

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1700710

Dale Brooks, )  
Employee, )  
Claimant, )  
vs. )  
Benore Logistics System, Inc., )  
Employer, )  
and )  
Great American Alliance Insurance Company, )  
Carrier, )  
Defendants. )

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FULL COMMISSION ORDER

**RECEIVED**  
NOV 21 2018  
SC Court of Appeals

**DATE OF PANEL REVIEW:**

Appellate Panel Review held in Columbia, South Carolina on March 19, 2018 and June 18, 2018.

**APPEARANCES:**

Claimant appeared and represented by Robert T. Usry, of Holland & Usry, PA, of Spartanburg, South Carolina.

Defendants appeared and represented by Daniel B. Eller, of Eller Tonnsen Bach, LLC, of Greenville, South Carolina.

**FILED:**

## STATEMENT OF THE CASE

Dale Brooks (Claimant) alleged a repetitive trauma injury to his low back and right leg from “repeatedly getting in and out of his truck.” (Claimant’s Form 50 dated June 6, 2017). Defendants denied the claim. A hearing was held on September 7, 2017, before Commissioner Gene McCaskill. On December 27, 2017, Commissioner McCaskill issued an Order finding Claimant met his burden of providing a compensable repetitive trauma injury to his low back affecting his right leg. He awarded Claimant temporary total disability benefits for the period January 19, 2017 through June 28, 2017, as well as prior and future causally-related medical treatment. Defendants timely appealed Commissioner McCaskill’s Order arguing, among other things, he erred in awarding benefits because Claimant failed to provide a causation opinion sufficient to satisfy S.C. Code Ann. § 42-1-172.

All testimony has been taken and delivered, with the documentary evidence, to each member of the Appellate Panel. Oral argument was held on March 19, 2018 and June 18, 2018.<sup>1</sup>

### COMMISSIONER MCCASKILL’S ORDER

Commissioner McCaskill issued the following findings of facts and conclusions of law:

#### FINDINGS OF FACT

1. *The Claimant alleges that he suffered a work-related accident to his low back and right leg arising out of and within the course and scope of his employment. More specifically, he asserts a repetitive trauma claim to*

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<sup>1</sup> Following the initial oral argument, it was discovered that Defendants’ Reply Brief—though not specifically addressed at the oral argument—had not been properly served on Claimant’s attorney. Claimant’s attorney subsequently requested an opportunity to address said brief. Accordingly, the Appellate Panel ordered a second oral argument, which occurred on June 18, 2018. During the second oral argument, Claimant’s attorney agreed any due process issues were resolved because he was able to review the Reply Brief prior to the second oral argument.

*those body parts.*

2. *The Defendants deny the claim.*
3. *Claimant asserts that the mechanism of injury was tasks he did repetitively as a switcher truck operator.*
4. *Defendants assert that no one else has claimed any injury doing the same tasks. Claimant points out this case is about him, not anyone else.*
5. *Defendants entered into evidence a report from Ergonomic Consultant Glen K. Adams, MRC, CRC, CEES which reads in part, "The job tasks of the switcher operator do not require lifting that exceeds any recommended safe lifting limits established in any of the generally accepted ergonomics research and assessment tools." Additionally, none of the tasks performed by a switcher operator resulted in elevated risks to the operator. The report concludes, "Overall, no increased risks were identified for the development of musculoskeletal disorders to the lumbar spine/low back while performing the job tasks of switcher operator at Benore Logistics." Mr. Adams' report was provided to a reasonable degree of professional ergonomics certainty.*
6. *Claimant has treated with Dr. Eric Loudermilk of Piedmont Comprehensive Pain Management Group, LLC.*
7. *Claimant underwent a[n] MRI on 06/27/17 at Anderson Radiology which was ordered by Dr. Loudermilk. Under "impression" the report from that MRI reads, "L4-5 disc degeneration with baseline disc bulge and small midline disc protrusion."*
  - A. *The doctor Defendants authorized to treat Claimant ordered an MRI, but*

*Defendants denied the claim before he got that MRI.*

8. *Dr. Loudermilk answers, "yes" in a questionnaire dated 08/11/17 to the question, "Did the repetitive activities of Dale's job, including but not limited to going up and down stairs, getting in and out of a truck, opening and closing doors, bending and stooping and climbing ladders, most probably cause low back pain with the right leg radiculopathy?" He also answers "yes" to the question, "Did the work injuries from repeated work activities above cause an L4-5 disc protrusion shown on Dale's MRI of 6.27.17?" Likewise, he confirms these repeated work activities caused Claimant's low back pain with right leg radiculopathy.*
9. *Dr. Loudermilk also opines that the Claimant cannot currently perform the activities of a switcher operator.*
10. *Dr. Loudermilk also sets forth modalities of treatment which he believes will most probably be required in the treatment of the Claimant. They include physical therapy, lumbar traction, non-narcotic medications, and lumbar epidural steroid injections.*
11. *Dr. Loudermilk's opinions are stated to a reasonable degree of medical certainty.*
12. *When the evidence is viewed as a whole, there is only one medical opinion in the record. That is the uncontroverted medical opinion of Dr. Loudermilk. As such, it must be given great weight.*
13. *The ergonomics report from Mr. Adams while instructive does not control. Dr. Loudermilk indicates that he has read the report and it does not alter his opinion.*

14. *A workers' compensation hearing is an evidentiary hearing. I can only consider the evidence before me. Based on the preponderance of the evidence before me in this case, I must conclude that the Claimant has suffered a compensable repetitive trauma injury to his low back affecting his right leg.*
  - A. *I find a direct causal relationship between the repetitive acts and the employment.*
  - B. *This finding is based on the entire record.*
15. *Claimant is entitled to medical care and treatment for his work-related injury with an orthopedist with a specialty to the back of the Defendant's choosing.*
16. *Claimant is entitled to whatever usual and customary modalities of care and treatment that doctor provides or directs to include causally-related imaging.*
17. *Claimant is entitled to have prior related medical care paid for by Defendants, including all treatment done and ordered by Dr. Loudermilk, including the MRI at Anderson Radiology and Claimant's prescriptions.*
18. *The Claimant is not at MMI.*
19. *Claimant testified that he is currently working 23 hours a week and making \$10.00 hour.*
20. *Claimant is entitled to unpaid TTD due pursuant to the Act for the period of 01/19/17 - 06/28/17.*

#### **CONCLUSIONS OF LAW**

1. *The findings of fact above are construed to be conclusions of law if applicable.*
  2. *Under § 42-1-40, Claimant had an average weekly wage of \$789.93 and a corresponding compensation rate of \$526.65.*
  3. *Under § 42-1-172 and Murphy v. Owens Corning, 710 S.E.2d 454 (Ct. App*
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2011), medical evidence established a causal connection between Claimant's repetitive activities in regular employment duties and the injury.

4. Under § 42-15-60, Claimant is entitled to:
  - A. Prior related medical care paid for by Defendants, including all treatment done and ordered by Dr. Loudermilk, including the MRI at Anderson Radiology and Claimant's prescriptions.
  - B. Additional medical treatment for his work-related injury with an orthopedist with a specialty to the back of the Defendant's choosing. Claimant is entitled to whatever usual and customary modalities of care and treatment that doctor provides or directs to include causally-related imaging.
5. Under § 42-9-260 and Reg. 67-502 et seq., Claimant is entitled to unpaid TTD for 01/19/17 - 06/28/17.
  - a. **Back-owed TTD calculation.** From 01/19/17 - 06/28/17 is 23 weeks. Multiplying this by Claimant's comp rate of \$526.65 gives compensation of **\$12,112.95.**

#### **ORDER/AWARD**

1. Defendants shall immediately pay for prior related medical care, including all treatment done and ordered by Dr. Loudermilk, including the MRI at Anderson Radiology and Claimant's prescriptions.
2. Defendants shall immediately provide medical treatment for Claimant's work-related injury with an orthopedist with a specialty to the back of the Defendant's choosing, including usual and customary modalities of care and treatment that doctor provides or directs to include causally-related

*imaging.*

3. *Defendants shall pay Claimant unpaid TTD of \$12,112.95, as calculated above, in a check made payable to Claimant and his attorneys Holland & Usry, PA. The attorney fee and costs are subject to Form 61 and Commission approval.*

***ALL OF WHICH IS SO ORDERED.***

**STANDARD OF REVIEW**

In Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50 review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown thereof, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Single Commissioner. After careful consideration and review of all evidence in the instant case, the Appellate Panel, by unanimous vote, hereby issues a full reversal of the Single Commissioner's Findings of Fact and Conclusions of Law. Accordingly, the Appellate Panel hereby issues its own findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Claimant alleges a repetitive trauma injury to his low back and right leg as part of his job duties as a "Switcher" for the Employer-Defendant. (Claimant's Form 50 dated June 6, 2017).
2. Defendants denied the claim.
3. Claimant worked for Benore as a "Switcher" for approximately five months before he alleges he suffered the repetitive trauma injury. (Hr. Tr. p. 85, ll. 4-7). Claimant admitted that he did not know of any other Benore employee that had asserted a similar claim for a repetitive trauma back injury as a result of the "Switcher"

- position. (Hr. Tr. p. 85, ll. 8-25; p. 86, ll. 1-3). However, he contended that he would not know whether any other “Switcher” would have filed such a claim. *Id.*
4. Claimant testified at the hearing that his injury occurred from “getting in and out of the truck so much . . . .” (Hr. Tr. p. 41, ll. 9-13). Specifically, he stated his job duties required him to climb steps, stoop, bend over, and twist his body. (Hr. Tr. pp. 23-25; 41).
  5. Defendants hired ergonomics expert Glen Adams to review Claimant’s job and to issue an ergonomics report. (Def. APA p. 52).
  6. Glen Adams reviewed Claimant’s deposition, his medical records, and visited the job site where Claimant worked as a “Switcher.” (Def. APA p. 52-58). Adams found that, contrary to Claimant’s testimony, Claimant would be able to enter and exit the cab of the truck without having to bend over. (Def. APA. p. 57; Hr. Tr. pp. 77-78). He further found that the job tasks of a “Switcher” do not require lifting that exceeds any recommended safe lifting limits. (Def. APA p. 58). Finally, Adams concluded the job involved two activities with forward bending (connecting the harness and entering and exiting the cab); however, neither of those tasks involved elevated risks for the development of lumbar musculoskeletal disorders. (Def. APA pp. 57-58).
  7. Adams’ report was the only ergonomics report submitted by either party and was admitted into the record without objection. (Hr. Tr. p. 4; Def. APA pp. 52-58).
  8. Claimant did not present any expert ergonomic evidence that the job was sufficiently repetitive.

9. S.C. Code Ann. § 42-1-172(A) of the South Carolina Code defines “repetitive trauma injury” as “an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events.” A “repetitive trauma injury” is considered to arise out of employment only if it is established by medical evidence that there is a direct causal relationship between the condition under which the work is performed and the injury.” S.C. Code Ann. § 42-1-172(D). Moreover, an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury. S.C. Code Ann. § 42-1-172(B).
10. The plain language of S.C. Code Ann. § 42-1-172 indicates there is a two-part analysis a claimant must meet in order to meet his burden of proving a compensable repetitive trauma injury. First, there must be medical evidence establishing a causal connection between the “condition under which the work is performed and the injury.” § 42-1-172(D). Additionally, there is an independent requirement that a Commissioner find by a preponderance of evidence that the claimant’s specific job activities are repetitive. § 42-1-172(B).
11. Here, Claimant has failed to meet his burden under S.C. Code Ann. § 42-1-172. We initially note there was no finding of fact by the Single Commissioner that Claimant’s job activities as a “Switcher” were repetitive as required under S.C. Code Ann. § 42-1-172(B). On the other hand, Defendants presented ergonomics

evidence that the job was not sufficiently repetitive. Although Claimant testified that his job duties as a “Switcher” were repetitive in that they required him to stoop, bend over, and twist his body; we find the unbiased opinion of Glen Adams that Claimant’s job duties were not sufficiently repetitive is entitled to greater weight than Claimant’s testimony on that issue. (Hr. Tr. pp. 23-25; 41; Def. APA pp. 52-58).

12. We likewise find that Dr. Loudermilk’s opinion is entitled to less weight because he appears to have relied on Claimant’s own self-serving statements as to the alleged repetitive job activities of a “Switcher” as well as a description of those job activities from Claimant’s attorney included in questionnaires. (Cl. APA pp. 25-26, 31-32). This is especially troubling because according to the record from Claimant’s initial visit with Dr. Loudermilk, Claimant reported his back and leg pain had “been present since around January 3, 2017”; however, at the hearing Claimant testified he did not tell Dr. Loudermilk “a specific date.” (Cl. APA p. 22; Hr. Tr. p. 65, ll. 19-22). Additionally, there is no evidence Dr. Loudermilk ever reviewed a job description for a “Switcher.” Dr. Loudermilk’s opinions assume the job is sufficiently repetitive. For example, in Claimant’s attorney’s questionnaire to Dr. Loudermilk dated May 30, 2017, he is asked “[d]id the repetitive activities of [Claimant]’s job, including but not limited to going up and down stairs, getting in and out of a truck, opening and closing doors, bending and stooping . . . most probably cause low back pain with right leg radiculopathy?”; however, Dr. Loudermilk is never asked whether those job activities are

- sufficiently repetitive. (Cl. APA p. 25).
13. On the other hand, the ergonomics expert Glen Adams went on site at Benore to observe the job duties of a "Switcher." (Def. APA p. 52). Adams concluded the observed tasks of a switcher operator "do not meet any of the criteria above for elevated risks to the low back/lumbar spine." (Def. APA. P. 56). Specifically, he noted that connecting/disconnecting the trailer harness would only involve 60.5 seconds of forward bending of the spine per hour. (Def. APA pp. 56-57). Next, Adams found Claimant would be able to sit upright in the cab, and the task of entering/exiting the cab would require "minimal forward bending." (Def. APA p. 57). Thus, Dr. Loudermilk's causation opinion assumed that Claimant's job activities were repetitive; however, the only ergonomic evidence in the record found that his activities were not repetitive.
  14. Considering all of these factors, we choose to place less weight on Dr. Loudermilk's opinion in favor of the ergonomics expert, Glen Adams. We, therefore, find Claimant failed to prove his job as a "Switcher" was repetitive as required by S.C. Code Ann. § 42-1-172(B).
  15. Accordingly, neither medical nor ergonomics evidence supports a finding that Claimant's job activities as a "Switcher" were repetitive as required under S.C. Code Ann. § 42-1-172(B).

**CONCLUSIONS OF LAW**

1. S.C. Code Ann. § 42-1-172(A) defines “repetitive trauma injury” as “an injury which is gradual in onset and caused by the cumulative effects of repetitive traumatic events.”
2. S.C. Code Ann. § 42-1-172(B) states an injury is not considered a compensable repetitive trauma injury unless a commissioner makes a specific finding of fact by a preponderance of evidence between the repetitive activities that occurred while the employee was engaged in the regular duties of his employment and the injury.
3. Because neither medical nor ergonomics evidence supports a finding that Claimant’s job activities as a “Switcher” were repetitive as required under S.C. Code Ann. § 42-1-172(B), we hold Claimant failed to meet his burden of proving a compensable repetitive trauma injury.

**ORDER/AWARD**


**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Order of the Single Commissioner is hereby **REVERSED**, and the Findings of Fact and Conclusions of Law set forth above are the final decision of the South Carolina Workers’ Compensation Commission. Accordingly, Claimant failed to carry his requisite burden of proof to show a repetitive trauma injury to his low back and/or right leg as part of his job duties as a “Switcher.” Therefore, any and all claims for compensation, both temporary and permanent, as well as medical benefits are hereby **DENIED**.

**IT IS SO ORDERED.**

  
Commissioner Aisha Taylor  
For the Appellate Panel

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WE CONCUR



Commissioner Avery B. Willerson, Jr.



Commissioner R. Michael Campbell, II

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 26, 2018***