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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Honorable Melody James, Gene McCaskill and Susan Barden

W.C.C. File No. 1119380

Everett Davis, Employee, Claimant,.....Appellant,

v.

Southlake Transport, Inc., Employer, and
Lumberman's Underwriting Alliance, Carrier, Defendants, ...Respondents.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL iv

STATEMENT OF THE CASE 1

STANDARD OF REVIEW 6

ARGUMENT

I. The Commission properly found that Claimant's current left knee complaints and problems are not causally related to his work injury 7

II. The Commission properly found that Claimant did not meet his burden of proving that his current need for medical attention is causally related to his work injury 9

III. The Commission Decision Correctly held that Claimant is at Maximum Medical Improvement for his left knee and his lower back 15

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

Airco, Inc. v. Hollington,
269 S.C. 152, 236 S.E.2d 804 (1977) 15

Anderson v. Baptist Med. Ctr.,
343 S.C. 47, 541 S.E.2d 526 (2001) 7, 8, 11

Broughton v. South of the Border,
336 S.C. 488, 520 S.E.2d 634 (Ct. App. 1999) 6, 9

Clade v. Champion Labs.,
330 S.C. 8, 496 S.E.2d 856 (1998) 7

Curiel v. Environmental Mgmt. Servs.,
376 S.C. 23, 655 S.E.2d 482 (2007) 15

Ervin v. Richland Mem'l Hosp.,
386 S.C. 245, 687 S.E.2d 337 (Ct. App. 2009) 10

Gadson v. Mikasa Corp.,
368 S.C. 214, 628 S.E.2d 262 (Ct. App. 2006) 15

Lark v. Bi-Lo, Inc.,
276 S.C. 130, 276 S.E.2d 304 (1981) 6

Lorick v. South Carolina Elec. & Gas Co.,
245 S.C. 513, 141 S.E.2d 662 (1965) 7

Martin v. Rapid Plumbing,
369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006) 16

McGuffin v. Schlumberger-Sangamo,
307 S.C. 184, 414 S.E.2d 162 (1992) 6, 9

Munn v. Nucor Steel,
336 S.C. 28, 518 S.E.2d 289 (1999) 10, 16

Murphy v. Owens Corning,
393 S.C. 77, 710 S.E.2d 454 (Ct. App. 2011) ..... *passim*

Murphy v. Owens Corning,
2008 SC Wrk. Comp. LEXIS 998, W.C.C. File No. 0716612 (Feb. 25, 2009) 11

Nettles v. Spartanburg Sch. Dist. # 7,
341 S.C. 580, 535 S.E.2d 146 (Ct. App. 2000) 15

Outlaw v. Johnson Serv. Co.,
254 S.C. 486, 176 S.E.2d 152 (1970) 12

Owens v. Herndon,
252 S.C. 166, 165 S.E.2d 696 (1969) 8

Owings v. Anderson Cnty Sheriff's Dept.,
315 S.C. 297, 433 S.E.2d 869 (1993) 8

Rogers v. Kunja Knitting Mills, Inc.,
312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994) 6

Scott v. Havnear Motor Co.,
226 S.C. 580, 86 S.E.2d 475 (1955) 7, 11

Sharpe v. Case Prod., Inc.,
336 S.C. 154, 519 S.E.2d 102 (1999) 7, 9, 14

Shealy v. Aiken Cnty,
341 S.C. 448, 535 S.E.2d 438 (2000) 6

STATUTES

S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2012) 6

S.C. Code Ann. § 42-1-120 ..... 12, 13

S.C. Code Ann. § 42-9-35 ..... 8, 14

S.C. Code Ann. § 42-9-35(B) 12

S.C. Code Ann. § 42-15-60 ..... 10, 11, 16

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE COMMISSION PROPERLY FOUND THAT CLAIMANT'S CURRENT LEFT KNEE COMPLAINTS AND PROBLEMS ARE NOT CAUSALLY RELATED TO HIS WORK INJURY?

II. WHETHER THE COMMISSION PROPERLY FOUND THAT CLAIMANT DID NOT MEET HIS BURDEN OF PROVING THAT HIS CURRENT NEED FOR MEDICAL ATTENTION IS CAUSALLY RELATED TO HIS WORK INJURY?

III. WHETHER THE COMMISSION DECISION CORRECTLY HELD THAT CLAIMANT IS AT MAXIMUM MEDICAL IMPROVEMENT FOR HIS LEFT KNEE AND HIS LOWER BACK?

STATEMENT OF THE CASE

Claimant Everett Davis was involved in a motor vehicle accident ("MVA") on November 28, 2011 when the tractor trailer he was driving impacted a passenger car attempting to pass in front of the truck. (R. 50-52). At the time of the MVA, Claimant was employed by Southlake Transport, Inc.[1] Claimant testified that he did not request medical treatment for either his left knee or back following the accident. (R. 87, line 18 – 88, line 9). In fact, he continued driving about three hours to his destination and the following day drove from Philadelphia to Florida, passing through South Carolina without stopping for any medical care. (R. 88, line 10 – 89, line 25). In fact, Claimant continued performing his regular job and did not seek any medical attention for his knee or back until he saw Dr. Compton on December 27, 2011 as part of his annual physical, which was already scheduled. (R. 90, line 8 – 91, line 6).

Prior to this accident, on September 7, 2011, Claimant had seen Dr. Compton and complained about "occasional pains in left knee from arthroscopy about 15 years ago ..." Dr. Compton also recorded "old deformities noted left knee but right is benign." (R. 39).

Following the work-related MVA, Claimant missed no time from work because of his left knee or his lower back, consistently working 11 hours per day and driving, on average, 2,900 miles a week. (R. 91, line 19 – 92, line 14) (R. 103, line 5 – 104, line 13). Claimant admitted that he did not complain to any of his supervisors about any ongoing left knee pain or lower back pain. (R. 92, lines 15-18). In fact, Carrie Glenn, Southlake Transport's Safety Director, testified that after the accident she asked Claimant whether he had any injuries, which he denied. The following January, she saw him rubbing his knee and, when she asked about it, he said, "Well, the doctor said I might have a little bit of arthritis in it." Southlake Transport had no idea Claimant was seeing a doctor for any work-related problems. (R. 104, line 14 – 105, line 3).

[1] Southlake Transport and its workers' compensation carrier are referred to herein jointly as Respondents.

Ms. Glenn explained that, in addition to driving, Claimant's normal job duties included opening the swing doors on the trailer, rolling down landing gear and switching out trailers. (R. 104, lines 1-7).

Claimant filed a Form 50, alleging work-related injuries to his lower back and left knee as a result of the November 28, 2011 MVA. Respondents initially denied the claim, (R. 37), and later entered into a Consent Order agreeing to provide causally-related medical treatment for Claimant's left knee and lower back with Dr. Robert DaSilva and Dr. Ivan E. LaMotta. (R. 47-49). Under the Consent Order, Respondents accepted the claim and began providing medical treatment to Claimant's lower back and left knee.

Dr. DaSilva performed an Independent Medical Evaluation of Claimant's left knee on May 31, 2012. (R. 146, lines 19-23) (R. 40-42). Dr. DaSilva concluded that Claimant suffered from "**[s]evere arthritis left knee pre-existing not related to injury**," and that he "[w]ould not recommend removal of loose body because main problem is arthritis. **Recommend knee replacement. Again unrelated and pre-existing to injury**." (R. 41) (emphasis added).

Claimant filed another Form 50, seeking additional medical treatment for his lower back and left knee, including a total knee replacement. Respondents filed a Form 51, denying that Claimant was entitled to any further medical treatment for his left knee based on Dr. DaSilva's medical opinion that Claimant required no further causally-related medical care to the left knee. Respondents continued to provide treatment to Claimant's lower back pending the results of an Independent Medical Evaluation by Dr. LaMotta. (R. 38).

Dr. LaMotta's assessment was that Claimant "has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. I agree with Dr. DaSilva in that both of these diagnoses are pre-existing and **not related to his motor vehicle collision** sustained December [sic] 2011.

Therefore, **the diagnoses of left knee pain and low back pain are not causally related to his accident.**" (R. 46) (emphasis added). Dr. LaMotta's medical notes reveal that the history of recent lower back pain was provided by the Claimant: "There is no documentation in the medical record provided to me of any complaints of low back pain after the accident. However, now the patient states that since the accident he started having mild back pain in the low back ... and has gotten worse during the past 2 months." (R. 44). Both Drs. DaSilva and LaMotta concluded that any further medical treatment to Claimant's left knee and lower back was not causally related to his MVA. (R. 40-46).

At his deposition, Dr. DaSilva stated to a reasonable degree of medical certainty that, although Claimant's severe arthritis was at the point that he was experiencing severe pain, his current condition was not related to his work accident. (R. 165, line 15 – 166, line 19). Furthermore, Dr. DaSilva was shown the medical report from September 7, 2011, where Claimant complained of left knee pain to his physician, and concluded to a reasonable degree of medical certainty that Claimant "does not require a knee replacement surgery because of any type of aggravation caused by [his work-related] accident." (R. 167, line 6 – 168, line 4). Dr. DaSilva confirmed that the main consideration underlying his recommendation for a knee replacement is that Claimant has "an end-stage knee ... That is what's gonna make me recommend a knee replacement. If he presented with mild arthritis or even moderate arthritis and had the same accident and the same amount of pain, I would not be recommending a knee replacement to him." (R. 172, lines 16-25).

Although Claimant's counsel invited Dr. DaSilva to make the connection between Claimant's self-reported increased pain in his left knee and the need for a knee replacement, Dr. DaSilva just couldn't "make that stretch," (R. 174, line 5 – 175, line 1), and reiterated his

conclusion, that Claimant's work-related accident "**did not exacerbate his preexisting arthritis to the extent to where he now requires a total knee replacement because of the impact of the work accident.**" (R. 176, line 15 – 177, line 10) (emphasis added). Dr. DaSilva affirmed that the knee replacement would not be treating anything that occurred as a result of the work related accident. (R. 178, lines 7-10).

All of Dr. DaSilva's testimony regarding whether Claimant experienced increased pain following his work accident was based on Claimant's history to him – he made no objective finding that there was any physical change that would precipitate an increase in pain. *See* (R. 152, lines 2-6) (R. 158, line 2 – 159, line 7) (R. 160, line 19 – 161, line 1). Furthermore, Dr. DaSilva noted that Claimant was experiencing chronic, or long term, pain in his left knee. (R. 164, lines 17-25) (R. 41). As for the positive pain on the median and lateral joint line, Dr. DaSilva clarified that he did not know if that pain existed prior to Claimant's work-related accident, but he would assume it did, given Claimant's severe arthritis. (R. 151, lines 11-23). All of the other treatment options Dr. DaSilva laid out for Claimant were to treat his severe arthritis, not any injury that was related to his employment. (R. 154, line 3 – 155, line 9).

Single Commissioner Derrick L. Williams heard the parties on January 7, 2013. Claimant was 50 years old at the time of the hearing before Commissioner Williams. (R. 76, lines 21-24). Although Claimant first testified that he had had no problems with his left knee prior to the accident, (R. 94, lines 11-22), once he was confronted with the medical records from his September 7, 2011 visit with Dr. Compton, Claimant admitted he had been having occasional pain in his left knee. (R. 95, line 9-24). Although Claimant testified that he had admitted at his deposition to "some pain every ... now and then," he hedged when confronted with the actual transcript of his deposition showing he had denied any pain in his left knee prior to the MVA.

(R. 96, line 13 – 97, line 19). Claimant first argued that his treatment with Dr. Compton was after the MVA, and then asserted that he did not go to see Dr. Compton because of problems with his knee and did not complain to Dr. Compton about his knee. (R. 97, line 20 – 98, line 21). Despite testifying about how painful both his left knee and lower back were, (R. 82, line 13 – 84, line 13), Claimant admitted that, at the time of the hearing before Commissioner Williams, he was not taking any pain medications for either alleged injury. (R. 84, line 25 – 85, line 1) (R. 98, line 22 – 99, line 4).[2]

Commissioner Williams issued his Decision and Order on November 21, 2012, finding that Claimant suffered a job-related injury to his left knee and back on November 28, 2011. However, Commissioner Williams also found that, based on the medical reports and testimony of Drs. DaSilva and LaMotta, Claimant's current complaints regarding his left knee "are not causally related to his work injury." (Decision & Order of the Single Commissioner, January 29, 2013, R. 33) ("Single Commissioner Decision"). As a result, Commissioner Williams found that Claimant had failed to meet his burden of proving that "his current need for additional medical treatment to his left knee, specifically a left knee replacement, is causally related to [his work-related] accident." (Single Commissioner Decision, R. 34-35). In addition, Claimant was found to be "at maximum medical improvement for his left knee and his back," based on the medical evidence in the record. (Id.).

Claimant timely appealed to the Full Commission. An Appellate Panel of the Full Commission heard the parties on June 18, 2013 and issued its decision on August 12, 2013, affirming the Single Commission Decision in its entirety. (Decision & Order of the Appellate Panel of the Full Commission, filed August 12, 2013, R. 17-19) ("Commission Decision").

[2] Although Claimant testified that he took Advil and Tylenol for his knee and that, if his doctors had prescribed pain medication for his knee he would have taken it, (R. 100, lines 13-22), the fact is, by his own admission, none of his treating physicians were prescribing pain medication for either his left knee or his lower back.

Claimant timely appealed to this Court.

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the substantial evidence rule of the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2012). Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court should affirm the decision of the Full Commission unless it is clearly erroneous in view of the substantial evidence of the whole record. Lark, 276 S.C. at 136, 276 S.E.2d at 307. The reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by errors of law. S.C. Code Ann. § 1-23-380(A)(5). The Administrative Procedures Act "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." Rogers v. Kunja Knitting Mills, Inc., 312 S.C. 377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994).

Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the same conclusion the administrative agency reached in order to justify its action. Shealy v. Aiken Cnty, 341 S.C. 448, 455, 535 S.E.2d 438, 442 (2000). The findings of the Full Commission are presumed correct and can be set aside only if unsupported by substantial evidence or based on an error of law. McGuffin v. Schlumberger-Sangamo, 307 S.C. 184, 186, 414 S.E.2d 162, 163 (1992).

It is not within an appellate court's purview to reverse findings of the Full Commission which are supported by substantial evidence. Broughton v. South of the Border, 336 S.C. 488, 496, 520 S.E.2d 634, 637 (Ct. App. 1999). Where there is a conflict in the evidence, either by

different witnesses or the testimony of the same witness, the factual findings of the Commission are conclusive. Anderson v. Baptist Med. Ctr., 343 S.C. 487, 492-93, 541 S.E2d 526, 528 (2001); Scott v. Havnear Motor Co., 226 S.C. 580, 584, 86 S.E.2d 475, 476 (1955) (where expert medical testimony is in conflict, in whole or in part, the findings of fact by the Commission are conclusive). "The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence." Sharpe v. Case Prod., Inc., 336 S.C. 154, 160, 519 S.E.2d 102, 105 (1999). Finally, appellate review of "the Commission's factual findings of whether a claimant is entitled to compensation for aggravation of a pre-existing condition [is] under the substantial evidence standard of review." Murphy v. Owens Corning, 393 S.C. 77, 86, 710 S.E.2d 454, 458 (Ct. App. 2011).

ARGUMENT

I. The Commission properly found that Claimant's current left knee complaints and problems are not causally related to his work injury.

As he does before this Court, Claimant argued before the Commission that his current problems with his left knee are the result of an aggravation of his underlying arthritic condition. (Commission Decision, R. 4) (R. 55, lines 9-13). However, the Commission properly found that Claimant failed to meet his burden of proving the problems he is experiencing now are causally related to his work-related accident.

The claimant bears the burden "of proving facts that will bring the injury within the workers' compensation law, and such award must not be based on surmise, conjecture or speculation." Clade v. Champion Labs., 330 S.C. 8, 11, 496 S.E.2d 856, 858 (1998); Lorick v. South Carolina Elec. & Gas Co., 245 S.C. 513, 517, 141 S.E.2d 662, 664 (1965). "The right of a claimant to compensation for aggravation of a pre-existing condition arises only where there is a dormant condition which has produced no disability but which becomes disabling by reason of

the aggravating injury." Anderson, 343 S.C. at 493, 541 S.E2d at 528; *see also* S.C. Code Ann. § 42-9-35.[3]

Dr. DaSilva's medical notes state that Claimant suffered from "**[s]evere arthritis left knee pre-existing not related to injury**," and that he "[w]ould not recommend removal of loose body because main problem is arthritis. **Recommend knee replacement**. Again **unrelated and pre-existing to injury**." (R. 41) (emphasis added). Dr. LaMotta's medical notes state that Claimant "has arthritis affecting the lumbar spine and severe arthritis affecting the left knee. I agree with Dr. DaSilva in that both of these diagnoses are pre-existing and **not related to his motor vehicle collision** sustained December [sic] 2011. Therefore, **the diagnoses of left knee pain and low back pain are not causally related to his accident.**" (R. 46) (emphasis added). Dr. DaSilva consistently testified to a reasonable degree of medical certainty that Claimant was at the point with his severe arthritis that he was experiencing severe pain but that his current condition was not related to his work accident. (R. 165, line 15 – 166, line 19) (R. 167, line 6 – 168, line 4) (R. 176, line 15 – 177, line 10). Dr. LaMotta concurred. (R. 46). Thus, there is credible, substantial evidence in the record supporting the Commission's finding that Claimant's current "complaints of pain in his left knee are not causally related to his work injury." (Commission Decision, R. 17-18).

Regardless of the fact that Claimant points to evidence in the record that he asserts supports his position, (App. Br. pp. 5-6), the Commission's factual determination regarding a lack of causal relationship is reviewed under the substantial evidence standard. Owings v. Anderson Cnty Sheriff's Dept., 315 S.C. 297, 299, 433 S.E.2d 869, 870 (1993). In Owings, the claimant argued that physical training conducted by the sheriff's office aggravated his pre-

[3] The "rights and liabilities of employee and employer under the Workmen's Compensation Act are purely statutory and are to be judged by the terms of the Act." Owens v. Herndon, 252 S.C. 166, 168, 165 S.E.2d 696, 698 (1969).

existing atherosclerotic disease. One expert opined that it did and another expert concluded that it did not. The Commission ruled that the claimant's cardiac problems were not causally related to the physical training. The South Carolina Supreme Court held that, "[w]hether a claimant's condition was accelerated or aggravated by an accidental injury is a factual matter for the Commission and its finding of fact based on conflicting evidence may not be set aside." 315 S.C. at 299-300, 433 S.E.2d at 870. The same standard applies here.

Note that the standard of review on appeal is not, as Claimant suggests, whether "reasonable minds" might reach a different conclusion than the Commission reached, (App. Br. p. 6), but whether the Commission Decision is supported by substantial evidence in the record. *See, e.g.*, McGuffin, 307 S.C. at 186, 414 S.E.2d at 163; Broughton, 336 S.C. at 496, 520 S.E.2d at 637. Specifically, appellate review of the Commission's determination regarding "whether a claimant is entitled to compensation for aggravation of a pre-existing condition [is] under the substantial evidence standard of review." Murphy, 393 S.C. at 86, 710 S.E.2d at 458. Under the substantial evidence standard of review, "the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Sharpe, 336 S.C. at 154, 519 S.E.2d at 105.

Because the Commission's findings that Claimant failed to meet his burden of proving his current complaints and problems with his left knee are supported by substantial evidence, this Court should uphold the Commission Decision.

II. The Commission properly found that Claimant did not meet his burden of proving that his current need for medical attention is causally related to his work injury.

Claimant next argues that the Commission erred in finding that Claimant's current need for medical treatment to his left knee, specifically a total left knee replacement, is not causally related to his work-related accident. However, Claimant's arguments are misplaced and

ultimately fail. Because Claimant failed to meet his burden of proving that his current complainants of increased pain in his left knee, which he argues is the reason he needs the knee replacement, (App. Br. pp. 6-8), are causally related to his November 28, 2011 MVA, he is not entitled to medical treatment (or other benefits) as a result. Furthermore, substantial evidence supports the Commission Decision on this point, which should be upheld.

First, it is beyond dispute that benefits, including medical treatment and care, are awarded under the Act only for work-related injuries and conditions. Munn v. Nucor Steel, 336 S.C. 28, 31-32, 518 S.E.2d 289, 290 (1999) (denying medical treatment for non-work-related condition, even where such treatment was deemed reasonable and necessary). "[A]ny medical treatment claimed under § 42-15-60 must be causally related to the 'injury by accident' arising out of and in the course of employment." 336 S.C. at 32, 518 S.E.2d at 290; *see also* Ervin v. Richland Mem'l Hosp., 386 S.C. 245, 687 S.E.2d 337 (Ct. App. 2009) (upholding the Commission's determination that the claimant was not entitled to medical care and other benefits because she had failed to prove a causal link between her present medical condition and her work). Thus, regardless of whether or not Claimant needs a knee replacement to address his preexisting severe arthritis, Respondents are not responsible for paying for it because any such need is not causally related to his employment with Southlake Transport.

Second, as noted above, Claimant points to his current complaints of pain as the reason he believes he is entitled to the knee replacement surgery, relying on Murphy, which he erroneously suggests awarded benefits based solely on subjective complaints of pain. (App. Br. pp. 7-8). Claimant's attempt to misconstrue and misstate the holding in Murphy should be rejected. In Murphy, although the Commission noted the claimant's subjective complaints of neck pain, the Commission specifically stated that its finding was "based on the record as a

whole, including the medical record and deposition testimony of Dr. MacDonald that the job aggravated [the claimant's] condition ..." 393 S.C. at 86, 710 S.E.2d at 459. In fact, a review of the underlying Commission decision in Murphy reflects a detailed review of the medical evidence, which supported its finding that the claimant's job aggravated and/or exacerbated her underlying neck condition. Murphy v. Owens Coming[sic], 2008 SC Wrk. Comp. LEXIS 998, W.C.C. File No. 0716612 **4-5 (Feb. 25, 2009). Thus, the decision in Murphy was not based solely on complaints of pain, but was supported by medical evidence in the record, which the Commission accepted over other, conflicting medical evidence.

Third, Claimant's counsel properly asserted before the Full Commission that "the test to determine whether a person is entitled to medical treatment for an aggravation is not whether the complaints are subjective, but whether it causes disability." (R. 56, line 23 – 57, line 3) (R. 56, line 18). In the workers' compensation context, medical care or treatment is provided by an employer under Section 42-15-60 for a work-related injury or illness, "for an additional time as in the judgment of the commission will tend to lessen the period of **disability** as evidenced by expert medical evidence stated to a reasonable degree of medical certainty." S.C. Code Ann. § 42-15-60 (emphasis added). Indeed, "[t]he right of a claimant to compensation for aggravation of a pre-existing condition arises only where there is a dormant condition which has produced no disability but which **becomes disabling** by reason of the aggravating injury." Anderson, 343 S.C. at 493, 541 S.E2d at 528 (emphasis added); Scott, 343 S.C. at 583, 541 S.E2d at 476 (holding "[a]n accidental injury arising out of and in the course of employment which aggravates a pre-existing infirmity and results in **disability** is compensable") (emphasis added). The problem for Claimant is that, even if he had proven the MVA aggravated his pre-existing

arthritic condition, which he has not, he has utterly failed to prove any increased disability, or any disability at all as that term is defined in the Act.

In the workers' compensation context, "[t]he term '*disability*' means 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; *see also* Outlaw v. Johnson Serv. Co., 254 S.C. 486, 489, 176 S.E.2d 152, 154 (1970) (explaining that "[l]oss of earning capacity is the criterion. There is no recognition of the elements of pain and suffering, or of increased discomfort and difficulty in performing the work as long as there is no diminution in earning capacity"), *citing* Owens, 252 S.C. at 168, 165 S.E.2d at 698. Here, Claimant admittedly missed no time from work because of his left knee or his lower back, and continued to work consistently 11 hours per day and to drive, on average, 2,900 miles a week. (R. 91, line 19 – 92, line 14) (R. 103, line 5 – 104, line 13). There is no evidence whatsoever that Claimant experienced a loss of wages or the ability to earn the same wages he earned prior to the November 28, 2011 MVA.

Claimant asserts that Respondents rely on the fact that he continued to work as evidence that his need for a knee replacement surgery was not causally related to his work accident. (App. Br. p. 8). Claimant is correct only in part. Respondents point to the facts that Claimant continued to work full 11-hour days, missing no time from work and driving on average 2,900 miles per week, as evidence that he suffered no disability as defined in the Act and as required under S.C. Code Ann. § 42-9-35(B) (providing that the Commission may award compensation benefits to a claimant "who has a … preexisting condition and who **incurs a subsequent disability** from an injury arising out of an in the course of his employment ...") (emphasis added). Respondents point to the same medical evidence from Drs. DaSilva and LaMotta that

the Commission relied on as substantial evidence that there is no causal relationship between Claimant's need for a knee replacement and his employment.

Claimant cites a passage from Dr. DaSilva's deposition where he was asked whether Claimant's "ability to get around, his ability to work, has also been affected by the increase in pain," to which Dr. DaSilva replied "based on the history, yes." However, Dr. DaSilva made it clear that he was relying on Claimant's history and did not know what type and level of pain Claimant might have been experiencing prior to his work accident. (R. 158, line 2 – 159, line 7). Thus, it is misleading to assert, as Claimant does, that Dr. DaSilva testified that Claimant's ability to work has been affected by an increase in pain. Furthermore, there simply is no evidence of a disability, as that term is defined in the Act – an "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.

Claimant asserts that "uncontradicted expert medical testimony by the authorized treating physician and Dr. [Michael K.] Drakeford that Claimant suffered an increase in pain." (App. Br. p. 7). Claimant fails to cite anywhere in the record where Dr. DaSilva or Dr. LaMotta, his treating physicians, (R. 47-48), conclusively stated that Claimant suffered from an increase in pain from the accident. As noted above, Dr. DaSilva couched his statements regarding Claimant's pain level on history taken from Claimant and was careful to clarify that he did not know what level of pain Claimant may have been experiencing prior to the accident. (*See, for example*, R. 158, line 2 – 159, line 7). Dr. DaSilva's medical report indicates that Claimant reported increased pain, but also notes, Claimant "reports back pain but reports ... no arthalgias/joint pain," as well as noting "chronic pain in left knee." (R. 41). Dr. LaMotta's medical notes make it clear that the history of lower back pain was provided by the Claimant:

"There is no documentation in the medical record provided to me of any complaints of low back pain after the accident. However, now the patient states that since the accident he started having mild back pain the low back ... and has gotten worse during the past 2 months." (R. 44). Ultimately, however, both Drs. DaSilva and LaMotta concluded that Claimant's current diagnoses of left knee pain and low back pain are not causally related to his November 28, 2011 accident. (R. 41, 46).[4]

Next, Claimant seizes on the fact that Dr. DaSilva indicated that a number of factors go into the decision to provide a total knee replacement, and argues that this proves he is entitled to have the employer cover that treatment as a result of aggravation of a pre-existing condition under § 42-9-35 and Murphy. (App. Br. p. 7). However, as noted above, substantial evidence fully supports the Commission's decision regarding whether the MVA aggravated Claimant's underlying chronic, severe arthritis in his left knee. That there may be other evidence that supports Claimant's assertions is irrelevant, so long as substantial evidence supports the Commission Decision. Sharpe, 336 S.C. at 154, 519 S.E.2d at 105. In addition, as noted above, Murphy was decided on the basis of medical evidenced causally linking her pain and symptoms to her job.

Because it is supported by substantial evidence in the record, this Court should affirm the Commission's finding that Claimant failed to prove his need for additional medical treatment to his left knee is causally related to his employment.

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[4] Even Dr. Drakeford, who examined but did not treat Claimant, qualified at his deposition that his statements regarding increased pain after the MVA were based on the history that Claimant gave him. (R. 119, lines 7-16 ("Just based on **his history and the fact that he said he didn't have knee pain** until he had the MVA, it seems to have precipitated or exacerbated the symptoms from his left knee") (emphasis added)) (R. 127, line 19 – 128, line 15 ("I haven't seen [Claimant] but this one time; so, I don't know how the progression of the symptoms have gone or how they cooled down or anything like that .... It's based on his history")) (R. 137, lines 7-17 (acknowledging that he based his opinion on the history provided to him by Claimant, which he "assumed" was truthful)).

III. The Commission Decision Correctly held that Claimant is at Maximum Medical Improvement for his left knee and his lower back.

First, Claimant argues that the Commission Decision is deficient because it does not contain sufficiently detailed findings of fact to substantiate its finding that he is at maximum medical improvement ("MMI") for his back. (App. Br. p. 8). However, the determination of whether a claimant is at MMI is itself a factual determination. Curiel v. Environmental Mgmt. Servs., 376 S.C. 23, 29, 655 S.E.2d 482, 485 (2007) (MMI is a factual determination by the Commission which must be upheld on review if supported by substantial evidence"); Gadson v. Mikasa Corp., 368 S.C. 214, 224, 628 S.E.2d 262, 268 (Ct. App. 2006) (upholding the Commission's determination regarding MMI based on the medical evidence and noting that "MMI is a factual determination left to the discretion of the appellate panel"). The Commission based its factual finding that Claimant had reached MMI on the medical evidence in the record. (Commission Decision, R. 18). Evidence in this record that Claimant's current problems with his lower back are unrelated to his employment, (R. 41, 45-46), constitutes substantial evidence that supports the Commission's factual determination. Although both Drs. DaSilva and LaMotta recommended additional medical treatment to Claimant's left knee and lower back, those recommendations specifically denied any causal relationship between the need for medical care and Claimant's employment. (R. 41, 46). This factual determination, in turn, supports the Commission's legal conclusion that Claimant is at MMI for his left knee and low back. (Commission Decision, R. 19). Thus, because the Full Commission Decision contains all the specific findings of fact necessary to its legal conclusions, and those findings are sufficiently detailed to permit appellate review, it is not deficient in that respect. *See, e.g.*, Airco, Inc. v. Hollington, 269 S.C. 152, 160, 236 S.E.2d 804, 808 (1977); Nettles v. Spartanburg Sch. Dist. # 7, 341 S.C. 580, 590, 535 S.E.2d 146, 151 (Ct. App. 2000).

Second, in addition to being supported by substantial evidence, the Commission's findings that Claimant is at MMI for his left knee and back are entirely proper. MMI is "a term used to indicate that a person has reached such a plateau that in the physician's opinion there is no further medical care or treatment which will lessen the degree of impairment." Martin v. Rapid Plumbing, 369 S.C. 278, 288, 631 S.E.2d 547, 552 (Ct. App. 2006). There is no evidence in this record that Claimant has ever received an impairment rating for either his left knee or his back. Furthermore, as noted above, medical treatment and care are awarded under the Act only for work-related injuries and conditions. *See* S.C. Code Ann. § 42-15-60; Munn, 336 S.C. at 32, 518 S.E.2d at 290. Relying on both of Claimant's treating physicians, the Commission concluded that his current condition and pain are not causally related to his employment. (Commission Decision, R. 17-18).

The Commission's determinations that Claimant has reached MMI for his left knee and his back should be upheld on appeal.

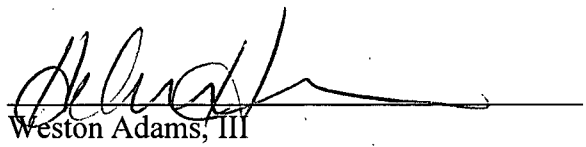
CONCLUSION

For all the reasons stated herein, this Court should uphold the Commission Decision and dismiss Claimant's appeal.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, L.L.C.

December 16, 2013



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Honorable Melody James, Gene McCaskill and Susan Barden

W.C.C. File No. 1119380

Everett Davis, Claimant, ... Appellant,

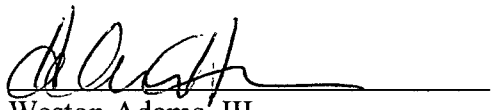
v.

Southlake Transport, Inc., Employer, and
Lumberman's Underwriting Alliance, Carrier, ... Respondents.

PROOF OF COMPLIANCE

The undersigned certifies that the Respondents' Brief complies with Rule 211(b), SCACR. The undersigned further certifies that the Respondents' Brief complies with the South Carolina Supreme Court's August 13, 2007 Order re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

December 16, 2013



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PROOF OF SERVICE

I certify that I have served the **Respondents' Brief** on Everett Davis, by depositing a copy of it in the United States Mail, postage prepaid, on the 16th day of December, 2013, addressed to his attorney of record,

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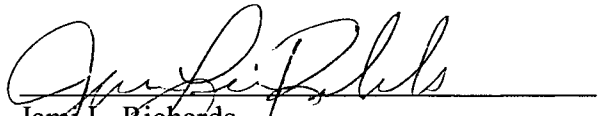

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