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

W.C.C. FILE NO: 1607281

Willie Carroll Powell

EMPLOYEE,
CLAIMANT/RESPONDENT

VS.

Johnsonville Mechanical Contractors, Inc.

EMPLOYER,

AND

Bridgefield Casualty Insurance Company
c/o Summit

CARRIER,
DEFENDANTS/APPELLANTS,

Appellate Panel Review held in Columbia, South
Carolina, on September 18, 2018 per notices timely
And properly served upon all parties of interest.

Appellate Panel Decision and Order Filed:

November 30, 2018

RECEIVED
DEC 06 2018
SC Court of Appeals

APPEARANCES:

Claimant/Appellant represented by Thomas W. Greene, Esquire, of
Greene Law Firm, of Johns Island, South Carolina

Defendants/Respondents represented by J. Brandon Hylton, Esquire, of
McAngus Goudelock and Courie, of Florence, South Carolina

STATEMENT OF THE CASE

The parties were heard by Single Commissioner Aisha Taylor at a hearing on November 30, 2017 in Hartsville, South Carolina. As a result of that hearing, the Single Commissioner issued an order filed May 22, 2017 from which the Claimant appealed.

Within the statutory period, the Claimant filed an Application for Review in this case setting their assignments of alleged error. Copies of the Application for Review were properly served upon all the parties.

In a Form 30, Request for Commission Review, the Claimant assert nine errors, as follows:

1. The Hearing Commissioner Erred in failing to find that Claimant injured his back, his right lower extremity, and his right foot and toes. The error being:

The substantial evidence in the recor establishes that in addition to his right leg the Claimant suffered injuries to his back and to his right foot and toes and tha Claimant's injury to his right leg has affected his right foot and toes which are scheduled members.

2. The Hearing Commissioner erred in failing to find that Claimant injured his back, his right lower extremity and his right food and toes. The error being:

Because the insurance adjuster, Kiema Lewis, refuse to approve diagnostic procedures and medical treatment ordered by authorized physicians any doubt that Claimant injured his back as well as his right leg, foot and toes should be resolved in favor of the Claimant.

3. The Hearing Commissioner erred in failing to designate neurosurgeon, William Naso, M.D., as Claimant's authorized treating physician. The error being:

The pattern of denial of any diagnostic procedures or treatment relating to Claimant's back and right leg by the insurance adjuster, Kiema Lewis, justified granting Claimant's request that Dr. Naso be designated as his authorized treating physician.

4. The Hearing Commissioner erred in failing to find that the workers' compensation insurance carrier upon designation of a physician as an "authorized treating physician" has a duty to approve medical recommendations made unless good cause shown for refusal. The error being:

A workers' compensation insurance carrier chooses and designates authorized treating physicians or physicians and, therefore, has a duty to act in good faith and with good cause before refusing treatment recommendations by such physicians

5. The Hearing Commissioner erred in failing to find that the insurance adjuster in this case, Kiema Lewis, acted without good cause in refusing to authorize diagnostic procedures and medical treatment recommended by authorized physicians and other physicians. The error being:

She denied, without good cause or excuse medical treatment and diagnostic procedures needed by the Claimant in order to affect a cure or give relief for his injuries without good cause and in bad faith.

6. The Hearing Commissioner erred in finding as a fact that Dr. Williams Naso's opinion concerning causation of Claimant's back injury was not consistent with a preponderance of the evidence. The error being:

Dr. Naso's opinion on causation of Claimant's back injury is fully supported by a preponderance of the evidence.

7. The Hearing Commissioner erred in finding as a fact that Dr. Naso's opinion with reference to Claimant's MRI was "relatively unremarkable." The error being:

Dr. Naso's opinion was that in addition, the MRI showed a mild disc protrusion to the right L5-S1 and that he recommended an L5-S1 epidural injection.

8. The Hearing Commissioner erred in finding that (Dr. Johnson's) Dr. Steve Poletti's IME, "was out of proportion with the preponderance of the medical evidence as a whole". The error of being:

Dr. Poletti's IME conclusions and opinion are consistent with a preponderance of the evidence which establishes the Claimant injured his back as well as his right leg, right foot and toes.

9. The Hearing Commissioner erred in not requiring the Defendants to pay for Claimant's MRI, Dr. Poletti's, and Dr. Naso's IME. The error being:

The costs were incurred by Claimant because the adjuster, Kiema Lewis, refused, without good cause or excuse, to authorize treatment to diagnose and treat Claimant's injuries.

Pursuant to the *South Carolina Code of Laws Annotated* Section 42-17-50, we, the Appellate Panel have reviewed the Single Commissioner's Decision and Order and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the Briefs of the Appellant and Respondents, as well as arguments held before this Appellate Panel on September 18, 2018.

After careful review, this Appellate Panel of the South Carolina Workers' Compensation Commission has determined that the Single Commissioner's Findings of Fact and Conclusions of

Law are correct. As a result, the Appellate Panel adopts and issues the following Findings of Fact, Conclusions of Law, and Order, from the ones issued by the Single Commissioner.

FINDINGS OF FACTS

1. Claimant sustained an admitted compensable injury to his right leg within the course and scope of his employment.
 2. Claimant initially reported his injury as follows: "He had his right leg kind of wrapped around a pipe laying on his back, and when he went to pull up he felt something pop in the back of his right calf," (Claimant's APA, page 1).
 3. On September 9, 2016, Dr. Daniel DeCamps provided a medical statement which stated: "I can state with a reasonable degree of medical certainty that the patient did suffer an injury to his right lower extremity and from his description of how it occurred that his current symptoms in that area were a result of his injury," (Claimant's APA, pages 5-6).
 4. Claimant later began to complain of nerve pain that ran from his right leg into his back and back down into his right foot. At one point, Claimant complained of pain in both legs and both hands, including loss of grip strength (Claimant's APA, page 13).
 5. Claimant received diagnostic evaluations including an EMG, which did not record accurate results due to technical limitations regarding Claimant's reaction to pain (Claimant's APA, page 15). Claimant also had an MRI of his lumbar spine, which showed some degenerative changes at L5-S1.
 6. On March 1, 2017, Claimant underwent an Independent Medical Evaluation with Dr. Denton who diagnosed Claimant with a neurological injury "most likely to the peroneal nerve or at the tibial nerve peroneal nerve injection." Dr. Denton ruled out a separate knee injury and opined Claimant should retry the EMG and Claimant's future "workup
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should be continued with either neurology or possibly neurosurgery for peripheral nerve injury,” (Claimant’s APA, page 23).

7. On August 9, 2017, Claimant returned to Dr. Denton and still had not yet seen a neurologist or neurosurgeon (Claimant’s APA, page 24.)
 8. On August 27, Claimant was referred to Dr. Naso for evaluation and treatment with a diagnosis of “peroneal nerve palsy with foot drop,” (Claimant’s APA, page 25).
 9. Claimant saw Dr. Naso on October 14, 2017, who opined Claimant’s lumbar MRI was “relatively unremarkable.” Dr. Naso recommended a course of physical therapy and an L5/S1 ESI (Claimant’s APA, page 51).
 10. On November 14, 2017, Dr. Naso provided a medical statement that conditioned his medical opinion on facts that we find are not supported by a preponderance of the medical evidence. Specifically, Dr. Naso stated, “If it is true that the patient developed at the time of his injury or shortly thereafter pain that began in the low back radiating down the right leg into the foot...” (Claimant’s APA, page 52-A). We find this hypothetical is not consistent with the preponderance of the medical evidence including Claimant’s initial reporting of the injury.
 11. We find the Claimant’s right leg injury is limited to that of the peroneal nerve in the right leg. This finding is based upon the preponderance of the medical evidence including the deposition testimony of Dr. Denton which we found to be persuasive. We did review Dr. Johnson’s IME report dated October 20, 2016 that also causally related Claimant’s alleged back and right knee injury; however, we find it is out of proportion with the preponderance of the medical evidence as a whole and this, we did not give it great weight.
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12. Claimant is not at maximum medical improvement for his right leg/peroneal nerve injury and is entitled to additional medical treatment at the direction of Defendants pursuant to S.C. Code Section 42-15-60.
13. We find Claimant failed to meet his burden of proving a separate or independent injury to his back or right knee as a result of this injury. This finding is supported by a preponderance of the evidence as a whole.
14. Claimant is entitled to temporary total or temporary partial disability benefits for all lost time from work due to his right leg/peroneal nerve injury as documented by the authorized treating physicians, if any.
15. No hearing costs are assessed.

CONCLUSIONS OF LAW

1. Section 42-1-160 of the South Carolina Code of Laws (1976, as amended) is applicable in defining "injury and personal injury."
2. Section 42-9-35 of the South Carolina Code of Laws (1976, as amended) is applicable in determining evidence of a preexisting condition.
3. Section 42-15-60 of the South Carolina Code of Law (1976, as amended) is applicable in determining the period of time within which medical treatment and supply shall be furnished.
4. Section 42-17-40 of the South Carolina Code of Laws (1976, as amended) is applicable in governing the conduct of Hearings and rendering of awards.

ORDER

IT IS ORDERED that the Claimant sustained an injury only to the peroneal nerve in his

right lower extremity as a result of a compensable work related accident on May 3, 2016.

IT IS FURTHER ORDERED that Claimant failed to meet his burden of proof that he sustained a compensable injury to his back and right knee as a result of the work related accident of May 3, 2016.

IT IS FURTHER ORDERED that Claimant is entitled to an evaluation of his peroneal nerve in his right leg to be conducted by a physician of the Defendant's choosing pursuant to Section 42-15-60 of the South Carolina Workers' Compensation Act.

No hearing costs are assessed in this case.

AND IT IS SO ORDERED.

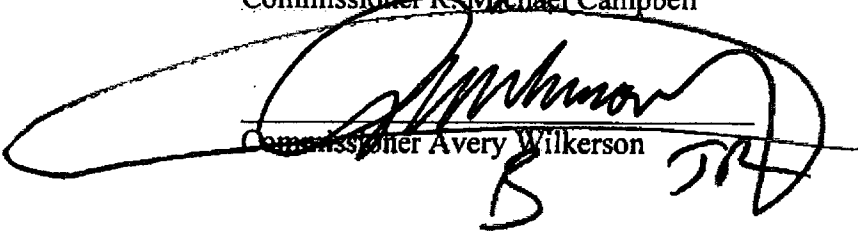


Commissioner T. Scott Beck
For the Appellate Panel

WE CONCUR:



Commissioner R. Michael Campbell



Commissioner Avery Wilkerson

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 November 30, 2018