

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

RECEIVED
AUG 22 2018
SC Court of Appeals

W.C.C. FILE NO: 1401730

Carl E. Lucas

EMPLOYEE,
CLAIMANT/APPELLANT

VS.

RNDC Of South Carolina

EMPLOYER,

AND

Hartford Indemnity

CARRIER,
DEFENDANTS/RESPONDENTS

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:

July 23, 2018

APPEARANCES: Claimant/Appellant represented by Elizabeth M. Pentz, Esquire
Defendants/Respondents represented by Kay G. Crowe, Esquire

STATEMENT OF THE CASE

A hearing was held before Commissioner Aisha Taylor on June 13, 2017. This case has a lengthy procedural history. Carl E. Lucas ("Claimant") suffered alleged compensable injuries by accident on January 17, 2014, to his back, bilateral legs, bilateral hips, bilateral feet. Subsequently, he developed depression, insomnia and erectile dysfunction. The Claimant filed a March 1, 2016, hearing Form 50 for additional medical treatment in the form of a second opinion. The Defendants filed March 28, 2016, Form 51 with the back listed as the only body part. However, in a May 6, 2015, consent order the Defendants accepted the depression and insomnia which obligated the carrier to pay for treatment. The Defendants filed an April 27, 2016, Form 21 hearing request. The Claimant responded with a Form 22 requesting mediation. The parties mediated this case on June 27, 2016. While the Form 70 noted the mediation ended with an impasse, the parties executed a consent order September 23, 2016. The Claimant signed a Form 17 to discontinue temporary total disability benefits and the Defendants agreed to send the Claimant for a Functional Capacity Evaluation. The Defendants filed another Form 21 on January 30, 2017. Through several scheduling attempts, this hearing was held in York County on June 13, 2017.

The Claimant asserted that he was at maximum medial improvement on October 16, 2015, pursuant to authorized treating physician Ryan Krafft, M.D., Pain Center of Irmo, March 18, 2016, deposition [DEF. EXB. J; pg. 460-467]. From this time to present, the Claimant received ongoing pain management at the Pain Center of Irmo treatment. [CL. APA 6].

On December 5, 2016, the Claimant suffered a syncope episode. After testing by a cardiologist, Mitchell W. Jacocks, M.D., he determined that the Claimant did not suffer cardio issues. However, Dr. Jacocks provided February 17, 2017, correspondence that Claimant's syncope episodes were causally related to the ongoing back pain. [HRG. TR.6:4-19]. Therefore, the Defendants should be ordered to pay all past and ongoing medical bills causally related to the Claimant's syncope treatment including, but not limited to, Lexington Medical Center, Lexington County EMS, and Dr. Jacocks. [HRG. TR.6:25 – 7:8].

The Claimant requested that the Commission order the Defendants to pay for therapy [*aqua*], a back brace, and pads for the Claimant's tens unit. These items were previously requested and never approved. [HRG. TR. 7:8-12].

Finally, the Claimant asserted that he was permanently and totally disabled, and alternatively suffered a wage loss. [HRG. TR. 7:14 – 9:4].

The Defendants asserted that the Claimant was at maximum medical improvement pursuant to Scott B. Boyd, M.D. and that Dr. Boyd's rating "reflects his disability." [HRG. TR. 9:9-13; CL. APA7]. The Defendants argued that the Claimant's varied background and experience, including store manager, demonstrated there are "things that he could continue to do." [HRG. TR. 9:14-16]. Further, Dr. Jacocks' evaluation and all subsequent treatment should be denied as causally related. [HRG. TR. 9:16 - 10:4]. Defendants admitted that some Dodge medicals would be covered via pain management prescribed medications and "those have been paid on an ongoing basis." [HRG. TR. 10:4-10]. "We deny that there is any other medical care causally related to his on-the-job injury that needs to be paid on a continuing basis." [HRG. TR. 10:10-12]. The Claimant signed a Form 17, thus "he is not being paid at this time." [HRG. TR. 10:13-14].

SINGLE COMMISSIONER'S FINDINGS OF FACT

1. Claimant sustained admitted compensable injuries to his lower back and psyche including depression and insomnia per prior Consent Order.
2. I find Claimant's onset of syncope episodes is causally related to Claimant's work injury. This finding is based on the preponderance of the evidence as a whole including the medical opinion of Dr. Jacocks, Claimant's treating cardiologist, who opined Claimant's syncope episodes were a physical reaction of Claimant's back pain. [CL. APA 10].
3. I find Defendants are liable for all of Claimant's medical treatment with Dr. Jacocks that was directly related to the syncope episodes including the tests that Dr. Jacocks performed to make a formal diagnosis. [CL. EXH. O, P, Q, R].
4. I find Claimant is permanently and totally disabled pursuant to Section 42-9-10 as a result of his injuries to his back, psyche, and syncope episodes. This finding is based on the preponderance of the evidence as a whole including the unrefuted vocational analysis of Adger Brown, who initially opined this was a wage loss claim, but changed his opinion to permanent and total disability after Claimant's onset of syncope episodes.
5. Claimant is entitled to the commuted value of 500 weeks of benefits less any amounts previously paid to the Claimant in the form of temporary benefits.
6. Claimant is entitled to lifetime medical treatment for his causally-related injuries pursuant to Section 42-15-60.
7. Claimant is entitled to a lump-sum payment of his award.
8. Claimant is entitled to James v. Anne's SSA apportionment language.
9. No hearing costs are assessed.
10. That all parties to this proceeding are subject to and bound by the terms and provisions of the S.C Workers' Compensation Act, as amended, with Carl E. Lucas, as the Claimant; RNDC Of South Carolina as the Employer; and Sedgwick Claims Management Services, Inc. as the Carrier.

CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-1-120 of the South Carolina Code of Laws, 1976 (as amended), defines the term “disability” as meaning “incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.” S.C. Code Ann. §42-1-120.
2. S.C. Code Ann. §42-1-160 of the South Carolina Code of Laws, 1976 (as amended), states that “injury” and “personal injury” are defined as “injury by accident arising out of and in the course of employment”. S.C. Code Ann. §42-1-160(a). Section 42-1-160 of the South Carolina Code provides:

“[i]n medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, "medically complex cases" means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques.” S.C. Code Ann. §42-1-160(e).

Furthermore, Section 42-1-160 of the South Carolina Code stipulates that, “[a]s used in this section, "medical evidence" means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.” S.C. Code Ann. §42-1-160(g).
3. S.C. Code Ann. §42-9-10 of the South Carolina Code of Laws, 1976 (as amended).

“Amount of compensation for total disability; what constitutes total disability.

(A) When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages. In no case may the period covered by the compensation exceed five hundred (500) weeks except as provided in subsection (C).” S.C. Code Ann. §42-9-10 (A). Inability to perform services other than those “so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist.” Wynn v. Peoples Natural Gas Co., 238 S.C.1 (1961).

4. Finally, S.C. Code Ann. §42-15-60 of the South Carolina Code of Laws, 1976 (as amended), requires Defendants to authorize causally-related medical treatment. S.C. Code Ann. §42-15-60. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. §42-15-60; Dodge v. Brucoli, Clark, and Layman, Inc., 514 S.E.2d 593 (S.C.App. 1999). Claimant bears the burden of proving entitlement to benefits under the Act. Crisp v. SouthCo., Inc., 401 S.C. 627 (2013) (citing Clade v. Champion Labs., 330 S.C. at 11, 496 S.E.2d at 857). For good cause shown, the Commission may in their discretion, order additional medical, surgical, or other treatment. Clark v. Aiken County Government, 620 S.E.2d 99 (S.C.App. 2005).

EVIDENCE OF THE CASE

The Single Commissioner heard the testimony of the only witness, Carl E. Lucas, Claimant and received all medical records and exhibits presented.

The Single Commissioner heard the Claimant’s testimony, a fifty (50) year old male. He was last employed by Lexington School District One August 2016 until December 5, 2016, as a bus driver. [HRG. TR. 11:22 – 12:2].

Previously he worked for RNDC (*Employer*) October 1, 2012, through shortly after his January 17, 2014, on the job accident, as a delivery driver to restaurants and liquor stores which required driving, stooping, standing, lifting, and straining. [HRG. TR. 12::4-24]. The Claimant returned to work full duty after his April 30, 2013, accepted hernia workers' compensation claim. [HRG. TR. 12:25 - 13:17]. After, the Claimant lifted liquor boxes January 17, 2014, and injured his back, the Carrier authorized multiple [medical] facilities [HRG. TR. 13:18 - 14:18].

However, the Carrier did not authorize a tens unit, a replacement back brace, and aqua-robotics therapy. [HRG. TR. 14:19 - 16:4].

The Claimant testified that he had trouble receiving authorization for causally related medication ordered by authorized treating physician Michael P. Harris, M.D. [HRG. TR. 16:12 - 17:21].

The Claimant stated that his work experience included store manager, wrecker driver, and tractor work. [HRG. TR. 17:22 - 18:23]. He also attempted to sell grills at the Barnyard Flea Market. [HRG. TR. 18:24 - 19:14]. The Claimant testified that he obtained a bus driver position after RNDC did not call him back. [HRG. TR. 19:15 - 18]. He was forced to resign after syncope episodes and subsequent treatment. [HRG. TR. 19:19 -20:17]. The Claimant's current problems are erectile dysfunction, depression, restless legs, sleep, low back pain, and syncope episodes. [HRG. TR. 20:18-23]. Because of the permanent disability, housework and yardwork are problematic. [HRG. TR. 20:24 - 21:8].

The Claimant attested that the Lexington County School District One paid approximately \$10.00 - \$11.00 per hour. [HRG. TR. 21:9-11].

The Claimant resigned pursuant to “extreme syncope episodes, my back” and Dr. Jacocks’ no driving work restriction. [HRG. TR. 21:12 - 21]. Finally, the Claimant testified that workers’ compensation was responsible for causally related medical bills and mileage. [HRG. TR. 21:25 – 22:4]. Finally, the Claimant maintained that he needed to continue causally related medical treatment. [HRG. TR. 22:5-7].

On direct examination, the Claimant testified that he graduated high school where he obtained automobile shop technical training. [HRG. TR. 22:16 – 23:5]. He re-confirmed he was a tow truck driver/business owner. [HRG. TR. 23:6-17]. The Claimant confirmed he was an over the road truck driver, re-confirmed as an assistant store manager, and grading/clearing. [HRG. TR. 23:19 – 24:17]. The Claimant recited the January 17, 2014, accident facts as related to the April 30, 2013, hernia workers’ compensation claim. [HRG. TR. 24:18 – 27:22]. Further, he attested to pre-existing conditions. [HRG. TR. 28:11 – 30:7]. However, the January 17, 2014, on the job accident aggravated his back. [HRG. TR. 31:2-10].

FULL COMMISSION FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACTS

1. Claimant sustained admitted compensable injuries to his lower back and psyche including depression and insomnia per prior Consent Order.
2. We find Claimant’s onset of syncope episodes is causally related to Claimant’s work injury. This finding is based on the preponderance of the evidence as a whole including the medical opinion of Dr. Jacocks, Claimant’s treating cardiologist, who opined Claimant’s syncope episodes were a physical reaction of Claimant’s back pain. [CL. APA 10].
3. We find that the Appellants are liable for all causally related treatment only provided by Dr. Jacocks including the diagnostic testing performed to make a formal diagnosis. [CL. EXH. O, P, Q, R].

4. We find Claimant is permanently and totally disabled pursuant to Section 42-9-10 as a result of his injuries to his back, psyche, and syncope episodes. This finding is based on the preponderance of the evidence as a whole including the unrefuted vocational analysis of Adger Brown, who initially opined this was a wage loss claim, but changed his opinion to permanent and total disability after Claimant's onset of syncope episodes.
5. Claimant is entitled to the commuted value of 500 weeks of benefits less any amounts previously paid to the Claimant in the form of temporary benefits.
6. Claimant is entitled to lifetime medical treatment for his causally-related injuries pursuant to Section 42-15-60.
7. Claimant is entitled to a lump-sum payment of his award.
8. Claimant is entitled to James v. Anne's SSA apportionment language.
9. No hearing costs are assessed.
10. That all parties to this proceeding are subject to and bound by the terms and provisions of the S.C Workers' Compensation Act, as amended, with Carl E. Lucas, as the Claimant; RNDC Of South Carolina as the Employer; and Sedgwick Claims Management Services, Inc. as the Carrier.

CONCLUSIONS OF LAW

1. S.C. Code Ann. §42-1-120 of the South Carolina Code of Laws, 1976 (as amended), defines the term "disability" as meaning "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." S.C. Code Ann. §42-1-120.
2. S.C. Code Ann. §42-1-160 of the South Carolina Code of Laws, 1976 (as amended), states that "injury" and "personal injury" are defined as "injury by accident arising out of and in the course of employment". S.C. Code Ann. §42-1-160(a). Section 42-1-160 of the South Carolina Code provides:

“[i]n medically complex cases, an employee shall establish by medical evidence that the injury arose in the course of employment. For purposes of this subsection, “medically complex cases” means sophisticated cases requiring highly scientific procedures or techniques for diagnosis or treatment excluding MRIs, CAT scans, x-rays, or other similar diagnostic techniques.” S.C. Code Ann. §42-1-160(e).

Furthermore, Section 42-1-160 of the South Carolina Code stipulates that, “[a]s used in this section, “medical evidence” means expert opinion or testimony stated to a reasonable degree of medical certainty, documents, records, or other material that is offered by a licensed health care provider.” S.C. Code Ann. §42-1-160(g).

3. S.C. Code Ann. §42-9-10 of the South Carolina Code of Laws, 1976 (as amended). “Amount of compensation for total disability; what constitutes total disability. (A) When the incapacity for work resulting from an injury is total, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages. In no case may the period covered by the compensation exceed five hundred (500) weeks except as provided in subsection (C).” S.C. Code Ann. §42-9-10 (A). Inability to perform services other than those “so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist.” Wynn v. Peoples Natural Gas Co., 238 S.C.1 (1961).
4. Finally, S.C. Code Ann. §42-15-60 of the South Carolina Code of Laws, 1976 (as amended), requires Defendants to authorize causally-related medical treatment. S.C. Code Ann. §42-15-60.

Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. §42-15-60; Dodge v. Bruccoli, Clark, and Layman, Inc., 514 S.E.2d 593 (S.C.App. 1999). Claimant bears the burden of proving entitlement to benefits under the Act. Crisp v. SouthCo., Inc., 401 S.C. 627 (2013) (citing Clade v. Champion Labs., 330 S.C. at 11, 496 S.E.2d at 857). For good cause shown, the Commission may in their discretion, order additional medical, surgical, or other treatment. Clark v. Aiken County Government, 620 S.E.2d 99 (S.C.App. 2005).


ORDER

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

IT IS FURTHER ORDERED that payment of Dr. Jacocks' bills is limited to only those causally related to treatment.


AND IT IS SO ORDERED

S.C. WORKERS COMPENSATION COMMISSION FULL PANEL

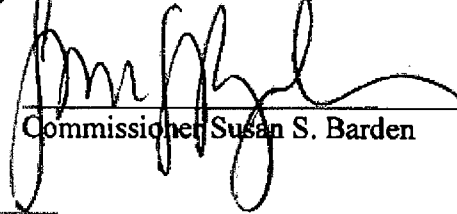


Commissioner R. Michael Campbell
For the Appellate Panel

WE CONCUR:



Commissioner T. Scott Beck



Commissioner Susan S. Barden

Date: _____
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia on July 23, 2018