

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

WCC FILE NO(S): 1401997 & 1422134

Ray K. Logan

EMPLOYEE,

CLAIMANT/RESPONDENT

v.

Winthrop University

EMPLOYER,

And

South Carolina State Accident Fund,

CARRIER,

DEFENDANTS/APPELLANT

Appellate Panel Review held in Columbia, South
Carolina, on March 19, 2018 per notices timely
and properly served upon all parties of interest

Appellate Panel Decision and Order
Filed June 5, 2018

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SC Court of Appeals

APPEARANCES: Claimant/Respondent represented by Tyler Bathrick, Esquire, of
Stewart Law Offices, L.L.C. of Rock Hill, South Carolina

Defendant/Appellant represented by David H. Keller, Esquire, and
Evelyn Norton, Esquire, of Turner, Padgett, LLC of Greenville,
South Carolina

STATEMENT OF THE CASE

Claimant, Ray Logan, is fifty-six years old. He is a twelve-year employee of Winthrop University. He was originally hired by Winthrop as a painter/plaster. He worked his way up to supervisor/lead man. He has no criminal convictions. He has been involved in two automobile accidents, but never recovered money or sought medical treatment because of those accidents. He does have a history of work related accidents.

Mr. Logan was not experiencing any back pain and/or hip pain prior to his December 1, 2014 accident.

On December 1, 2014 Mr. Logan sustained a work-related injury to his back, right hip, and legs (radiculopathy) while moving a five gallon bucket. The Defendants admitted the claim with regard to the back only and provided medical treatment through Riverview Medical Center. On May 13, 2015 the treating physician at Riverview diagnosed avascular necrosis in the hip and degenerative changes resulting in canal and foraminal stenosis in the low back. The treating physician returned Mr. Logan to full duty work and advised him to follow up with an orthopedist.

Claimant, through his attorney, contacted the Defendants and requested ongoing medical treatment through an orthopedist. The Defendants refused to authorize ongoing medical treatment. As a result, Mr. Logan was forced to seek his own medical treatment through Dr. William Lehman.

Initially, Dr. Lehman diagnosed osteoarthritis of the right hip and lumbar facet joint arthroplasty, spondylosis and stenosis. He provided injections to the back.

On November 19, 2015 Dr. Lehman opined as follows:

- a) The back and hip are located in close proximity to one another. Additionally, the symptoms of back pain and hip osteoarthritis/avascular necrosis are extremely

similar and difficult to differentiate without imaging. As a result, it is my medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that it is not unusual for physicians to misdiagnose pain associated with hip arthritis/avascular necrosis as originating in the back.

- b) It is my expert medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting of back while lifting a bucket) aggravated a pre-existing condition in Mr. Logan's right hip (arthritis) resulting in the present condition of the right hip and Mr. Logan's need for continued medical treatment through my office including but not limited to right hip replacement.
- c) It is my expert medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting of back while lifting a bucket) either caused and/or aggravated a preexisting condition in his back resulting in the present condition of his back and his need for continued medical treatment through my office.
- d) It is my expert medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's diagnosis by my office is consistent with the mechanism of injury that occurred on December 1, 2014 (twisting of back while lifting a bucket) and Mr. Logan's onset of pain following that accident.

Dr. Lehman recommended a hip replacement. As a result, on November 19, 2015 Claimant, through his attorney, contacted the Defendants advised them that a hip replacement was pending and that they should select a physician, if they were interested in taking over care.

On December 15, 2015 Dr. Lehman performed a total hip replacement. Following surgery, Mr. Logan continued to follow up with Dr. Lehman for his back, hips, and legs.

On June 21, 2016 Dr. Lehman released Mr. Logan at maximum medical improvement. He recommended permanent work restrictions in the form of no lifting over 20 pounds, no repetitive lifting, and no repetitive bending, stooping, twisting. He recommended an FCE to determine additional restrictions. Dr. Lehman recommended future medical treatment in the form of injections, medications, physical therapy, follow

ups with his office, and another hip replacement in approximately 20 years. Dr. Lehman opined that Mr. Logan's back, hip, and right leg are permanently and will continue to be permanently affected by his injury. Dr. Lehman provided a 37% rating to the lower extremity and a 7% rating to the lumbar spine.

On July 14, 2016 Mr. Logan presented to Tracy Hill of Columbia Rehabilitation for a Functional Capacity Evaluation. Tracy Hill placed Mr. Logan in a limited light work category.

On August 31, 2016 Ashley Vargas, MS, CRC, CLCP performed a vocational assessment. At the conclusion of the assessment she opined, "In my professional opinion, Mr. Logan is totally and permanently disabled from a vocational viewpoint."

On September 26, 2016 both parties deposed Dr. Lehman. During the deposition Dr. Lehman opined: a) The opinions he provided in the November 19, 2015 questionnaire remain unchanged; and b) He agreed with the work restriction provided in the FCE.

On March 1, 2017 Dr. Lehman confirmed, "It is my expert medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting back while lifting a bucket) aggravated a pre-existing condition in his right hip resulting in and accelerating Mr. Logan's need for the hip replacement performed by my office."

Ashley Vargas reviewed Dr. Lehman's deposition and the functional capacity evaluation. She opined, "It is still my vocational opinion, most probably and to a reasonable degree of vocational certainty that Mr. Logan is permanently and totally disabled from a vocational viewpoint."

A hearing on Claimant's Form 50 and Defendant's Form 51 was initially scheduled for April 25, 2017. Prior to the call of the hearing the Defendants scheduled a functional capacity evaluation. Claimant refused to attend the functional capacity. On March 17, 2017 the Defendants filed a Motion to Compel Claimant's attendance at a functional capacity evaluation. On March 29, 2017 Claimant filed a response alleging: a) A functional capacity evaluation is not medical, surgical, hospital or other treatment pursuant to Section 42-15-60 of the South Carolina Code; b) A functional capacity evaluation is not a qualified physician or surgeon pursuant to Section 42-15-80 of the South Carolina Code; c) No physician recommended a new functional capacity evaluation; and d) The evaluation was scheduled at a CORA facility in Spartanburg (Claimant resides in Rock Hill). The Single Commissioner denied Defendants Motion to Compel.

The Defendants appealed their Motion to Compel a functional capacity evaluation to the Full Commission and the hearing originally scheduled for April 25, 2017 on Claimant's Form 50 and Defendants' Form 51 was removed from the docket until the Full Commission ruled on Defendant's appeal. The Single Commissioner issued an Order finding, "The Hearing record is closed other than any reports or evidence generated as a result of the pending motion." This Order was never appealed. On May 15, 2017 Defendant's Full Commission appeal was dismissed as interlocutory.

The parties were heard by R. Michael Campbell, II, on August 24, 2017 in Camden, South Carolina. At the call of the hearing, Claimant requested the following benefits: a) a formal finding of compensability with regard to the back, hips, and legs; b) payment of all causally medical treatment; c) payment of all temporary compensation owed to date; d) future lifetime medical treatment as recommended by Dr. Lehman; e) a finding of

permanency pursuant to Sections 42-9-10, 42-9-20, and/or 42-9-30 of the South Carolina Code; and f) all other benefits pursuant to the Act.

In response the Defendants requested the following: a) that Claimant submit to a Functional Capacity Evaluation; b) to cross exam Dr. Lehman on their Functional Capacity Evaluation; and c) to obtain a vocational evaluation after their Functional Capacity Evaluation. With regard to the merits of the claim, Defendants admitted a minor low back injury only that resulted in no permanency and no need for future medical treatment. Defendants continued to deny that the hip was causally related to either injury and allege that that it was a pre-existing condition that was merely an incidental finding during treatment. The Defendants requested a vocational evaluation prior to the determination of permanency. They denied that Claimant is permanently and totally disabled as a result of his injury. They denied that Claimant is entitled to future medical treatment.

On January 4, 2018 Commissioner Campbell issued his Decision and Order with the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

Based on the stipulations of the parties, testimony and evidence received and produced at the Hearing, the undersigned Commissioner finds the following facts based upon a preponderance of the evidence:

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is the sum of Four Hundred Seventy-Three and 84/100 (\$473.84) Dollars, based upon an average weekly wage of Seven

Hundred Ten and 73/100 (\$710.73) Dollars. This finding is based upon the stipulations and admissions of the parties.

3. I find that on the date of hearing, Mr. Logan was fifty-five years old.
4. I find that Mr. Logan graduated from Bladensburg Senior High School in Maryland. He attended Lincoln Technical Institute for approximately a year and a half studying air conditioning, refrigeration, and climate control maintenance. He did not complete the program due to financial difficulties. Mr. Logan is union certified in plaster work and painting. He is also certified in drywall, finishing, hanging, carpentry, and masonry. I find, besides what is listed above, that Mr. Logan does not have any additional degrees, certificates, and/or formal education.
5. I find that Mr. Logan owns a computer that he primarily uses to get on the internet. He does not know how to type and although he has heard of Microsoft Word and Microsoft Excel, he does not know how to use those programs or what those programs do.
6. I find that Mr. Logan is a twelve-year employee of Winthrop University. I find that Mr. Logan was working as a supervisor at the time of his injuries. I find that supervisor work is eighty to eighty five percent physical (lifting materials, painting, setting up scaffolding/ladders) and fifteen to twenty percent sit down (receiving work orders, negotiating material prices, managing personnel).
7. I find, that before working at Winthrop, Mr. Logan engaged in the following jobs:
 - a) Preload sorter at the United Postal Service (sorting boxes and loading trucks);
 - b) Lead man at Gary Logan Stucco (climbing ladders and scaffolding to perform

exterior coating on various buildings); c) Local Union 74 in Washington D.C. (construction work including drywall, framing, and pouring concrete).

8. I find that Mr. Logan has a work history consisting of physical work. I find that Mr. Logan testified that his present condition does not allow him to return to any of the jobs he engaged in prior to his injury.
9. I find that Mr. Logan has no criminal convictions.
10. I find that Mr. Logan has been involved in two automobile accidents, but never recovered money or sought medical treatment as a result of those accidents.
11. I find that Mr. Logan does have a history of work related back injuries including falling off a scaffolding thirty years ago, carrying a ladder in 2006, carrying a roll of wallpaper in 2008, lifting a bucket in 2010, working with a ladder in 2013, working on a ladder with extension poll on February 26, 2014.
12. I find that Mr. Logan was able to return to heavy physical work following each of those injuries.
13. I find that Mr. Logan treated with a chiropractor about once a year prior to his injury.
14. I find that on July 21, 2012, Mr. Logan presented to his family physician with low back pain after lifting shingles at home. Mr. Logan saw his family doctor one time for this injury as his pain resolved on its own and he was able to return to full duty work. I find that on December 11, 2012, Mr. Logan returned to his family physician for a routine follow up. The December 11, 2012 note is negative for complaints of pain in his neck, back, and/or shoulders.

15. I find that on February 26, 2014, Mr. Logan injured his low back while maneuvering a painting extension poll. I find that Mr. Logan sought medical treatment at Riverview Medical Center following the injury and also engaged in physical therapy. I find that Mr. Logan's pain resolved following this injury and treatment and that Mr. Logan was able to return to full duty at Winthrop.
16. I find that on May 16, 2014, Mr. Logan presented to his family physician, Dr. Anandupura, for a follow up for erectile dysfunction and hypertension. The note is negative for pain in the back, buttock, hips, and/or legs.
17. I find that Mr. Logan never injured his right hip prior to December 1, 2014.
18. I find that Mr. Logan was not experiencing any problems with his back and/or right hip when he presented to work on December 1, 2014.
19. I find that on December 1, 2014, Mr. Logan injured his low back, right hip, and buttocks during the course and scope of his employment with Winthrop University when he attempted to move a five-gallon bucket of compound weighing between sixty to seventy pounds. More specifically, Mr. Logan reached into his work van and attempted to pull the bucket with his right arm when he began to experience excruciating pain in his low back and buttocks.
20. I find that following the accident, Mr. Logan sat in the work van for approximately two to three hours. Later that day, he reported the accident to his supervisor and declined medical treatment.
21. I find that Mr. Logan initially declined medical treatment because he thought his back and buttock pain would resolve on its own.

22. I find that on the morning of December 2, 2014, Mr. Logan woke with worsening pain and called out of work.
23. I find that on December 4, 2014, Mr. Logan presented to Maxwell Chiropractic with pain from his mid back to buttock.
24. I find that Mr. Logan elected to seek his own medical treatment through Maxwell Chiropractic. I find that Mr. Logan initially did not want to treat at Riverview Medical Center.
25. I find that Mr. Logan primarily complained of low back and buttock pain until December 13, 2014. I find that on December 13, 2014 Mr. Logan began to advise Dr. Maxwell of right groin pain.
26. I find that Mr. Logan could no longer afford treatment on his own, so he requested medical treatment through Winthrop.
27. I find that on or about April 29, 2015, Winthrop began providing medical treatment through Riverview Medical Center.
28. I find that on April 29, 2015, Mr. Logan presented to Riverview Medical Center with right sided low back pain. An MRI was recommended, and Mr. Logan was advised to return to full duty work.
29. I find that on May 11, 2015 Mr. Logan underwent an MRI of the lumbar spine that revealed the following: a) severe facet hypertrophy and shallow disc protrusions at L5-S1; b) broad based disc protrusion with annular fissure, ligamentous thickening and facet hypertrophy with lateral recess and foraminal encroachment fairly severe on the left and moderate on the right; c) Shallow broad disc/osteophyte protrusion with mild to moderate canal and foraminal narrowing and moderate circumferential

canal stenosis at L3-4; d) Shallow broad protrusion with facet disease producing moderate to severe canal stenosis and moderate foraminal encroachment at L2-3; and e) Large left paramedical disc and osteophyte protrusion with moderate lateral recess and foraminal encroachment and mild overall canal stenosis at L1-2. I find that Dr. Douglas McConnell reviewed the MRI and indicated, "Multilevel prominent disc protrusions and fairly severe facet spondylosis and ligamentous thickening contributing to canal and foraminal stenosis at multiple levels...."

30. I find that on May 13, 2015, Mr. Logan returned to Riverview Medical Center for a follow up. Mr. Logan reported feeling about the same. The treating physician, Dr. Scott McNair opined, "On the x-rays of his spine there is noted changes suggesting avascular necrosis changes at the right hip. This is unrelated to his injury and warrants further investigation with the orthopedist. The MRI of the spine is significant for multiple level degenerative changes....This is not an acute finding." Mr. Logan was released to full duty work and advised to follow up with an orthopaedic. (Claimant's APA pp. 365-369).
31. I find that on May 13, 2015, Claimant, through his attorney, contacted the Defendants and requested medical treatment through an orthopaedic.
32. I find that on May 15, 2015, the Defendants refused to authorize additional medical treatment. As a result, Mr. Logan was forced to seek his own medical treatment through Dr. William Lehman.
33. I find that Mr. Logan continued to work following the December 1, 2014 injury. However, I find that Mr. Logan's work following the December 1, 2014 injury did not include the physical aspects of his job and that Mr. Logan would primarily put

in time and assign tasks. I find that Mr. Logan testified that, following the December 1, 2014 injury, he did not do anything physical at home. He indicated that after work he would go home, soak, and watch television.

34. I find that Dr. Lehman provided Mr. Logan with medical treatment to his back and right hip including ESI injections and medication.

35. I find that on October 15, 2015, Dr. Lehman recommended a total hip replacement.

36. I find that on November 19, 2015 Claimant, through his attorney, contacted the Defendants and advised that Mr. Logan was scheduled for hip surgery. Claimant indicated, "With a hip replacement coming up, if you guys want to pick up the hip and select a doctor to perform surgery, now would be a good time. I don't want to deprive you guys of your right to provide care if you are interested in providing care."

37. I find that on December 15, 2015, Dr. Lehman performed surgery in the form of a total hip arthroplasty. I find that following surgery Dr. Lehman restricted Mr. Logan from full weight bearing. He advised Mr. Logan to use a walker and restricted him from working from December 15, 2015 to July 15, 2016.

38. I find that Mr. Logan was let go by Winthrop when he was unable to return to work following his hip surgery.

39. I find that Dr. Lehman, Mr. Logan's surgeon and the physician that has treated him the most, has repeatedly opined, including in his deposition, that it is his medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting of back while lifting a bucket) aggravated a pre-existing condition in Mr.

Logan's right hip (arthritis) resulting in the present condition of the right hip and Mr. Logan's need for continued medical treatment through his office including but not limited to a right hip replacement.

40. Additionally, I find that Dr. Lehman has repeatedly opined, including in his deposition, that it is his medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting of back while lifting a bucket) either caused and/or aggravated a pre-existing condition in his back resulting in the present condition of his back and his need for continued medical treatment through his office.
41. I find that Dr. Bethea opined to a reasonable degree of medical certainty, after reviewing Claimant's medical records only, that Claimant's right hip problem is not related in any significant way to his accident at work and his right hip problem was a chronic degenerative process and the magnitude of the trauma from the accident falls way short of a permanent aggravation. Additionally, Dr. Bethea opined that there was no significant complaint of hip pain until three months after the accident.
42. I give greater weight to the opinions of the treating physician, Dr. Lehman, and less weight to Dr. Bethea. Dr. Bethea neither treated nor physically evaluated Mr. Logan.
43. I find that Dr. Wetzel provided a 7% rating to Mr. Logan's low back.
44. I find that Dr. Wetzel did not comment with regard to whether Mr. Logan's injury either caused and/or aggravated a pre-existing condition in the right hip.

45. I find that Dr. Lehman provided a 10% rating to Mr. Logan's whole person and converted that rating to 13% to the lumbar spine.
46. I find that Dr. Lehman provided a 25% rating to the lower extremity for the hip arthroplasty he performed.
47. I find that on July 14, 2016 Tracy Hill performed a functional capacity evaluation on Mr. Logan. I find that the results indicated that Mr. Logan put forth consistent effort during the evaluation and qualifies for limited light work. More specifically, I find that Mr. Logan tolerates occasional walking, stairclimbing, kneeling, bending, twisting and reaching. I find that Mr. Logan does not tolerate occasional squatting. I find that Mr. Logan could lift between ten to fourteen pounds at various heights on an occasional basis, carry fifteen pounds with two hands, and push/pull 15.6 pounds load in a sled.
48. I find that Dr. Lehman reviewed Tracy Hill's July 14, 2016 functional capacity evaluation and adopted the work restrictions outlined in Tracy Hill's July 14, 2016 functional capacity evaluation.
49. I find that Mr. Logan testified that the condition of his back and hip prevents him from returning to his job at Winthrop.
50. I find that Mr. Logan continues to experience pain in his lower back and right hip. He testified that he always has hip pain and that the pain prevents him from sleeping and makes it difficult for him to walk on uneven pavement or terrain. Mr. Logan rated his hip pain as a two on a one to ten scale when he is seated. He testified that sitting for over an hour, walking on even terrain, or sleeping can cause his pain to go up. He indicated that he sleeps with a pillow between his legs. He also testified

that he avoids stooping and bending at all costs. Mr. Logan indicated that he does not stand or walk for long periods of time and that sitting in firm, uncomfortable seats makes his pain worse. Mr. Logan testified that his hip pain can get to a five or six, on a one to ten scale, if he engages in too much bending, stooping, walking and/or standing. Mr. Logan indicated that he can walk approximately a quarter of a mile before he starts experiencing increased pain. He indicated that he can stand for an hour or two before the pain starts to increase.

51. I find that Mr. Logan experiences constant back pain that he rated as a two on a one to ten scale. He testified that his back pain increases with walking, laying and standing. He indicated that his back pain can get up to a seven or eight on a one to ten scale and that, in his opinion, the lower back is a bigger problem than the hip.
52. I find that Mr. Logan experiences occasional numbness in his lower extremities that generally occurs once a week.
53. I find that Mr. Logan's back and hip has forced him to modify physical activities that he engages in throughout the course of his normal day. He testified that waking up is an adjustment period and that his back pain and hip pain make it difficult for him to get going. After getting out of bed, Mr. Logan generally takes a shower. Mr. Logan testified that he uses a long handle scrubber to clean in the shower because his hip and back prevent him from reaching his right foot. After showering Mr. Logan dresses. He testified that since the accident he has had to sit on the bed, put one leg in his pants and then sit back and pull the other leg in. He uses a sock scooper to put on his socks. Mr. Logan testified that he can tie his left shoe, but his daughter, granddaughter, or wife ties his right shoe. After getting dressed, Mr.

Logan spends a majority of his day watching Fox News or CNN. Mr. Logan indicated that he averages two to three hours of sleep per night because he wakes up if he rolls or positions incorrectly. After waking up it takes him a while to get comfortable.

54. I find that Mr. Logan can drive his car, but he has to stop when driving long distances, because his lower back and hip feel more numb after sitting in the car for too long.

55. I find that Mr. Logan has not done yard work since the accident due to back and hip pain.

56. I find that Mr. Logan makes modifications when grocery shopping. He does not pick up heavier items like water. Additionally, he tries to limit his trips to twenty to thirty minutes as any shopping for longer than that results in increased discomfort in his low back.

57. I find that Mr. Logan makes modifications in order to complete or attempt light chores and activities around the house. Mr. Logan is able to sweep the floor. However, his back and hip prevent him from bending to pick up the dust pile. He still cooks but he does so with an assistant (either his daughter or granddaughter) who gets pots and pans out of lower cupboard for him. Additionally, he has a bar stool in the kitchen, so he can sit while cooking. Mr. Logan is able to take out light trash. He leaves heavier trash for his sons.

58. I find that Mr. Logan has not engaged in ladder work since the accident. Additionally, I find that since the accident Mr. Logan uses a hand rail while going up and down stairs.

59. I find that Mr. Logan cannot think of any jobs that he can go back to in his current condition.
60. I find that Mr. Logan is on Social Security Disability for his back, buttock and right hip. He did not have to hire an attorney to help him receive Social Security Disability.
61. I find that Mr. Logan ices his hip and back about once a week. I find that he continues to take medication, about once a week, for his back and hip as prescribed by Dr. Anandpura.
62. I find that Mr. Logan requested ongoing medical treatment through Dr. Lehman for his back and hip.
63. I find that Mr. Logan he has not experienced any new injuries since his December 1, 2014 injury. However, he has engaged in activities that have resulted in increased pain, like lifting a window open, lifting grandchildren, and bending down to pick up items from the ground.
64. I find that Mr. Logan testified that he has not worked for anyone since he underwent hip replacement surgery.
65. I find that Ashley H. Johnson opined, "It is still my vocational opinion, most probably and to a reasonable degree of vocational certainty, that Mr. Logan is totally and permanently disabled from a vocational viewpoint."
66. I find that Mr. Logan sustained an admitted injury to his low back arising out of and in the course and scope of his employment on December 1, 2014.
67. I find that Mr. Logan's December 1, 2014 work related accident aggravated a pre-existing condition in Mr. Logan's right hip resulting in his need for medical

treatment including, but not limited, to hip replacement surgery performed by Dr. Lehman.

68. I find that Mr. Logan reached maximum medical improvement on June 21, 2016.
69. I find that Mr. Logan is entitled to temporary total compensation from December 15, 2015 (the date of his hip replacement surgery) to June 21, 2016 (the date he reached maximum medical improvement).
70. I find that Mr. Logan's December 1, 2014 work related injury has resulted in permanent impairment and disability to his right hip and back.
71. I find that Mr. Logan is permanently and totally disabled.
72. I find that Defendants are responsible for payment of all causally related medical treatment Mr. Logan has received to date (including but not limited to Shiland Family Medicine, Progressive Physical Therapy, Carolina Orthopaedic Surgery Associates, and Riverview Medical Center) with the exception of chiropractic treatment which Claimant stipulated to at the hearing before the Single Commissioner.
73. I find that Mr. Logan is entitled to future causally related medical treatment for his low back and right hip as recommended by Dr. William Lehman.
74. I find that Mr. Logan is entitled to lifetime maintenance, repair and replacement of retained hardware pertaining to the causally related right hip replacement.
75. Prior to the August 24, 2017 hearing Claimant objected to Defendants APA ten, Dr. Bethea's letter on the grounds that it was not properly submitted before the Single Commissioner closed the record on April 25, 2017. Defendants maintained

that they provided Dr. Bethea's letter to Claimant's attorney three days prior to the April 25, 2017 hearing. I allowed Dr. Bethea's letter into the record.

76. During the August 24, 2017 hearing before the Single Commissioner, the Defendants raised the issue of compelling Mr. Logan to appear for a functional capacity evaluation and vocational assessment. On April 10, 2017 the undersigned denied Defendants motion to compel a functional capacity evaluation. In the undersigned's Order of June 16, 2017, postponing the hearing pending resolution of Defendants' appeal of the Motion to Compel, the hearing record was closed other than any reports or evidence generated as a result of the appealed motion. Defendants' appeal was dismissed as interlocutory. Therefore, Defendants request to compel a functional capacity evaluation and vocational assessment is hereby denied as the hip was a denied body part, no physician recommended a second functional capacity evaluation, and Dr. Lehman had already reviewed a functional capacity evaluation and adopted it during his deposition.

CONCLUSIONS OF LAW

Accordingly, as provided by §42-17-40, it is the determination and finding of this Commissioner:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident, claimant and defendant employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.

2. Pursuant to §42-1-150 and §42-1-160 claimant sustained an injury by accident to his back and right hip during the course and scope of his employment at Winthrop.

3. Pursuant to §42-15-20, proper notice of the injury was given.
4. Pursuant to §42-15-40, the claim was timely filed.
5. Pursuant to §42-9-35 claimant has sustained an aggravation of a pre-existing condition in his right hip resulting in his need for medical treatment, including but not limited to surgery performed by Dr. Lehman.
6. Pursuant to §42-9-10 and §42-1-120 Claimant is entitled to temporary total compensation in the amount of Four Hundred Seventy-Three Dollars and 84/100 (\$473.84) Dollars per week from December 15, 2015 through June 21, 2016.
7. Pursuant to §42-9-10 and §42-1-120, Claimant reached maximum medical improvement on June 21, 2016.
8. Awards of permanent and total disability are governed by §42-9-10 and case law decided thereunder. Having been found to have sustained multiple causally related disabilities which destroy Mr. Logan's earning capacity, Claimant is permanently and totally disabled.
9. Medical treatment is governed by §42-15-60 and Dodge v. Bruccoli, Clark Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999). Pursuant to §42-15-60 and Dodge v. Bruccoli, Clark Layman, Inc., Claimant is entitled to future lifetime medical treatment for his causally related medical problems, his back and right hip, as recommended by Dr. Lehman.
10. Payment of awards in lump sum is governed by § 42-9-301. Our Supreme Court has held the Commission has authority to allocate the lump sum over claimant's lifetime. James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

11. Pursuant to §42-15-60, Defendants are responsible for payment of all causally related medical treatment Mr. Logan has received to date (including but not limited to Shiland Family Medicine, Progressive Physical Therapy, Carolina Orthopaedic Surgery Associates, and Riverview Medical Center) with the exception of chiropractic treatment which Claimant stipulated to at the hearing before the Single Commissioner.

ORDER

Based upon the above Findings of Fact and Conclusions of Law set forth herein, it is hereby

ORDERED that Claimant sustained an admitted injury to his low back;

ORDERED that Claimant's December 1, 2014 work related accident aggravated a pre-existing condition in Mr. Logan's right hip resulting in his need for medical treatment including but not limited to hip replacement surgery performed by Dr. Lehman.

ORDERED that Defendants are responsible for payment of all causally related medical treatment Mr. Logan has received to date with regard to his right hip and back (including but not limited to Shiland Family Medicine, Progressive Physical Therapy, Carolina Orthopaedic Surgery Associates, and Riverview Medical Center) with the exception of chiropractic treatment which Claimant stipulated to at the hearing before the Single Commissioner.

ORDERED that Mr. Logan is entitled to temporary compensation from December 15, 2015 through June 21, 2016 (twenty-seven (27) weeks at four hundred seventy-three and 84/100 dollars per week).

ORDERED that Mr. Logan is permanently and totally disabled and entitled to the remaining four hundred seventy-three (473) weeks.

ORDERED that the four hundred seventy-three (473) weeks commutes to 428.46 weeks or two hundred three thousand, twenty one and 48/100 dollars (\$203,021.48). (The previous award of 432.394 weeks or two hundred four thousand, eight hundred eighty-five and 57/100 dollars (\$204,885.57) has been amended per agreement of parties to account for changes in present value computation).

ORDERED that the above award sum shall be paid in lump sum allocated in the following manner: One Hundred Thirty Thousand, One Hundred Thirteen and 80/100 Dollars (\$130,113.80) in compromise settlement of disputed future wage loss at the rate of \$104.52 per week for a period of 1244.88 weeks, representing the remainder of the Claimant's life, pursuant to South Carolina Code of Laws Ann. Section 19-1-150 and the South Carolina Supreme Court decisions of *James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010), *Utica-Mohawk Mills v. Orr.*, 227 S.C. 226, 87 S.E.2d 589 (1955) and pursuant to *Sciarotta v. Bowen*, 837 F2d 135 (3d Cir. 1988); Sixty Eight Thousand Two Hundred Ninety Five and 19/100 Dollars (\$68,295.19) as attorney's fees and Six Thousand Four Hundred Seventy Six and 58/100 Dollars (\$6,476.58) as expenses incurred in bringing this action.

ORDERED the defendants shall be responsible for future causally medical treatment to Claimant's low back and right hip pursuant to *Dodge v. Bruccolia, Clark, Layman, Inc.* as recommended by Dr. Lehman.

AND IT IS SO ORDERED.

Within the statutory period, Defendant/Appellant, by and through their attorney, filed a Request for Commission Review, setting forth the reasons for their appeal, copies of which were furnished to all interested parties prior to oral argument, which took place before the Appellate Panel on March 19, 2018.

By way of appeal, Defendant/Appellant assert that the single commissioner erred as follows:

1. In finding as a fact that Claimant never had injuries to his right hip prior to December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

2. In finding as a fact that Claimant was not suffering any physical problems with his back and/or right hip prior to December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

3. In finding as a fact that the Claimant injured his low back, right hip, and buttocks on December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

4. In finding as a fact that the Claimant suffered immediate pain in his buttocks and hip on December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

5. In finding as fact that the Claimant injured his "buttocks" on December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

6. In finding as fact that the Claimant suffered right groin pain as a result of his injury of December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

7. In stating in the Order that the Defendants refused to authorize medical treatment to the Claimant after May 13, 2015, the error being that the authorized treating physician reported in his narrative note that the conditions for which the Claimant was seeking medical treatment were unrelated to his injury of December 1, 2014.

8. In finding as a fact that the Defendants refused to refer Claimant to an orthopedist the error being that the authorized treating physician advised Defendants of the condition for which Claimant was seeking orthopedic care was unrelated to his injury of December 1, 2014.

9. In finding as a fact that after the Claimant's injury of December 1, 2014, he did not do his regular supervisory job to include the physical aspects thereof, the error being the preponderance of the evidence fails to support such a finding.

10. In quoting a statement from the Claimant regarding provision of medical care and treatment, in Finding of Fact number 36, the error being the statement is irrelevant, prejudicial, and insinuates that the Claimant is an expert in the area of workers' compensation law.

11. In finding as a fact that the Claimant was "let go" by Winthrop University following his hip surgery, the error being the statement is irrelevant and shows that the single commissioner was using surmise, conjecture, and speculation in reaching his determination.

12. In finding as a fact that the Claimant aggravated a pre-existing condition in his back as a result of his injury of December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

13. In finding as a fact that the Claimant aggravated a pre-existing condition in his right hip at the time of his December 1, 2014 accident, the error being the preponderance of the evidence fails to support such a finding.

14. In giving greater weight to the opinion of Dr. Lehman rather than Dr. Bethea, the error being the opinion of Dr. Bethea comports with the evidence presented, while the opinion of Dr. Lehman has no logical basis based on the Claimant's medical records.

15. In finding as a fact that the condition of Claimant's back and hip prevent him from returning to work at Winthrop University, the error being that such a finding is irrelevant to the terms and provisions of Title 42.

16. In finding as a fact that the Claimant's back and hip prevent him from returning to his job at Winthrop University, the error being the preponderance of the evidence fails to support such a finding.

17. In finding as a fact that the condition of the Claimant's back and hip prevent him from returning to his job at Winthrop University, the error being that the Claimant did not injure or aggravated any pre-existing condition in his hip at the time of his injury on December 1, 2014.

18. In discussing in the Findings of Fact the Claimant's statements regarding his hip, the error being that the preponderance of the evidence fails to support any hip injury as a result of his December 1, 2014 work-related injury.

19. In finding as a fact that the Claimant currently experiences constant back pain, the error being the preponderance of the medical evidence fails to support any back pain related to Claimant's injury by accident.

20. In finding as a fact that the Claimant currently experiences occasional numbness in his lower extremities, the error being the preponderance of the medical evidence fails to support such a finding.

21. In finding as a fact that the Claimant's back and hip problems have caused him to alter his activities, the error being such a finding is not supported by the preponderance of the evidence and is irrelevant to the Claimant's minor injury suffered on December 1, 2014.

22. In making findings of fact regarding Claimant's daily activities, the error being that such findings are irrelevant to Claimant's minor back injury suffered on December 1, 2014.

23. In finding as a fact that the Claimant cannot engage in work activity, the error being the preponderance of the evidence fails to support such a finding.

24. In finding as a fact that the Claimant cannot engage in work activity, the error being the same is irrelevant under the facts and circumstances of this case.

25. In finding as a fact that the Claimant's minor back injury of December 1, 2014 resulted in an injury to Claimant's right hip, the error being the preponderance of the evidence fails to support such a finding.

26. In finding as a fact that the Claimant's hip replacement surgery is related to his injury of December 1, 2014, the error being the preponderance of the evidence fails to support such a finding.

27. In finding as a fact that the Claimant achieved Maximum Medical Improvement on June 21, 2016, the error being that the medical evidence showed the Claimant achieved Maximum Medical Improvement no later than May 13, 2015.

28. In finding as a fact that the Claimant is entitled to Temporary Total Disability compensation after his hip surgery, the error being the preponderance of the evidence fails to support such a finding.

29. In finding as a fact that the Claimant's December 1, 2014 injury resulted in permanent impairment and/or disability to his right hip and back, the error being the preponderance of the evidence fails to support such a finding.

30. In finding as a fact that the Claimant is permanently and totally disabled, the error being the preponderance of the evidence fails to support such a finding.

31. In finding as a fact that Claimant is totally and permanently disabled, the error being at most this is a case under Section 42-9-30, but which does not rise to the level of total and permanent disability.

32. In finding as a fact that the Claimant is totally and permanently disabled, the error being that the Claimant failed to produce credible evidence regarding his degree of wage loss, if any.

33. In finding as a fact that the Defendants are responsible for medical care and treatment rendered to the Claimant after May 13, 2015, the error being the preponderance of the evidence fails to support such a finding.

34. In finding as a fact that the Claimant is entitled to future causally-related medical care and treatment, the error being the preponderance of the evidence fails to support such a finding.

35. In finding as a fact that the Claimant is entitled to lifetime maintenance for retained hardware to his right hip, the error being the preponderance of the evidence fails to support such a finding.

36. In failing to order the Claimant to undergo a vocational assessment and a functional capacity evaluation requested by Defendants, the error being the same constitutes an abuse of discretion.

37. In failing to order the Claimant to appear for a functional capacity evaluation and vocational assessment, the error being the Defendants were prejudiced in their ability to defend this claim based on the commissioner's determination.

38. In finding as a fact that no physician ordered a functional capacity evaluation, the error being that the Defendants maintain the right under Section 42-15-60 of requiring Claimant to appear for medical examinations.

39. In finding as a fact that because the hip injury was denied, the Defendants did not have the right to a functional capacity evaluation, the error being the same constitutes an abuse of discretion on the part of the single commissioner.

40. In failing to order Claimant to undergo a functional capacity evaluation and vocational assessment, the error being that the Defendants were prejudiced and unable to properly defend the claim based on the single commissioner's determination.

41. In concluding as a matter of law that the Claimant suffered injuries to his back and hip, the error being the preponderance of the evidence fails to support such a conclusion.

42. In concluding as a matter of law that the Claimant gave proper notice of an injury, the error being the preponderance of the evidence fails to support such a finding.

43. In concluding as a matter of law that a claim was timely filed, the error being the preponderance of the evidence fails to support such a conclusion.

44. In concluding as a matter of law that the Claimant sustained aggravation of a pre-existing hip and back condition, the error being the preponderance of the evidence fails to support such a conclusion, the Claimant having totally failed to meet his burden of proof.

45. In concluding as a matter of law that Claimant is entitled to Temporary Total Disability compensation from December 15, 2015 to June 21, 2016, the error being the preponderance of the evidence fails to support such a conclusion.

46. In concluding as a matter of law that Claimant achieved Maximum Medical Improvement on June 21, 2016, the error being the preponderance of the evidence fails to support such a conclusion.

47. In awarding the Claimant Permanent and Total Disability compensation under Section 42-9-10, the error being at most this case is a claim under Section 42-9-30 for loss of use of the back only.

48. In finding the Claimant to be totally and permanently disabled under Section 42-9-10, the error being the preponderance of the evidence fails to support such a conclusion.

49. In concluding as a matter of law that the Claimant is totally and permanently disabled under Section 42-9-10, the error being the Defendants were prejudiced by virtue of the commissioner's ruling that the Defendants were not entitled to a vocational assessment and functional capacity evaluation.

50. In concluding as a matter of law that the Claimant is entitled to future medical care and treatment to his back and right hip, the error being the preponderance of the evidence fails to support such a conclusion.

51. In concluding that the Claimant is entitled to a lump sum payment of his award, the error being the same constitutes an abuse of discretion.

52. In concluding as a matter of law that the Defendants are responsible for past, present, and future causally-related medical care and treatment, the error being the preponderance of the evidence fails to support such a conclusion.

53. In ordering the Defendants to be responsible for the aggravation of pre-existing conditions of the Claimant's back and right hip, the error being the preponderance of the evidence fails to support such an Order.

54. In ordering the Defendants to provide ongoing medical care and treatment for the Claimant's back and right hip, the error being the preponderance of the evidence fails to support such an Order.

55. In ordering the Defendants to pay causally-related medical care and treatment with regard to Claimant's right hip and back, the error being the preponderance of the evidence fails to support such an Order.

56. In ordering that the Claimant is entitled to Temporary Total Disability compensation, the error being the preponderance of the evidence fails to support such an Order.

57. In ordering that Claimant is totally and permanently disabled, the error being the preponderance of the evidence fails to support such an Order.

58. In ordering that the Claimant is permanently and totally disabled, the error being the commissioner made his determination without the benefit of an independent vocational assessment and functional capacity evaluation, which should have been ordered.

59. In determining the commuted value of the claim based on tables in effect in 2016, the error being that by the time the Order was issued, the commuted value tables had changed.

60. In ordering that the Claimant receive an award for Total and Permanent Disability in a lump sum, the error being the same constitutes an abuse of discretion.

61. In ordering that the Claimant receive payment of his award in a lump sum, the error being the preponderance of the evidence fails to support that he is totally and permanently disabled.

62. In ordering that the Defendants are responsible future casually-related medical care and treatment to Claimant's back and right hip, the error being the preponderance of the evidence fails to support such an Order.

63. The Defendants further assert and reassert all issues raised in the Appeal to the Full Commission on the issue of a functional capacity evaluation and vocational assessment, such Appeal being a part of the Record in this matter by virtue of the file having been made a part of the Record by the single commissioner.

The hearing testimony, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

Pursuant to South Carolina Code Annotated §42-17-50, we the Appellate Panel have reviewed the award, weighed the evidence as presented and considered all issues raised on appeal. If good grounds be shown, this Appellate Panel may 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 in the instant case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined by unanimous vote that all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, the Findings of Fact and Conclusions of Law by the Hearing Commissioner are adopted verbatim by the Appellate Panel and are incorporated herein by reference as if set forth fully herein. Therefore, the Order of the Hearing Commissioner is affirmed in its entirety.

FINDINGS OF FACT OF THE FULL COMMISSION

Based on stipulations of the parties, testimony and evidence received and produced at the Hearing, the Appellate Panel of the South Carolina Workers' Compensation Commission finds the following facts based upon a preponderance of the evidence:

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act. This finding is based upon the stipulations and admissions of the parties.
2. Claimant's applicable compensation rate is the sum of Four Hundred Seventy-Three and 84/100 (\$473.84) Dollars, based upon an average weekly wage of Seven Hundred Ten and 73/100 (\$710.73) Dollars. This finding is based upon the stipulations and admissions of the parties.
3. We find that on the date of hearing, Mr. Logan was fifty-five years old.
4. We find that Mr. Logan graduated from Bladensburg Senior High School in Maryland. He attended Lincoln Technical Institute for approximately a year and a half studying air conditioning, refrigeration, and climate control maintenance. He did not complete the program due to financial difficulties. Mr. Logan is union

- certified in plaster work and painting. He is also certified in drywall, finishing, hanging, carpentry, and masonry. We find, besides what is listed above, that Mr. Logan does not have any additional degrees, certificates, and/or formal education.
5. We find that Mr. Logan owns a computer that he primarily uses to get on the internet. He does not know how to type and although he has heard of Microsoft Word and Microsoft Excel, he does not know how to use those programs or what those programs do.
 6. We find that Mr. Logan is a twelve-year employee of Winthrop University. We find that Mr. Logan was working as a supervisor at the time of his injuries. We find that supervisor work is eighty to eighty five percent physical (lifting materials, painting, setting up scaffolding/ladders) and fifteen to twenty percent sit down (receiving work orders, negotiating material prices, and managing personnel).
 7. We find, that before working at Winthrop, Mr. Logan engaged in the following jobs: a) Preload sorter at the United Postal Service (sorting boxes and loading trucks); b) Lead man at Gary Logan Stucco (climbing ladders and scaffolding to perform exterior coating on various buildings); c) Local Union 74 in Washington D.C. (construction work including drywall, framing, and pouring concrete).
 8. We find that Mr. Logan has a work history consisting of physical work. We find that Mr. Logan testified that his present condition does not allow him to return to any of the jobs he engaged in prior to his injury.
 9. We find that Mr. Logan has no criminal convictions.
 10. We find that Mr. Logan has been involved in two automobile accidents, but never recovered money or sought medical treatment as a result of those accidents.

11. We find that Mr. Logan does have a history of work related back injuries including falling off a scaffolding thirty years ago, carrying a ladder in 2006, carrying a roll of wallpaper in 2008, lifting a bucket in 2010, working with a ladder in 2013, working on a ladder with extension poll on February 26, 2014.
12. We find that Mr. Logan was able to return to heavy physical work following each of those injuries.
13. We find that Mr. Logan treated with a chiropractor about once a year prior to his injury.
14. We find that on July 21, 2012, Mr. Logan presented to his family physician with low back pain after lifting shingles at home. Mr. Logan saw his family doctor one time for this injury as his pain resolved on its own and he was able to return to full duty work. We find that on December 11, 2012, Mr. Logan returned to his family physician for a routine follow up. The December 11, 2012 note is negative for complaints of pain in his neck, back, and/or shoulders.
15. We find that on February 26, 2014, Mr. Logan injured his low back while maneuvering a painting extension poll. We find that Mr. Logan sought medical treatment at Riverview Medical Center following the injury and also engaged in physical therapy. We find that Mr. Logan's pain resolved following this injury and treatment and that Mr. Logan was able to return to full duty at Winthrop.
16. We find that on May 16, 2014, Mr. Logan presented to his family physician, Dr. Anandupura, for a follow up for erectile dysfunction and hypertension. The note is negative for pain in the back, buttock, hips, and/or legs.
17. We find that Mr. Logan never injured his right hip prior to December 1, 2014.

18. We find that Mr. Logan was not experiencing any problems with his back and/or right hip when he presented to work on December 1, 2014.
19. We find that on December 1, 2014, Mr. Logan injured his low back, right hip, and buttocks during the course and scope of his employment with Winthrop University when he attempted to move a five-gallon bucket of compound weighing between sixty to seventy pounds. More specifically, Mr. Logan reached into his work van and attempted to pull the bucket with his right arm when he began to experience excruciating pain in his low back and buttocks.
20. We find that following the accident, Mr. Logan sat in the work van for approximately two to three hours. Later that day, he reported the accident to his supervisor and declined medical treatment.
21. We find that Mr. Logan initially declined medical treatment because he thought his back and buttock pain would resolve on its own.
22. We find that on the morning of December 2, 2014, Mr. Logan woke with worsening pain and called out of work.
23. We find that on December 4, 2014, Mr. Logan presented to Maxwell Chiropractic with pain from his mid back to buttock.
24. We find that Mr. Logan elected to seek his own medical treatment through Maxwell Chiropractic. We find that Mr. Logan initially did not want to treat at Riverview Medical Center.
25. We find that Mr. Logan primarily complained of low back and buttock pain until December 13, 2014. We find that on December 13, 2014 Mr. Logan began to advise Dr. Maxwell of right groin pain.

26. We find that Mr. Logan could no longer afford treatment on his own, so he requested medical treatment through Winthrop.
27. We find that on or about April 29, 2015, Winthrop began providing medical treatment through Riverview Medical Center.
28. We find that on April 29, 2015, Mr. Logan presented to Riverview Medical Center with right sided low back pain. An MRI was recommended, and Mr. Logan was advised to return to full duty work.
29. We find that on May 11, 2015 Mr. Logan underwent an MRI of the lumbar spine that revealed the following: a) severe facet hypertrophy and shallow disc protrusions at L5-S1; b) broad based disc protrusion with annular fissure, ligamentous thickening and facet hypertrophy with lateral recess and foraminal encroachment fairly severe on the left and moderate on the right; c) Shallow broad disc/osteophyte protrusion with mild to moderate canal and foraminal narrowing and moderate circumferential canal stenosis at L3-4; d) Shallow broad protrusion with facet disease producing moderate to severe canal stenosis and moderate foraminal encroachment at L2-3; and e) Large left paramedial disc and osteophyte protrusion with moderate lateral recess and foraminal encroachment and mild overall canal stenosis at L1-2. We find that Dr. Douglas McConnell reviewed the MRI and indicated, "Multilevel prominent disc protrusions and fairly severe facet spondylosis and ligamentous thickening contributing to canal and foraminal stenosis at multiple levels...."
30. We find that on May 13, 2015, Mr. Logan returned to Riverview Medical Center for a follow up. Mr. Logan reported feeling about the same. The treating physician,

Dr. Scott McNair opined, "On the x-rays of his spine there is noted changes suggesting avascular necrosis changes at the right hip. This is unrelated to his injury and warrants further investigation with the orthopedist. The MRI of the spine is significant for multiple level degenerative changes....This is not an acute finding." Mr. Logan was released to full duty work and advised to follow up with an orthopaedic. (Claimant's APA pp. 365-369).

31. We find that on May 13, 2015, Claimant, through his attorney, contacted the Defendants and requested medical treatment through an orthopaedic.
32. We find that on May 15, 2015, the Defendants refused to authorize additional medical treatment. As a result, Mr. Logan was forced to seek his own medical treatment through Dr. William Lehman.
33. We find that Mr. Logan continued to work following the December 1, 2014 injury. However, we find that Mr. Logan's work following the December 1, 2014 injury did not include the physical aspects of his job and that Mr. Logan would primarily put in time and assign tasks. We find that Mr. Logan testified that, following the December 1, 2014 injury, he did not do anything physical at home. He indicated that after work he would go home, soak, and watch television.
34. We find that Dr. Lehman provided Mr. Logan with medical treatment to his back and right hip including ESI injections and medication.
35. We find that on October 15, 2015, Dr. Lehman recommended a total hip replacement.
36. We find that on November 19, 2015 Claimant, through his attorney, contacted the Defendants and advised that Mr. Logan was scheduled for hip surgery. Claimant

indicated, "With a hip replacement coming up, if you guys want to pick up the hip and select a doctor to perform surgery, now would be a good time. I don't want to deprive you guys of your right to provide care if you are interested in providing care."

37. We find that on December 15, 2015, Dr. Lehman performed surgery in the form of a total hip arthroplasty. We find that following surgery Dr. Lehman restricted Mr. Logan from full weight bearing. He advised Mr. Logan to use a walker and restricted him from working from December 15, 2015 to July 15, 2016.
38. We find that Mr. Logan was let go by Winthrop when he was unable to return to work following his hip surgery.
39. We find that Dr. Lehman, Mr. Logan's surgeon and the physician that has treated him the most, has repeatedly opined, including in his deposition, that it is his medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting of back while lifting a bucket) aggravated a pre-existing condition in Mr. Logan's right hip (arthritis) resulting in the present condition of the right hip and Mr. Logan's need for continued medical treatment through his office including but not limited to a right hip replacement.
40. Additionally, we find that Dr. Lehman has repeatedly opined, including in his deposition, that it is his medical opinion, most probably and to a reasonable degree of medical certainty (greater than 50% probability) that Mr. Logan's December 1, 2014 work related injury (twisting of back while lifting a bucket) either caused and/or aggravated a pre-existing condition in his back resulting in the present

- condition of his back and his need for continued medical treatment through his office.
41. We find that Dr. Bethea opined to a reasonable degree of medical certainty, after reviewing Claimant's medical records only, that Claimant's right hip problem is not related in any significant way to his accident at work and his right hip problem was a chronic degenerative process and the magnitude of the trauma from the accident falls way short of a permanent aggravation. Additionally, Dr. Bethea opined that there was no significant complaint of hip pain until three months after the accident.
 42. We give greater weight to the opinions of the treating physician, Dr. Lehman, and less weight to Dr. Bethea. Dr. Bethea neither treated nor physically evaluated Mr. Logan.
 43. We find that Dr. Wetzel provided a 7% rating to Mr. Logan's low back.
 44. We find that Dr. Wetzel did not comment with regard to whether Mr. Logan's injury either caused and/or aggravated a pre-existing condition in the right hip.
 45. We find that Dr. Lehman provided a 10% rating to Mr. Logan's whole person and converted that rating to 13% to the lumbar spine.
 46. We find that Dr. Lehman provided a 25% rating to the lower extremity for the hip arthroplasty he performed.
 47. We find that on July 14, 2016 Tracy Hill performed a functional capacity evaluation on Mr. Logan. We find that the results indicated that Mr. Logan put forth consistent effort during the evaluation and qualifies for limited light work. More specifically, we find that Mr. Logan tolerates occasional walking, stairclimbing, kneeling,

bending, twisting and reaching. We find that Mr. Logan does not tolerate occasional squatting. We find that Mr. Logan could lift between ten to fourteen pounds at various heights on an occasional basis, carry fifteen pounds with two hands, and push/pull 15.6 pounds load in a sled.

48. We find that Dr. Lehman reviewed Tracy Hill's July 14, 2016 functional capacity evaluation and adopted the work restrictions outlined in Tracy Hill's July 14, 2016 functional capacity evaluation.
49. We find that Mr. Logan testified that the condition of his back and hip prevents him from returning to his job at Winthrop.
50. We find that Mr. Logan continues to experience pain in his lower back and right hip. He testified that he always has hip pain and that the pain prevents him from sleeping and makes it difficult for him to walk on uneven pavement or terrain. Mr. Logan rated his hip pain as a two on a one to ten scale when he is seated. He testified that sitting for over an hour, walking on even terrain, or sleeping can cause his pain to go up. He indicated that he sleeps with a pillow between his legs. He also testified that he avoids stooping and bending at all costs. Mr. Logan indicated that he does not stand or walk for long periods of time and that sitting in firm, uncomfortable seats makes his pain worse. Mr. Logan testified that his hip pain can get to a five or six, on a one to ten scale, if he engages in too much bending, stooping, walking and/or standing. Mr. Logan indicated that he can walk approximately a quarter of a mile before he starts experiencing increased pain. He indicated that he can stand for an hour or two before the pain starts to increase.

51. We find that Mr. Logan experiences constant back pain that he rated as a two on a one to ten scale. He testified that his back pain increases with walking, laying and standing. He indicated that his back pain can get up to a seven or eight on a one to ten scale and that, in his opinion, the lower back is a bigger problem than the hip.
52. We find that Mr. Logan experiences occasional numbness in his lower extremities that generally occurs once a week.
53. We find that Mr. Logan's back and hip has forced him to modify physical activities that he engages in throughout the course of his normal day. He testified that waking up is an adjustment period and that his back pain and hip pain make it difficult for him to get going. After getting out of bed, Mr. Logan generally takes a shower. Mr. Logan testified that he uses a long handle scrubber to clean in the shower because his hip and back prevent him from reaching his right foot. After showering Mr. Logan dresses. He testified that since the accident he has had to sit on the bed, put one leg in his pants and then sit back and pull the other leg in. He uses a sock scooper to put on his socks. Mr. Logan testified that he can tie his left shoe, but his daughter, granddaughter, or wife ties his right shoe. After getting dressed, Mr. Logan spends a majority of his day watching Fox News or CNN. Mr. Logan indicated that he averages two to three hours of sleep per night because he wakes up if he rolls or positions incorrectly. After waking up it takes him a while to get comfortable.
54. We find that Mr. Logan can drive his car, but he has to stop when driving long distances, because his lower back and hip feel more numb after sitting in the car for too long.

55. We find that Mr. Logan has not done yard work since the accident due to back and hip pain.
56. We find that Mr. Logan makes modifications when grocery shopping. He does not pick up heavier items like water. Additionally, he tries to limit his trips to twenty to thirty minutes as any shopping for longer than that results in increased discomfort in his low back.
57. We find that Mr. Logan makes modifications in order to complete or attempt light chores and activities around the house. Mr. Logan is able to sweep the floor. However, his back and hip prevent him from bending to pick up the dust pile. He still cooks but he does so with an assistant (either his daughter or granddaughter) who gets pots and pans out of lower cupboard for him. Additionally, he has a bar stool in the kitchen, so he can sit while cooking. Mr. Logan is able to take out light trash. He leaves heavier trash for his sons.
58. We find that Mr. Logan has not engaged in ladder work since the accident. Additionally, we find that since the accident Mr. Logan uses a hand rail while going up and down stairs.
59. We find that Mr. Logan cannot think of any jobs that he can go back to in his current condition.
60. We find that Mr. Logan is on Social Security Disability for his back, buttock and right hip. He did not have to hire an attorney to help him receive Social Security Disability.

61. We find that Mr. Logan ices his hip and back about once a week. We find that he continues to take medication, about once a week, for his back and hip as prescribed by Dr. Anandpura.
62. We find that Mr. Logan requested ongoing medical treatment through Dr. Lehman for his back and hip.
63. We find that Mr. Logan he has not experienced any new injuries since his December 1, 2014 injury. However, he has engaged in activities that have resulted in increased pain, like lifting a window open, lifting grandchildren, and bending down to pick up items from the ground.
64. We find that Mr. Logan testified that he has not worked for anyone since he underwent hip replacement surgery.
65. We find that Ashley H. Johnson opined, "It is still my vocational opinion, most probably and to a reasonable degree of vocational certainty, that Mr. Logan is totally and permanently disabled from a vocational viewpoint."
66. We find that Mr. Logan sustained an admitted injury to his low back arising out of and in the course and scope of his employment on December 1, 2014.
67. We find that Mr. Logan's December 1, 2014 work related accident aggravated a pre-existing condition in Mr. Logan's right hip resulting in his need for medical treatment including, but not limited, to hip replacement surgery performed by Dr. Lehman.
68. We find that Mr. Logan reached maximum medical improvement on June 21, 2016.

69. We find that Mr. Logan is entitled to temporary total compensation from December 15, 2015 (the date of his hip replacement surgery) to June 21, 2016 (the date he reached maximum medical improvement).
70. We find that Mr. Logan's December 1, 2014 work related injury has resulted in permanent impairment and disability to his right hip and back.
71. We find that Mr. Logan is permanently and totally disabled.
72. We find that Defendants are responsible for payment of all causally related medical treatment Mr. Logan has received to date (including but not limited to Shiland Family Medicine, Progressive Physical Therapy, Carolina Orthopaedic Surgery Associates, and Riverview Medical Center) with the exception of chiropractic treatment which Claimant stipulated to at the hearing before the Single Commissioner.
73. We find that Mr. Logan is entitled to future causally related medical treatment for his low back and right hip as recommended by Dr. William Lehman.
74. We find that Mr. Logan is entitled to lifetime maintenance, repair and replacement of retained hardware pertaining to the causally related right hip replacement.
75. Prior to the August 24, 2017 hearing Claimant objected to Defendants APA ten, Dr. Bethea's letter on the grounds that it was not properly submitted before the Single Commissioner closed the record on April 25, 2017. Defendants maintained that they provided Dr. Bethea's letter to Claimant's attorney three days prior to the April 25, 2017 hearing. The Single Commissioner allowed Dr. Bethea's letter into the record.

76. During the August 24, 2017 hearing before the Single Commissioner, the Defendants raised the issue of compelling Mr. Logan to appear for a functional capacity evaluation and vocational assessment. On April 10, 2017 the undersigned denied Defendants motion to compel a functional capacity evaluation. In the undersigned's Order of June 16, 2017, postponing the hearing pending resolution of Defendants' appeal of the Motion to Compel, the hearing record was closed other than any reports or evidence generated as a result of the appealed motion. Defendants' appeal was dismissed as interlocutory. Therefore, Defendants request to compel a functional capacity evaluation and vocational assessment is hereby denied as the hip was a denied body part, no physician recommended a second functional capacity evaluation, and Dr. Lehman had already reviewed a functional capacity evaluation and adopted it during his deposition.

CONCLUSIONS OF LAW OF THE FULL COMMISSION

Accordingly, as provided by §42-17-40, it is the determination and finding of the Full Commission:

1. Pursuant to §42-1-130 and §42-1-140, at the time of the accident, claimant and defendant employer were covered parties under the provisions of the South Carolina Workers' Compensation Act.
2. Pursuant to §42-1-150 and §42-1-160 claimant sustained an injury by accident to his back and right hip during the course and scope of his employment at Winthrop.
3. Pursuant to §42-15-20, proper notice of the injury was given.
4. Pursuant to §42-15-40, the claim was timely filed.

5. Pursuant to §42-9-35 claimant has sustained an aggravation of a pre-existing condition in his right hip resulting in his need for medical treatment, including but not limited to surgery performed by Dr. Lehman.

6. Pursuant to §42-9-10 and §42-1-120 Claimant is entitled to temporary total compensation in the amount of Four Hundred Seventy-Three Dollars and 84/100 (\$473.84) Dollars per week from December 15, 2015 through June 21, 2016.

7. Pursuant to §42-9-10 and §42-1-120, Claimant reached maximum medical improvement on June 21, 2016.

8. Awards of permanent and total disability are governed by §42-9-10 and case law decided thereunder. Having been found to have sustained multiple causally related disabilities which destroy Mr. Logan's earning capacity, Claimant is permanently and totally disabled.

9. Medical treatment is governed by §42-15-60 and Dodge v. Bruccoli, Clark Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999). Pursuant to §42-15-60 and Dodge v. Bruccoli, Clark Layman, Inc., Claimant is entitled to future lifetime medical treatment for his causally related medical problems, his back and right hip, as recommended by Dr. Lehman.

10. Payment of awards in lump sum is governed by § 42-9-301. Our Supreme Court has held the Commission has authority to allocate the lump sum over claimant's lifetime. James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010).

11. Pursuant to §42-15-60, Defendants are responsible for payment of all causally related medical treatment Mr. Logan has received to date (including but not limited to Shiland Family Medicine, Progressive Physical Therapy, Carolina Orthopaedic

Surgery Associates, and Riverview Medical Center) with the exception of chiropractic treatment which Claimant stipulated to at the hearing before the Single Commissioner.

ORDER OF THE FULL COMMISSION

Based upon the above Findings of Fact and Conclusions of Law set forth herein, it is hereby

ORDERED that Claimant sustained an admitted injury to his low back;

ORDERED that Claimant's December 1, 2014 work related accident aggravated a pre-existing condition in Mr. Logan's right hip resulting in his need for medical treatment including but not limited to hip replacement surgery performed by Dr. Lehman.

ORDERED that Defendants are responsible for payment of all causally related medical treatment Mr. Logan has received to date with regard to his right hip and back (including but not limited to Shiland Family Medicine, Progressive Physical Therapy, Carolina Orthopaedic Surgery Associates, and Riverview Medical Center) with the exception of chiropractic treatment which Claimant stipulated to at the hearing before the Single Commissioner.

ORDERED that Mr. Logan is entitled to temporary compensation from December 15, 2015 through June 21, 2016 (twenty-seven (27) weeks at four hundred seventy-three and 84/100 dollars per week).

ORDERED that Mr. Logan is permanently and totally disabled and entitled to the remaining four hundred seventy-three (473) weeks.

ORDERED that the four hundred seventy-three (473) weeks commutes to 428.46 weeks or two hundred three thousand, twenty one and 48/100 dollars

(\$203,021.48). (The previous award of 432.394 weeks or two hundred four thousand, eight hundred eighty-five and 57/100 dollars (\$204,885.57) has been amended per agreement of parties to account for changes in present value computation).

ORDERED that the above award sum shall be paid in lump sum allocated in the following manner: One Hundred Thirty Thousand, One Hundred Thirteen and 80/100 Dollars (\$130,113.80) in compromise settlement of disputed future wage loss at the rate of \$104.52 per week for a period of 1244.88 weeks, representing the remainder of the Claimant's life, pursuant to South Carolina Code of Laws Ann. Section 19-1-150 and the South Carolina Supreme Court decisions of James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010), Utica-Mohawk Mills v. Orr., 227 S.C. 226, 87 S.E.2d 589 (1955) and pursuant to Sciarotta v. Bowen, 837 F2d 135 (3d Cir. 1988); Sixty Eight Thousand Two Hundred Ninety Five and 19/100 Dollars (\$68,295.19) as attorney's fees and Six Thousand Four Hundred Seventy Six and 58/100 Dollars (\$6,476.58) as expenses incurred in bringing this action.

ORDERED the defendants shall be responsible for future causally medical treatment to Claimant's low back and right hip pursuant to Dodge v. Bruccolia, Clark, Layman, Inc., as recommended by Dr. Lehman.

AND IT IS SO ORDERED.

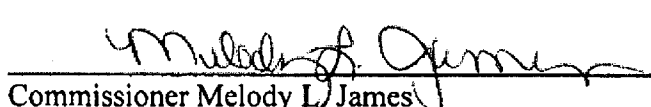
**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION FULL
AFFIRMATION OF SINGLE COMMISSIONER.**



Commissioner Avery B. Wilkerson, Jr.



Commissioner Aisha Taylor



Commissioner Melody L. James

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 5, 2018