

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 1508995

SAMUEL PAULINO,

Claimant,

Respondent,

vs.

DIVERSIFIED COATINGS, INC.,

Employer,

and

AMGUARD INS. CO.,

Carrier,

Appellants,

RECEIVED

NOV 02 2018

SC Court of Appeals

**DECISION AND ORDER
ON APPEAL TO FULL
COMMISSION**

RECEIVED

NOV 16 2018

SC Court of Appeals

Appellant Panel Review held in Columbia,
South Carolina, on July 16, 2018 per
notices timely and properly served upon all
parties of interest.

Appellant Panel Decision and Order filed
October 3, 2018

APPEARANCES:

Claimant appeared and represented by Stephen N. Garcia, Esquire of Garcia Law, LLC, Greenville, South Carolina.

Defendants Diversified Coating Systems, Inc. and Amguard Ins. Co. appeared and represented by George Gallagher, Esquire of Speed, Seta, Martin, Trivett & Stublely, LLC, Columbia, SC.

STATEMENT OF CASE

This case was heard by the undersigned Commissioner on March 5, 2018 in Spartanburg, South Carolina. Notices were timely and properly served upon all parties of interest at which time all parties were present for the hearing: The Claimant, Samuel Paulino, the Claimant's attorney, Stephen N. Garcia; the Defendants, Diversified Coating System and AmGuard Ins. represented by their attorney, George Gallagher.

The Claimant presents to determine Claimant's entitlement to permanent total or partial disability, future medical care, compensability as to a denied psychological claim, continuing medical treatment, and whether Claimant is entitled to a lump sum award. Claimant argues that he is permanently and totally disabled under § 42-9-30(21) as he has allegedly sustained a 50% or greater disability to the spine. The Defendants argue that Claimant has not sustained a 50% or greater disability to the spine. Defendants admit that the psychological condition is related to the work incident, however, Defendants deny liability for the cost of medical treatment as the psychological treatment was not performed by a physician of the Defendants' choosing.

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the Hearing Commissioner received the following records into evidence.

Defendants' APA Submissions:

APA No. 1. Dr. Timothy McHenry medical note dated 4/22/16 consisting of four (4) pages;

APA No. 2. FCE, Elite Physical Therapy dated 11/20/17 and consisting of nine (9) pages;

Claimant's APA Submissions:

APA No. 3. Southeastern Neuro & Spine, Dr. Timothy McHenry, medical notes dated 7/1/15 through 4/1/17 and consisting of thirty-six (36) pages;

APA No. 4. Surgery Ortho Clinic medical notes dated 9/3/15 through 11/19/15 and consisting of sixty-one (61) pages;

APA No. 5. Ortho-Neuro Patewood/Physiatry Crosscreek 111, Dr. Joyti K. Math medical notes dated 11/13/15 through 12/6/17 and consisting of ninety-one (91) pages;

APA No. 6. PMH Injection Clinic medical notes dated 8/2/16 and consisting of six (6) pages;

APA No. 7. New Horizon Behavioral Health medical notes dated 2/1/17 through 6/23/17 and consisting of twenty-two (22) pages;
and

APA No. 8. Independent Medical Evaluation of Dr. Glenn Scott dated 12/27/17 and consisting of two (2) pages.

STIPULATIONS

The Claimant's Counsel and Counsel for the Defendants stipulated at the hearing to the following issues:

1. The purpose of the Hearing was to determine issues set forth on the Forms 21 and 50.
2. The Claimant seeks benefits under the South Carolina Workers' Compensation Act for injuries allegedly sustained on or about February 6, 2015 while employed by the Defendant, Diversified Coating Systems, Inc. and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case.
3. All parties received timely and proper notice of the scheduled hearing.
4. Venue for the hearing was properly set in Greenville County, but was later transferred to Spartanburg County by consent of parties.
5. The Commission file is made part of the record with the exception of self-serving declarations and unstipulated medical records.
6. The claimant has an average weekly wage of \$468.32 with a corresponding compensation rate of \$312.22.
7. The APA submissions of both parties are admitted without objection.

EVIDENCE OF CASE

Testimony

Testimony of Samuel Paulino – direct examination by Stephen N. Garcia

The Claimant prefaced his testimony with personal and background information. His date of birth is [REDACTED]. He was born in the Dominican Republic. He moved to the United

States in May of 2014. Claimant testified that he does not speak English. He is married and resides with his wife, six-year-old child and seven-year-old child. Claimant testified that he moved to the United States primarily to find work. Claimant further testified that while he normally takes medications, he did not take his medications prior to hearing because the medications make him sleepy and groggy. The Claimant did not drive to work, but instead received a ride from his cousin. Claimant further testified that he would drive *before* this injury, however, he does not drive now. (Tr. p. 18, line 21 through p. 20, line 10.)

Attention was then turned to Claimant's educational background and work history. Claimant graduated from high school in the Dominican Republic. He attended a 4-year college in the Dominican Republic in Computer Information Systems. However, Claimant has not attended any college or university classes in the United States nor does he have any degrees or certifications from any institutions in the United States. Claimant has not attended English classes of any sort, although Claimant did testify that he had intended to enroll in classes prior to his work-related injury. Since moving to the United States, Claimant has held two jobs: one as an ice-cream truck driver for approximately four and a half months and the other for the Defendant Employer as a custodian/janitor for approximately five months. The position as an ice-cream truck driver required loading and unloading of the truck and consisted of lifting greater than 10 pounds and driving all day. Claimant's subsequent position at Defendant Employer required 40-plus-hour work weeks. When asked whether Claimant believed he could perform the same work for Defendant Employer in his current condition, Claimant testified he could not, citing excessive exertion of force. Defendant did not believe he could last two hours in the same position he held with Defendant Employer. (Tr. p. 20, line 11 through p. 23, line 20.)

Claimant was then questioned regarding his Functional Capacity Evaluation conducted on November 20, 2017. Claimant testified that the FCE was the only physical exertion he has taken part in since the work injury. Claimant testified that physical exertion required of him in completion of the FCE was easier than the work he would do for the Defendant Employer. Claimant stated that the work he would do for the Defendant Employer required lifting of greater than 10 pounds and required crouching (Tr. p. 23, line 21 through p. 24, line 16.)

Claimant was then questioned regarding his vocational history while in the Dominican Republic. Claimant testified that he worked as a bank teller following graduation and that he performed basic computer repairs on the side. Claimant never maintained any kind of meaningful employment as a computer repair technician within the Dominican Republic. Claimant was questioned as to why he cannot repair computers in the United States, and he responded that although he has sought work as a computer repair technician in the United States, he has been turned down repeatedly for failing to have any formal training or education in the United States and because of his language barrier. Claimant testified that he graduated from his computer-related education in Dominican Republic approximately ten years ago and that the last time he worked on a computer in any capacity was nearly five years ago. Claimant also testified that computers change over time. (Tr. p. 24, line 17 through p. 26, line 10.)

Claimant was questioned regarding whether he has looked for work following his work injury. Claimant indicated he *has* sought work, specifically in the computer field and in the construction/factory field. However, because of his inability to speak English, he could not find computer work and because of his restrictions and limitations, he could not perform construction/factory work. (Tr. p. 26, line 11 through p. 26, line 20.)

Attention was again directed towards the Claimant's Functional Capacity Evaluation performed in November of 2017. Claimant was questioned regarding some of the documented difficulties he experienced during and after the evaluation. Claimant testified that he approached the exam with maximum effort as a reference point for his resultant physical capacity following the work injury. Claimant testified that as a result of the effort exerted, he experienced a lot of pain and needed help for the next three days just to get out of bed. Claimant indicated that the FCE lasted only two hours and twenty minutes or so, but that he did not believe he could perform a repeat FCE at the same level the very next day. Claimant also stated that it would be impossible for him to perform the activities that comprised the FCE for eight hours per day and forty hours per week. (Tr. p. 26, line 21 through p. 27, line 19.)

Claimant was asked whether he would submit to the spinal cord stimulator trial that Dr. Math had recommended for him. Claimant indicated that he would. (Tr. p. 27, line 20 through p. 27, line 19.)

Attention was then turned towards Claimant's alleged psychological injury. Claimant was asked why he sought psychological treatment, and Claimant responded that he sought help for his depression and anxiety as it related to the work accident. Claimant testified that the psychological visits helped him "a little". However, Claimant also testified that he was referred to Mental Health of Greenville but was not able to continue that treatment because of lack of funds. (Tr. p. 28, line 20 through p. 29, line 18.)

Testimony of Samuel Paulino – Cross-Examination by George Gallagher

Cross-examination commenced with questions regarding whether Claimant had ever worked as a computer programmer in the Dominican Republic. Claimant stated that he did do some jobs as a sort of informal, independent contractor. Claimant testified that he did some

repair work and sometimes would install computer operating systems. However, Claimant testified that he did *not* program computers or write code. Claimant testified that he performed computer repair work for approximately three or four years following his stint as a bank teller in the Dominican Republic. He did not perform computer repair work for his employer bank. Claimant further testified that most of his computer education coursework involved mathematics. (Tr. p. 30, line 6 through p. 31, line 16.)

Claimant was then questioned as to whether his wife is employed. Claimant testified that his wife is employed and works at a supermarket. However, Claimant testified that she does not have group health insurance. (Tr. p. 31, line 17 through p. 31, line 16.)

No further testimony was presented at the Single-Commissioner Hearing.

FINDINGS OF FACT

IT IS FOUND AS A FACT:

- 1. Order instructions were sent to the Parties on March 14, 2018.*
- 2. This Claim was initially denied at the Single Commissioner Hearing held on September 13, 2016. This Claim was subsequently reversed and found compensable by the Full Commission at the Appeal Hearing held on April 18, 2017.*
- 3. The Full Commission Order dated July 19, 2017 found that Claimant carried his burden of showing a work-related injury by accident occurring on or about February 6, 2015, awarded the cost of all causally related medical treatment, found the Claimant to be at MMI as to the spine on April 22, 2016, and awarded temporary total disability benefits for the period of July 15, 2015 to April 22, 2016. All other issues were held in abeyance. The Claimant having been previously deemed to have achieved MMI as to the spine on*

April 22, 2016, the primary issues before this Commissioner is permanency, Dodge medicals, the denied injury to the psyche, and a request for lump sum payment.

- 4. Claimant was honest and clear in his testimony.*
- 5. Claimant was a teller in a bank and repaired computers while living in the Dominican Republic.*
- 6. Claimant has computer training; however, he also has a major language barrier as he is unable to speak much or any English.*
- 7. Claimant was deemed to have sustained a 13% impairment to the whole person by Dr. McHenry, the inherited, authorized physician, on or about May 3, 2016. However, opinion regarding Claimant's permanent restrictions and future medical care were deferred to Dr. Joyti Math, the inherited, authorized pain management specialist.*
- 8. Claimant's work restrictions are extensive. Although Claimant was found to have completed his functional capacity evaluation dated November 20, 2017 at a medium demand level, various issues in completing the evaluation were noted. Following review of the Functional Capacity Evaluation, Dr. Joyti Math opined that Claimant had sustained a 12% impairment to the spine and further assigned work restrictions of light work duty with no lifting of greater than 10 pounds.*
- 9. I find that Claimant's impairment ratings are very low based on the poor surgical result.*
- 10. I find that based on the medication list alone, Claimant has suffered a major disability.*
- 11. I find that Claimant has met his burden of proving an injury to his psyche and that he is entitled to a psychological visit with a physician of Defendants' choosing.*
- 12. I find that Claimant has sustained a greater than 50% disability to the spine.*

13. Because of the Claimant's transient resident status, I find that Claimant is entitled to a lump sum award.

CONCLUSIONS OF LAW

Accordingly, as provided under the South Carolina Code of Laws, § 42-17-40, and § 1-23-320, it is the determination of this Commissioner that:

1. Pursuant to S.C. Code § 42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. Pursuant to S.C. Code § 42-17-20, venue in Spartanburg, South Carolina was proper and agreed to by the parties.
3. Pursuant to S.C. Code § 1-23-320(b), and Reg. 67-607, notice of the hearing was timely and properly served upon all parties of interest.
4. Pursuant to S.C. Code § 42-1-160 and based on a preponderance of the evidence, including the medical records, exhibits, and testimony presented at the hearing, the Claimant satisfied his burden of proof that he suffered an injury to his psyche by accident and arising out of and in the course and scope of his employment.
5. Pursuant to S.C. Code § 42-15-60, Claimant is entitled to psychological/psychiatric treatment under the control and direction of Defendants.
6. Pursuant to § 42-9-30(21), Claimant has sustained a greater than 50% disability to the spine, and therefore is permanently and totally disabled, and Defendants having failed to rebut that presumption, Claimant is thereby entitled to compensation under § 42-9-10(B);
7. Pursuant to § 42-15-60, Claimant is entitled to payment of all causally-related, authorized medicals as well as lifetime, causally-related medical benefits;
8. Pursuant to § 42-9-301, Claimant is entitled to lump sum payment of benefits.

ORDER

***IT IS HEREBY ORDERED** that the greater weight of the evidence supports a finding that Claimant is permanently and totally disabled and Defendant is entitled to credit for any temporary benefits paid to Claimant;*

***IT IS HEREBY ORDERED** that Claimant is entitled to payment of all causally-related medicals as well as continued payment of lifetime, causally-related medical benefits;*

***IT IS HEREBY ORDERED** that Claimant is entitled to lump sum payment of award.*

AND IT IS SO ORDERED.

After considering all the evidence contained in the record, we **AFFIRM WITH AMENDMENTS** the Single Commissioner's Findings of Fact, Conclusions of law, and Order and therefore make the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

1. Order instructions for the Single Commissioner Hearing were sent to the Parties on March 14, 2018.
2. This Claim was initially denied at the Single Commissioner Hearing held on September 13, 2016. This Claim was subsequently reversed and found compensable by the Full Commission at the Appeal Hearing held on April 18, 2017.
3. The Full Commission Order dated July 19, 2017 found that Claimant carried his burden of showing a work-related injury by accident occurring on or about February 6, 2015, awarded the cost of all causally related medical treatment, found the Claimant to be at

the spine on April 22, 2016, and awarded temporary total disability benefits for the period of July 15, 2015 to April 22, 2016. All other issues were held in abeyance. The Claimant having been previously deemed to have achieved MMI as to the spine on April 22, 2016, the primary issues before the Full Commission was permanency, *Dodge* medicals, the denied injury to the psyche, and a request for lump sum payment.

4. The Single Commissioner found that the Claimant was honest and clear in his testimony.
5. Claimant was a teller in a bank and repaired computers while living in the Dominican Republic.
6. Claimant has computer training; however, he also has a major language barrier as he is unable to speak much or any English.
7. Claimant was deemed to have sustained a 13% impairment to the whole person by Dr. McHenry, the inherited, authorized physician, on or about May 3, 2016. However, opinion regarding Claimant's permanent restrictions and future medical care were deferred to Dr. Joyti Math, the inherited, authorized pain management specialist.
8. Claimant's work restrictions are extensive. Although Claimant was found to have completed his functional capacity evaluation dated November 20, 2017 at a medium demand level, various issues in completing the evaluation were noted. Following review of the Functional Capacity Evaluation, Dr. Joyti Math opined that Claimant had sustained a 12% impairment to the spine and further assigned work restrictions of light work duty with no lifting of greater than 10 pounds.
9. We find that Claimant's impairment ratings are very low based on the poor surgical result.
10. We find that based on the medication list alone, Claimant has suffered a major disability.

11. We find that Claimant has met his burden of proving an injury to his psyche, that he has achieved MMI, that no further psychological treatment is indicated, and that he is entitled to payment of causally related, completed psychological treatment.
12. We find that Claimant has sustained a greater than 50% disability to the spine.
13. Because of the Claimant's transient resident status, we find that Claimant is entitled to a lump sum award.

CONCLUSIONS OF LAW

Accordingly, as provided under the South Carolina Code of Laws, § 42-17-40, and § 1-23-320, it is the determination of the Full Commission that:

1. Pursuant to S.C. Code § 42-1-160 and based on a preponderance of the evidence, including the medical records, exhibits, and testimony presented at the hearing, the Claimant satisfied his burden of proof that he suffered an injury to his psyche by accident and arising out of and in the course and scope of his employment.
2. Pursuant to S.C. Code § 42-15-60, Claimant is entitled to payment of all causally related psychological/psychiatric.
3. Pursuant to § 42-9-30(21), Claimant has sustained a greater than 50% disability to the spine, and therefore is permanently and totally disabled, and Defendants having failed to rebut that presumption, Claimant is thereby entitled to compensation under § 42-9-10(B);
4. Pursuant to § 42-15-60, Claimant is entitled to payment of all causally-related, authorized medicals as well as lifetime, causally-related medical benefits;
5. Pursuant to § 42-9-301, Claimant is entitled to lump sum payment of benefits.

ORDER


IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that Claimant is permanently and totally disabled and Defendant is entitled to credit for any temporary benefits paid to Claimant;

IT IS HEREBY ORDERED that Claimant is entitled to payment of all causally-related medicals as well as continued payment of lifetime, causally-related medical benefits;

IT IS HEREBY ORDERED that Claimant is entitled to lump sum payment of award.

IN AFFIRMATION WITH AMENDMENTS OF THE SINGLE COMMISSIONER'S DECISION & ORDER, IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



GENE McCASKILL, COMMISSIONER



R. MICHAEL CAMPBELL II, COMMISSIONER



T. SCOTT BECK, COMMISSIONER

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 Hollmon on October 3, 2018