

SOUTH CAROLINA  
WORKERS COMPENSATION COMMISSION  
WCC # 1701477

Robert Darby, )  
Employee, Claimant )  
v. )  
Carolina Wood )  
Employer )  
and )  
Palmetto Timber Fund, SIF, Carrier )

**DECISION AND ORDER**

**APPEARANCES:**

Claimant: Matthew W. Jackson, Esq  
Employer/Carrier: John W. Rabb, Jr. Esq.

**STIPULATIONS:**

Date of accident: 02/17/2014  
Average weekly wage: \$700.00  
Compensation rate: \$466.66  
No objections to venue or jurisdiction in Orangeburg County, South Carolina.

**REASON FOR HEARING:**

To determine issues set for in Form 50/51, Employee's Request for Hearing.

**APA SUBMISSIONS**

**EMPLOYEE:**

1. MUSC
2. Summerville Health Center, Dr. Franklin C Fetter, MD
3. Summerville Medical Center

**RECEIVED**  
APR 03 2019  
SC Court of Appeals

**EMPLOYER/CARRIER:**

1. Dr. David Castellone, MD

**EXHIBITS:**

1. Deposition Transcript of 30(b)(6), O'Dell Williams
2. Deposition Transcript of Claimant, Robert Darby.

**STATEMENT OF THE CASE:**

Claimant alleged he sustained an injury to his left knee arising out of and in the course and scope of his employment on Friday 02/17/2017. He alleged a pine tree he was cutting got caught or "hemmed up" in another tree and then kicked around and hit him on the left side, leg, and down below the knee. This was an unwitnessed accident. Employer/Carrier denied the claim and this Hearing was scheduled on a 50/51 seeking medical care and treatment and temporary total benefits.

**FINDINGS OF FACT:**

Based on the pleadings, medical submissions, exhibits, I make the following findings of fact:

1. I find that the South Carolina Workers Compensation Commission has jurisdiction over both the parties to and the subject matter of this claim.
2. I find that at the time of Claimant's alleged work related accident on February 17, 2017, both the Claimant and the Employer were subject to the Workers Compensation Act.
3. I find that notice of the hearing was timely and properly served upon all parties of interest.
4. I find that venue in Orangeburg County is proper.
5. The average weekly wage is \$700.00 and the compensation rate is \$466.66.
6. Claimant alleged he sustained an injury to his left knee arising out of and in the course and scope of his employment on Friday 02/17/2017. He alleged a pine tree he was cutting got caught or "hemmed up" in another tree and then kicked around and hit him on the left side, leg, and down below the knee. This was an unwitnessed accident. The accident occurred at 11:30 AM. After the accident, he sat on top of a log pile for about 25 minutes. "Knock off" time was 12:00 PM.

7. Claimant first sought medical treatment on Sunday February 19<sup>th</sup> at Summerville Medical Center. He testified he called Mr. Williams, his supervisor, the night before and told him he believed he had sprained his leg. Tr pg 14-15. X-rays revealed he sustained a fracture to his leg, specifically the tibia below his knee. He subsequently received treatment at Summerville Health Center and Dr. Franklin Fetter MD and the Medical University of South Carolina (MUSC).

8. Claimant testified at the Hearing the tree hit him so hard it knocked him down, but he was able to walk 15-20 feet to a hill to sit down. Tr.pg 19. 1.11-22.

9. Claimant testified he had a small limp when he was coming out of the woods, and he wasn't in any pain at the time. Tr. pg 12. 1.10-14. He testified at the Hearing he had a conversation with Mr. Williams before the accident for about a minute about a burnt out spark plug. Tr. pg 13 1.9-24.

10. In his sworn testimony on 07/13/2017, the Claimant testified he did not speak to Mr. Williams before he left work, but waved and went to his truck. He did not report the accident to Mr. Williams. He was walking with a small limp. Darby Deposition, Tr.pg 31 l. 23-25, pg. 33, l. 6-25.

11. In his sworn testimony on 07/13/2017, Mr. O'Dell Williams testified that although he believed Mr. Darby was honest, he had a specific and lengthy conversation (1 hour) with Mr. Darby after the alleged incident on the day in question. Specifically, Mr. Darby's demeanor was all right, he was laughing and cutting up, he was not favoring his leg or limping in any way and did not appear to have anything wrong with him. Williams Deposition, Tr. pgs 20-22.

12. With only the Claimant's subjective complaints and absent any causally-related medical evidence or eyewitnesses, and due to the discrepancies in sworn testimony, I hereby find Claimant did not meet his burden of proof that he sustained a compensable work-related injury to his left knee.

### **CONCLUSIONS OF LAW:**


1. The burden lies with the claimant to demonstrate causation by a preponderance of the evidence. S.C. Second Injury Fund v. Liberty Mutual, 353 S.C 576, S.E.2d 199 (2005).

2. Workers' compensation awards must not be based on surmise, conjecture or speculation. Kennedy v. Williamsburg County, 242 S.C. 477, 131 S.E.2d 512 (1963).

**ORDER:**

1. Claimant's request for benefits under the Act is hereby denied.

**AND IT IS SO ORDER**

  
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Commissioner Mike Campbell

March 14th, 2018

**CERTIFICATE OF SERVICE**

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.  
March 14, 2018

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell