

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKER'S COMPENSATION
COMMISSION,
APPELLATE PANEL

APPELLATE CASE NO.: 2018-002005
WCC FILE NO: 1707458

Scotty Steele,

Appellant,

v.

Canal Wood, LLC, Wallace
Logging and the Hartford
Insurance Company,

And

The SC Worker's
Compensation Uninsured
Employer's Fund,

Respondents.

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SC Court of Appeals

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. **THE COMMISSION APPELLANT PANEL MAJORITY ERRED IN FINDING THAT THE CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT 8 WEEKS AFTER THE JUNE 9, 2017 DOCTOR VISIT BASED ON A SINGLE NOTE INDICATING AN “ANTICIPATED” AND “APPROXIMATE” DATE OF MAXIMUM MEDICAL IMPROVEMENT.**
- II. **THE DISSENT OF COMMISSIONER BARDEN IS CORRECT THAT THERE IS NO SUBSTANTIAL MEDICAL EVIDENCE IN THE RECORD THAT THE APPELLANT EVER REACHED MAXIMUM MEDICAL IMPROVEMENT AND COMMISSIONER BECK’S ORDER SHOULD BE UPHELD.**

STATEMENT OF FACTS

On June 3, 2017, Timothy Scott Steele was loading logs onto a truck in the course and scope of his employment for Wallace Logging Company, LLC. (HT p. 13, ll. 13-15). While attaching additional logs to the cable loader, his hand was caught by the middle and ring finger and he was forcibly lifted into the air until he struck the boom of the lift, at which time his middle finger was ripped off at the first knuckle and his ring finger was split open. (HT p. 14, ll. 13-25). He was taken by ambulance to the emergency room, where his wounds were treated and he was released to follow up with an orthopedic. (HT p. 15, ll. 14-25). He visited an orthopedic doctor on June 9, 2017. The doctor found that he had suffered a substantial injury to his right middle finger, with bone loss. The doctor indicated that he should be followed in his office for wound evolvment and that he could also follow up with any changes. (Claimant APA #3, p. 53). At the end of the visit, the doctor filled out a work excuse form that indicated that Mr. Steele was “anticipated” to be able to return to work in “~6-8 wks.” (Claimant APA #3, p. 59). Mr. Steele received no follow up treatment, no further debridement of the skin of the finger and no treatment whatsoever for his diminishing grip strength and shoulder weakness and pain following the accident. He filed for hearing on June 9, 2017, six

days after the injury. (Form 50). A hearing was held on December 19, 2017, several months after the accident. (Single Commissioner Order, p. 1). At the hearing, after hearing testimony from the Claimant that he was still having problems with the hand as well as the elbow and shoulder of the same arm, the single Commissioner ruled that Mr. Steele had suffered a compensable injury, that Wallace Logging company was an employer subject to the act, that Mr. Steele was not a statutory employee of Canal Wood, LLC, and that the return to work note was not dispositive of a full release to duty. (Single Commissioner Order, pp. 6-7). The single Commissioner Ordered Wallace Logging, and/or the SC Uninsured Fund to pay Mr. Steele back Temporary Total disability payments from the date of injury to present and continuing and to pick up the medical treatment Mr. Steele still needed until such time as he reached MMI. (Single Commissioner Order p. 8). The ruling was reduced to an Order on April 18, 2018 (Single Commissioner Order p. 1) and was appealed by the SC Uninsured Fund to the full Commission. The full Commission panel ruled, 2-1 over Commissioner Barden's dissent, that Mr. Steele was only entitled to 8 weeks of TTD based on the note by the treating physician. (Full Commission Order, p. 6). Commissioner Barden, dissenting, agreed with the Claimant that there was no medical evidence that the claimant was at MMI eight weeks after the injury and that the majority's ruling unfairly penalized the Claimant for being unable to seek treatment on his own. (Full Commission-Order, p. 8).

STANDARD OF REVIEW

"An appellate court may reverse a Commission decision when that decision is unsupported by substantial evidence." *Grant v. Grant Textiles*, 372 S.C. 196, 201, 641 S.E.2d 869, 871 (2007).

ARGUMENT

- 1. THE COMMISSION APPELLANT PANEL MAJORITY ERRED IN FINDING THAT THE CLAIMANT REACHED MAXIMUM MEDICAL IMPROVEMENT 8**

WEEKS AFTER THE JUNE 9, 2017 DOCTOR VISIT BASED ON A SINGLE NOTE INDICATING AN “ANTICIPATED” AND “APPROXIMATE” DATE OF MAXIMUM MEDICAL IMPROVEMENT.

The full Commission should be overturned and the Single Commissioner’s decision reinstated because the full Commission’s Order was not supported by substantial evidence. *Clemmons v. Lowe’s Home Centers, Inc.-Harbison, Employer and Sedgwick Claims Management Services, Inc., Carrier*, 420 S.C. 282, 803, S.E.2d 268 (2017). There was no evidence presented at the hearing or during the appeals process that indicated Mr. Steele was at maximum medical improvement eight weeks following the accident. The doctor’s note writing Mr. Steele out of work is not only not dispositive of his ability to return to work, it is speculative by design, using words like “anticipated” and the symbol for approximately to indicate that the doctor is unsure. Further, the doctor indicated in his treatment notes that he would need to follow the evolution of the injury and that Mr. Steele might need further debridement. At the time of the evaluation, the doctor noted a loss of range of motion in the hand that he attributed to pain, but did not do so definitively. The doctor’s notes indicate that his diagnosis, and even his approximation of when Mr. Steele would be able to return to work, were based on his intention to continue following Mr. Steele during his period of recovery. The full Commission erred in overturning the decision of the single Commissioner.

Further, despite the fact that the full Commission did not explicitly rule that the claimant was at maximum medical improvement after eight weeks, the decision to justify cutting off his benefits at that time would have required a finding that he was at maximum medical improvement. Under S.C. Code Ann. 42-9-260 *et seq.*, addressing the termination of temporary total disability benefits, only section (D) would be a proper standard for termination in the present case. The Commission panel therefore had to have found the claimant at MMI to properly terminate benefits after eight weeks of

compensation.

Finally, the full Commission panel neglected issue a finding on the issue of permanence, which would be proper following a period of disability.

2. THE DISSENT OF COMMISSIONER BARDEN IS CORRECT THAT THERE IS NO SUBSTANTIAL MEDICAL EVIDENCE IN THE RECORD THAT THE APPELLANT EVER REACHED MAXIMUM MEDICAL IMPROVEMENT AND COMMISSIONER BECK'S ORDER SHOULD BE UPHELD.

Commissioner Barden's dissent, while short, goes straight to the heart of the case. "The last medical indicated that the Claimant had not reached maximum medical improvement. The claimant has not been provided any further treatment. Therefore, I decline to amend Commissioner Beck's Order, which would be penalizing claimant." (Full Commission Order, p. 8). The only testimony in the record indicates that Mr. Steele was still having problems at the time of the hearing. There is no countervailing testimony and, in fact, no evidence at all to counter the evidence presented by the claimant. Claimant immediately sought medical treatment after the accident. He followed up with an orthopedic as directed. No further treatment was authorized. Normally, after being written out of work, Mr. Steele would have begun receiving temporary total disability payments but Wallace Logging was uninsured. Realizing he would not be getting any form of income during his period of total disability, he filed for a hearing almost immediately, naming both the putative statutory employer and the SC Worker's Compensation Uninsured Employer's Fund as defendants. Through no fault of his own, he waited for a hearing until December of 2017. At the hearing, he was found to be credible by the single Commissioner. The single Commissioner's Order awarding Claimant back TTD and treatment was issued in April and immediately appealed. At no time has he ever received

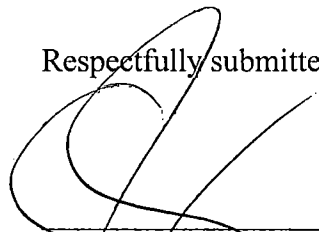
further treatment for his injuries.

To find retroactively that the speculative note regarding an anticipated and approximated future return to work was dispositive of maximum medical improvement unfairly penalizes the claimant and leaves him without further treatment for his injuries.

CONCLUSION

The Order of the single Commissioner should be restored in its entirety and the SC Worker's Compensation Uninsured Employer's Fund should be Ordered to pay TTD from the date of injury to present and continuing and provide treatment for all of Mr. Steele's injuries until such time as he reaches maximum medical improvement.

Respectfully submitted,



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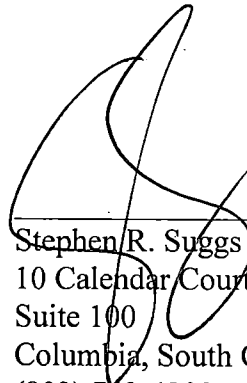
I certify that I served a copy of the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal upon the South Carolina Court of Appeals and Counsel for Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed at their address of record, namely:

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February 19, 2019



A handwritten signature in black ink, appearing to read "Stephen R. Suggs", is written over a horizontal line. The signature is stylized and loops back to cross itself.

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