/5 strength in each lower extremity, 4/5 strength in the right upper extremity, and 5/5 strength in the left upper extremity. (APA p. 683). Cranial nerves were virtually intact and Claimant was awake, alert and answering questions appropriately. (APA p. 683). Claimant was able to walk and stand unassisted but used aid of 4-pronged cane for balance. (APA p. 683). Dr. Lozanne issued a 53% whole person impairment rating pursuant to Chapter 15 of the AMA Guidelines, Fifth Edition, but no separate impairment was included for bladder, erectile, sexual or respiratory function, nor was any separate impairment for lower extremity involvement included. (APA p. 684).

FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACTS

1. The South Carolina Workers' Compensation Commission has jurisdiction over the subject matter and parties of this claim.
2. Claimant's average weekly wage is One Thousand Four Hundred Sixty-One Dollars (\$1,461.40) and 40/100 with a corresponding compensation rate of Seven Hundred Four Dollars (\$704.92) and 92/100.
3. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find that Claimant sustained compensable injuries to his neck, right arm, brain (for initial closed head injury and resulting headaches and seizures), and psyche within the course and scope of his employment.
4. Claimant also alleges entitlement of lifetime benefits under the act based on a claim for incomplete paraplegia and brain damage as outlined in S.C. Code Ann. Section 42-9-10(C).
5. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant has failed to meet his burden of proving entitlement to lifetime benefits on the basis of "incomplete paraplegia". This finding is based on the preponderance of the evidence as a

whole, including the deposition testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim.

6. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Dr. Lozanne testified the suffix "plegia" refers to a complete lack of movement and that "paraplegia" is the complete inability to move your legs. (Depo. of Dr. Lozanne pp. 5-6). After review of Dr. Poletti's medical note diagnosing Claimant with "incomplete quadriparesis or a form of incomplete quadriplegia", Dr. Lozanne testified the phrase "incomplete quadriplegia" was inappropriate in this instance and that Claimant suffered from cervical myelopathy – spinal cord dysfunction that has led to some symptoms – including difficulty with balance. (Depo. of Dr. Lozanne pp. 21).
7. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Dr. Lozanne went on to state unequivocally Claimant does not suffer from quadriplegia and it would be inappropriate to describe him as an incomplete quadriplegic. (Depo. of Dr. Lozanne pp. 21-22).
8. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we give greater weight to the testimony and medical opinions of Dr. Lozanne, who is the authorized treating neurosurgeon in the claim.
9. Based on a preponderance of the evidence including the medical records of the Claimant, and the testimony of Dr. Lozanne, we find Dr. Lozanne's analysis of Claimant's physical examinations as well as the diagnostic studies including the EMG nerve conduction studies (conducted in 2013 & 2015) and MRI (both cervical and lumbar) as outlined in his deposition to be very persuasive and we gave it great weight. (Claimant's APA p. 550-551, 572-573, 689-695, 733-734, 774-779)

10. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant's motor functioning was tested by way of physical examinations throughout the course of Claimant's medical treatment. During Claimant's initial treatment with Dr. Lozanne on January 22, 2013, Claimant was noted to have motor strength in all of his extremities and even had resistance strength. (Claimant's APA p. 677-679).
11. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find the physical examination performed by Claimant's own unauthorized physician revealed Claimant had motor strength in his lower extremities rated as 5 out of 5 with hip flexion and dorsiflexion, 4 out of 5 in knee flexion, extension and plantar flexion bilaterally. Claimant was also noted to have intact motor strength in the upper extremities. (Claimant's APA pp. 568-569).
12. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant's lack of consistent complaints regarding bowel and/or bladder dysfunction, while not dispositive, to be weighted evidence in the present case. (Claimant's APA pp. 677, 718, 721, 731, 735).
13. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant has failed to meet his burden of proving entitled to lifetime benefits on the basis of having sustained permanent and severe physical brain damage. This finding is based on the preponderance of the evidence including:
 - a. Three brain scans performed by treating physicians including Dr. Meiere, Dr. Naso, and Dr. Sandoz (Claimant's APA pp. 91-92, 687-688, 660-661);
 - b. Claimant's appearance at and participation in two depositions;

- c. Claimant's attendance at most of his medical appointments on his own to which he also drove himself on his own;
 - d. Claimant's service as treasurer of his union at the time of his injury and continued service as treasurer through 2012 (at the time of the hearing he was still a member of the union);
 - e. The lack of any medical evidence stated to a reasonable degree of medical certainty that Claimant sustained brain damage that was permanent and severe.
14. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find there is insufficient evidence in the medical record to support a finding that Claimant sustained an injury to his lower back (and any resulting radiculopathy to the legs) as a result of his work injury. This finding is based on the preponderance of the evidence as a whole, including the deposition testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim.
15. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find that Claimant's allegation of separate injuries to his bilateral shoulders and left arm are denied as they are not supported by a preponderance of the medical evidence. This finding is based on the preponderance of the evidence as a whole, including the deposition testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim.
16. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant sustained an injury to his brain. This finding is based on Claimant's initial closed head injury and resulting headaches. Claimant's history of seizures weighed into this decision as well although Claimant is currently taking medication and having not had a seizure since February 19, 2012.

17. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant's injuries to his neck, right arm, brain (for initial closed head injury and resulting headaches and seizures) and psyche render him permanently and totally disabled. This finding is based on the medical evidence as a whole and the opinions on Claimant's employability offered by Dr. Sandoz, Dr. Poletti, Dr. Mills and Dr. Brabham. This finding is based on the preponderance of the evidence as a whole.
18. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant is entitled to lifetime causally-related medical treatment for his neck, right arm, brain (headaches & seizures) and depression.
19. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant is not entitled to a mobility scooter as there is insufficient evidence in the record causally-relating the need for the scooter to compensable injuries as outlined above. Specifically, Dr. Sandoz did not prescribe the mobility scooter until October 1, 2015 after Claimant alleged lower back and bilateral lower extremity symptoms associated with his 2011 work injury – claims which have been denied as noted above.
20. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant's request for a mobility scooter as a result of causally-related medical treatment is not supported by a preponderance of the medical evidence and is denied.
21. Based on a preponderance of the evidence including the medical records of the Claimant, the testimony of Dr. Lozanne, the Claimant's testimony and the testimony of the Claimant's wife, we find Claimant is entitled to a lump-sum payment of the commuted value of 500 weeks of benefits

less any amount previously paid to the Claimant in the form of temporary benefits. This finding is based on the preponderance of the evidence as a whole.

22. No hearing costs are assessed.

CONCLUSIONS OF LAW

It is concluded under the South Carolina Worker's Compensation Act in Section 42-1-10 S.C. Code of Laws, et seq., that:

1. Pursuant to S.C. Code Ann. Section 42-15-10 and Section 42-17-20, jurisdiction and venue are proper.
2. Pursuant to South Carolina Workers' Compensation Commission Rules and Regulations, Rule 67-210(B) and Rule 67-213(C), the parties were properly served with Notice of the Hearing.
3. Workers' Compensation awards may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it. Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999) ; Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct.App.1997) rev'd on other grounds.
4. A workers' compensation claimant has the burden of proving facts that show the alleged injury arose out of and in the course and scope of employment. Clade v. Champion Laboratories, 330 S.C. 8, 496 S.E.2d 856 (S.C. 1998).
5. Only the facts and circumstances of the injury can determine whether it is compensable and, therefore, whether the employee's remedy is exclusively under the Compensation Law. Thompson v. J.A. Jones Const. Co., 199 S.C. 304, 19 S.E.2d. 226 (1942).

6. A "possibility" is not enough to show that a worker's injury arose out of and in the course and scope of his employment. Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (S.C. 1960).
7. The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence. Tiller, 334 S.C. 333, 513 S.E.2d 843, rehearing denied (S.C. 1999).
8. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, Claimant sustained compensable injuries to his neck, right arm, brain (per Regulation 67-1101 for initial closed head injury and resulting headaches and seizures), and psyche within the course and scope of his employment.
9. Claimant also alleges entitlement of lifetime benefits under the act based on a claim for incomplete paraplegia and brain damage as outlined in S.C. Code Ann. Section 42-9-10(C).
10. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, we find Claimant has failed to meet his burden of proving entitlement to lifetime benefits pursuant to Section 42-9-10(C) on the basis of "incomplete paraplegia". This finding is based on the preponderance of the evidence as a whole, including the medical records of the Claimant, the testimony of Dr. Lozanne, who was the authorized treating physician and surgeon in this claim, the Claimant's testimony and the testimony of the Claimant's wife.
11. In Reed-Richards v. Clemson University, the Single Commissioner held that the claimant was a paraplegic as a result of her work accident and, therefore, entitled to lifetime benefits. 37 S.C. 304, 638 S.E.2d 77 (S.C. App. 2007). This finding was based

in large part on the deposition and notes of Dr. David Shallcross, one of the claimant's treating physicians, who labeled her an incomplete paraplegic. The Full Commission upheld the Single Commissioner's Order, and the Court of Appeals eventually upheld the Full Commission's finding based on the substantial evidence standard. The claimant required the use of a walker and lost control of her bowel and bladder and developed urinary retention.

12. We find the Reeds-Richards case is distinguishable from the present case. In Reeds-Richards, the Court of Appeals affirmed Claimant's lifetime benefits based on the grounds that there was substantial evidence in the record to support the finding by the Commission. In that case, the only medical opinion in evidence was that of Dr. Shallcross, who opined Claimant had incomplete paraplegia. There were no other medical opinions on the issue in the record and as such, there were no other medical opinions on which the Commission or the Court could rely.
13. Expert medical testimony is designed to aid the South Carolina Workers' Compensation Commission in coming to the correct conclusion; therefore, Commission determines the weight and credit to be given to expert testimony. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999)
14. In the present case, we give greater weight to the testimony and medical opinions of Dr. Lozanne, the authorized treating neurosurgeon in the claim. We find Dr. Lozanne's analysis of Claimant's physical examinations as well as the diagnostic studies including the EMG nerve conduction studies (2013 & 2015) and MRI (cervical and lumbar) as outlined in his deposition to be very persuasive and we gave it great weight.

15. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, we find Claimant has failed to meet his burden of proving entitled to lifetime benefits pursuant to Section 42-9-10(C) on the basis of having sustained permanent and severe physical brain damage as contemplated by S.C. Code Ann. Section 42-9-10(C) and the case law as outlined in Crisp and Sparks. This finding is based on the preponderance of the evidence including:

- a. Three brain scans performed by treating physicians including Dr. Meiere, Dr. Naso, and Dr. Sandoz (Claimant's APA pp. 91-92, 687-688, 660-661);
- b. Claimant's appearance at and participation in two depositions;
- c. Claimant's attendance at most of his medical appointments on his own to which he also drove himself on his own;
- d. Claimant's service as treasurer of his union at the time of his injury and continued service as treasurer through 2012 (at the time of the hearing he was still a member of the union);
- e. The lack of any medical evidence stated to a reasonable degree of medical certainty that Claimant sustained brain damage that was permanent and severe as required by case law and the Act.

16. Section 42-1-160 of the Act requires that, to be compensable, an injury by accident must be one "arising out of and in the course and scope of employment." Osteen v. Greenville County Sch. Dist., 333 S.C. 43, 49, 508 S.E.2d 21, 24 (1998).

17. For an injury to "arise out of" employment, the injury must be proximately caused by the employment. Fowler v. Abbott Motor Co., 236 S.C. 226, 113 S.E.2d 737 (1960). The injury arises out of employment when there is a causal connection between the

conditions under which the work is required to be performed and the resulting injury.

Douglas v. Spartan Mills, Startex Div., 245 S.C. 265, 140 S.E.2d 173 (1965).

18. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, we find there is insufficient evidence in the medical record to support a finding that Claimant sustained an injury to his lower back (and any resulting radiculopathy to the legs) as a result of his work injury. This finding is based on the preponderance of the evidence as a whole.
19. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, we find that Claimant's allegation of separate injuries to his bilateral shoulders and left arm are denied as we find they are not supported by a preponderance of the medical evidence. This finding is based on the preponderance of the evidence as a whole.
20. Pursuant to Section 42-1-160 and based on the preponderance of the evidence as a whole, we find Claimant sustained an injury to his brain pursuant to Regulation 67-1101. This finding is based on Claimant's initial closed head injury and resulting headaches. Claimant's history of seizures weighed into this decision as well although Claimant is currently taking medication and has not had a seizure since February 19, 2012.
21. Pursuant to Section 42-9-10 and based on the preponderance of the evidence as a whole, we find Claimant's injuries to his neck, right arm, brain (Regulation 67-1101) and psyche render him permanently and totally disabled pursuant to S.C. Code Ann. Section 42-9-10(A). This finding is based on the medical evidence as a whole and the opinions

on Claimant's employability offered by Dr. Sandoz, Dr. Poletti, Dr. Mills and Dr. Brabham. This finding is based on the preponderance of the evidence as a whole.

22. Pursuant to Section 42-15-60 and based on the preponderance of the evidence as a whole we find Claimant is entitled to lifetime causally-related medical treatment for his neck, right arm, brain (headaches & seizures per Regulation 67-1101) and depression.
23. Pursuant to Section 42-15-60 and based on the preponderance of the evidence as a whole we find Claimant is not entitled to a mobility scooter as there is insufficient evidence in the record causally-relating the need for the scooter to compensable injuries as outlined above. Specifically, Dr. Sandoz did not prescribe the mobility scooter until October 1, 2015 after Claimant alleged lower back and bilateral lower extremity symptoms associated with his 2011 work injury – claims which have been denied as noted above.
24. Pursuant to Section 42-15-60 and based on the preponderance of the evidence as a whole we find Claimant's request for a mobility scooter as a result of causally-related medical treatment is not supported by a preponderance of the medical evidence and is denied.
25. Pursuant to Section 42-9-301 and based on the preponderance of the evidence as a whole, we find Claimant is entitled to a lump-sum payment of the commuted value of 500 weeks of benefits less any amount previously paid to the Claimant in the form of temporary benefits. This finding is based on the preponderance of the evidence as a whole.
26. Claimant is entitled to James v. Anne's apportionment language in the Order.
27. No hearing costs are assessed.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the substantial evidence supports a finding that the Decision and Order of the Single Commissioner is **AFFIRMED** with amendments.

IT IS FURTHER ORDERED that Claimant sustained compensable injuries to his neck, right arm, brain (per Regulation 67-1101 for initial closed head injury and resulting headaches and seizures), and psyche within the course and scope of his employment.

IT IS FURTHER ORDERED that Claimant has failed to meet his burden of proving entitlement to lifetime benefits pursuant to Section 42-9-10(C) on the basis of "incomplete paraplegia".

IT IS FURTHER ORDERED that Claimant has failed to meet his burden of proving entitled to lifetime benefits pursuant to Section 42-9-10(C) on the basis of having sustained permanent and severe physical brain damage as contemplated by S.C. Code Ann. Section 42-9-10(C)

IT IS FURTHER ORDERED that we find there is insufficient evidence in the medical record to support a finding that Claimant sustained an injury to his lower back (and any resulting radiculopathy to the legs) as a result of his work injury.

IT IS FURTHER ORDERED that Claimant's allegation of separate injuries to his bilateral shoulders and left arm are denied as they are not supported by a preponderance of the medical evidence.

IT IS FURTHER ORDERED that Claimant sustained an injury to his brain pursuant to Regulation 67-1101.

IT IS FURTHER ORDERED that Claimant's injuries to his neck, right arm, brain (Regulation 67-1101) and psyche render him permanently and totally disabled pursuant to S.C. Code Ann. Section 42-9-10(A).

IT IS FURTHER ORDERED that Claimant is entitled to lifetime causally-related medical treatment for his neck, right arm, brain (headaches & seizures per Regulation 67-1101) and depression.

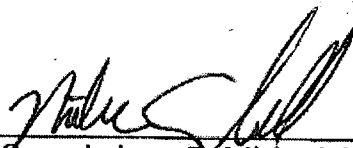
IT IS FURTHER ORDERED that Claimant is not entitled to a mobility scooter as there is insufficient evidence in the record causally-relating the need for the scooter to compensable injuries as outlined above.

IT IS FURTHER ORDERED Claimant is entitled to a lump-sum payment of the commuted value of 500 weeks of benefits less any amount previously paid to the Claimant in the form of temporary benefits. This finding is based on the preponderance of the evidence as a whole.

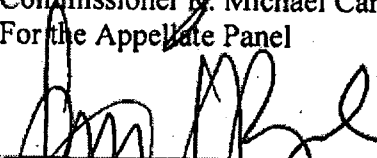
IT IS FURTHER ORDERED Claimant is entitled to James v. Anne's apportionment language in the Order.

IT IS SO ORDERED.

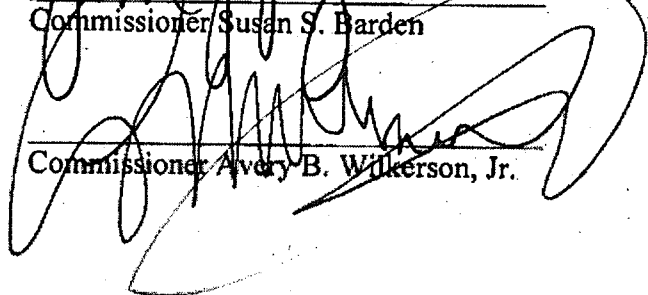
WE CONCUR:



Commissioner B. Michael Campbell, II
For the Appellate Panel



Commissioner Susan S. Barden



Commissioner Avery B. Wilkerson, Jr.

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 April 24, 2018