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

W.C.C. FILE NO: 1009201

HOMER WILLIAMS,

CLAIMANT/APPELLANT,

V.

WALTER P. RAWL & SONS, INC.

and

GREAT AMERICAN ALLIANCE INSURANCE COMPANY,

DEFENDANTS/RESPONDENTS.

Appellate Panel Review Hearing
Held in Columbia, South Carolina,
on October 22, 2012, per notices
timely and properly served upon
all parties of interest

Appellate Panel Decision and Order

filed, 1/3/13

APPEARANCES: CLAIMANT/APPELLANT was represented by David N. Truitt, Esquire, Lexington, South Carolina.

DEFENDANTS/RESPONDENTS were represented by E. Ros Huff, Jr., Esquire, Columbia, South Carolina.

Notice of Appeal due 1-30-13 CAW

STATEMENT OF THE CASE

This is an appeal by Defendants/Appellants of the Decision and Order by Commissioner Gene McCaskill filed on May 21, 2012.

Claimant filed a Form 50 hearing request on October 24, 2011, and the Defendants filed a Form 51 on November 15, 2011. This case was heard by Commissioner Gene McCaskill on February 2, 2012, at which time the parties and/or their representatives appeared and evidence was received. It is a denied work-related injury.

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury occurring on June 10, 2010, while in the employment of the Defendants. The Claimant suffered an injury by accident while stepping down from the cab of a tractor-trailer, causing injury to his right knee. He was treated initially by Dr. Keith Lobel and referred to Dr. David Kingery. Claimant underwent multiple injections with Dr. Kingery. On October 11, 2010, Dr. David Kingery provided a 0% permanent impairment rating to the right knee. On August 15, 2011, Dr. Daniel Westerkam provided a 12% permanent impairment rating to the right knee. The issue in this case is whether Claimant sustained a work-related right knee injury on June 10, 2010, and if so, whether Claimant is entitled to back temporary total disability (TTD) benefits, a permanent disability award, reimbursement for past medical care, future medical care, medication (past and future) and medical mileage (past and future). Defendants deny that Claimant sustained a work-related injury. Medical records were submitted under the Administrative Procedures Act as evidence and made part of the Commission record. The deposition of Dr. Daniel Westerkam, noticed by Defendants and taken February 1, 2012, was submitted into evidence without objection.

MEDICAL EVIDENCE/RATINGS - APA SUBMISSIONS

At the hearing on February 2, 2012, pursuant to the South Carolina Administrative Procedures Act, South Carolina Code §1-23-320 *et seq.*, and Regulation 67-612, the parties submitted the following items without objection as evidence in support of their cases;

CLAIMANT'S APA SUBMISSIONS
APA #1 Reports of Keith D. Lobel, M.D. consisting of pages 1 - 7
APA #2 Reports of David Kingery, M.D. consisting of pages 8 - 41
APA #3 Report of Edwin Pia, M.D. consisting of pages 42 - 43
APA #4 Report of Daniel Westerkam, M.D. consisting of pages 44 - 47

DEFENDANTS' APA SUBMISSIONS
APA #5 Lexington Family Practice White Knoll pages 49 - 91
APA #6 Lexington Orthopaedics pages 92 - 94
APA #7 Lexington Urological Associates pages 95 - 101
APA #8 Lexington Medical Center pages 102 - 117

DEFENDANTS' EXHIBITS
EXHIBIT #A Claimant's Deposition
EXHIBIT #B SCDOT Driver Logs
EXHIBIT #C Defendants' Response to Subpoena
EXHIBIT #D Medical Summary
EXHIBIT #E SCDEW Records
EXHIBIT #F Claimant's 6/17/2010 Recorded Statement

STIPULATIONS

At the call of the February 2, 2012, hearing, the parties stipulated that the South Carolina Workers Compensation had jurisdiction in this case and that venue was proper in Richland County. The purpose of the hearing is to decide issues raised in Claimant's Form 50 and Defendants' Form 51. Pursuant to a Consent Order dated September 13, 2011, both parties agreed and stipulated that the Claimant's applicable average weekly wage is $1,173.81 with a corresponding maximum compensation rate of $689.71. Notice was timely and properly served upon all parties of interest. The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury that occurred on or about June 10, 2010,

while in the employment of the Employer/Defendants, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction over this case. Without objection, and with the exception of any self-serving statements or non-stipulated medical reports, the Commission's file was made a part of the record.

CLAIMANT BIOGRAPHICAL

AGE:	66 (DOB: 3/30/1945)
SEX:	Male
HEIGHT:	5'4"
WEIGHT:	240 lbs.
MARITAL STATUS:	Married
CHILDREN:	Three children
WORK HISTORY:	Service station 2 years; machine shop 6 years; truck driver for 42 years
EDUCATION:	10th Grade

EVIDENCE

The Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an accidental injury occurring on June 10, 2010, while in the employment of the Defendant. The Claimant, the only witness at the February 2, 2012, hearing, testified that he is a truck driver for the Defendants and has been since 2005. The Claimant started work at about 2:00 a.m. on June, 10, 2010. He made deliveries on June 10, 2010, to Limehouse in Charleston, South Carolina, Piggly Wiggly in Charleston, South Carolina, and Food Lion and then back to Rawls. (Tr. p. 18, line 4 - 25; p. 19, line 1).

After parking the tractor trailer truck on the Defendant's lot, the Claimant got out of the cab and stepped down with his right foot. When his right foot touched the ground, he heard

something like a pop and he had so much pain in his knee that he could not put any weight on it. Claimant grabbed the truck to keep from falling to the ground. (Tr. p. 20, lines 3 - 11). After the injury, the Claimant hopped on his left leg to his personal truck, which was only three feet away. The Claimant, at the instruction of the Defendants, then took another employee to pick up a truck Defendants had rented. (Tr. p.21, lines 9 - 20).

Claimant hoped that the right knee pain might lessen, but when it did not, Claimant called Ferri in the Defendant's transportation office and told her what happened. (Tr. p. 21, lines 21 - 25). The Claimant told Ferri that when he stepped out of the truck, that he thought he had jammed his knee. (Tr. p. 22, lines 9 - 14). After dropping the other driver off, the Claimant called Ferri again to tell her that he had to go to his family doctor. (Tr. p. 22, lines 15 - 23). Claimant's family doctor is Lexington Family Practice. (Tr. p. 23, lines 2 - 8).

The Claimant was diagnosed with osteoarthritis in both knees in 2009, and his family doctor gave him Celebrex, which did help. Claimant did not miss any time from work due to the arthritis in his knees. (Tr. p. 23, lines 9 - 23; Defendant's APA 1, p. 66).

The Claimant went to see his family doctor three days prior to the accident. Claimant went because the muscles in the calf of his right leg were hurting. When the doctor performed a physical examination of the Claimant's knees, there was some pain in his knees. Claimant, however, did not go to his family doctor on June 7, 2010, because of knee pain. (Tr. p. 24, lines 3 - 19; Defendant's APA 1, p. 52). The Claimant worked up until the time he got hurt on June 10, 2010. (Tr. p. 24, lines 20 - 25).

The Claimant was unable to go back to work for four months following the June 10, 2010, work accident. (Tr. p. 25, lines 1 - 5).

The Claimant treated with Dr. Lobel at Lexington Family Practice for his right knee injury. Dr. Lobel ordered an MRI of his right knee. After the MRI, Claimant was referred to Dr. Kingery at Lexington Orthopaedics. (Tr. p. 25, lines 20 - 25; p. 26, lines 1 - 16). Dr. Kingery performed 4 - 5 knee injections in order to lessen the Claimant's period of disability. (Tr. p. 27, lines 2 - 11).

From the day of the accident until October 1 or 2, 2010, Claimant was unable to work and received no income or TTD from the Defendants. The Employer had no light duty work available. (Tr. p. 27, lines 22 - 25; p. 28, lines 1 - 25; p. 29, lines 1 - 3).

When the Claimant returned to work for the Employer, he was not able to do the unloading part of his job. Claimant worked for Employer until July 8, 2011, when he retired. (Tr. p. 29, lines 4 - 23).

The treatment provided to the Claimant by Dr. Kingery helped ease his pain. The injections were effective for 2 ½ to 3 months and then the Claimant had to return to Dr. Kingery for more care. (Tr. p. 30, lines 7 - 17).

The Claimant had to step down 22 inches from his tractor trailer cab when he was injured on June 10, 2010. Claimant's personal vehicles require a step down of a foot or less. (Tr. p. 31, lines 13 -20; p. 32, lines 2 - 10). No other vehicle Claimant has ridden in has a step down as far as his tractor trailer cab. (Tr. p. 32, lines 8-10).

The Claimant cannot fish any more since this accident as his knee hurts too much with sitting. (Tr. p. 32, lines 11 - 25; p. 33, line 1 - 5).

The Claimant takes prescription Celebrex, which helps reduce his pain and allows him to still drive a truck. (Tr. p. 33, lines 12 - 24). The Claimant saw Dr. Daniel Westerkam for an IME at the request of the Defendants, and Claimant wants Dr. Westerkam's recommendations

regarding a knee brace, cane, non-steroid anti-inflammatory medicine, and lifetime medical care approved and ordered by the Commission. (Tr. p. 35, lines 18 - 25; p. 36, lines 1 - 4).

The Defendants listed at least eight potential witnesses and called none to testify at the February 2, 2012, hearing.

Based upon the evidence received, Commissioner McCaskill made the following findings of fact at the February 2, 2012 hearing:

FINDINGS OF FACT

1. The Claimant suffered a work-related injury by accident to his right knee on June 10, 2010, arising out of and in the course of his employment. I base this conclusion on the testimony of the Claimant, the medical evidence contained in the APA submissions, and the medical questionnaires of Dr. Keith Lobel and Dr. David Kingery. Both of these doctors treated the Claimant.

After parking the tractor trailer truck on the Defendant's lot, the Claimant got out of the cab and stepped down with his right foot. When his right foot touched the ground, he heard something like a pop and he had so much pain in his knee that he could not put any weight on it. Claimant grabbed the truck to keep from falling to the ground. (Tr. p. 20, lines 3 - 11). After the injury, the Claimant hopped on his left leg to his personal truck, which was only three feet away. The Claimant, at the instruction of the Defendants, then took another employee to pick up a truck Defendants had rented. (Tr. p.21, lines 9 - 20).

The Claimant had to step down 22 inches from his tractor trailer cab when he was injured on June 10, 2010. Claimant's personal vehicles require a step down of a foot or less. (Tr. p. 31, lines 13 -20; p. 32, lines 2 - 10). No other vehicle Claimant has ridden in has a step down as far as his tractor trailer cab. (Tr. p. 32, lines 8-10). Claimant is 5 feet, 4 inches tall and weighs

240 pounds. (Claimant's APA 4, p. 47). I find that the force exerted onto Claimant's right knee during this 22 inch step down from the tractor trailer cab at work is greater than any force Claimant would encounter outside of his employment and that this danger was peculiar to his employment. I find that the causative danger of the 22 inch step down from the tractor trailer cab was peculiar to Claimant's work and not common to the neighborhood.

The Claimant treated with Dr. Lobel at Lexington Family Practice for his right knee injury. Dr. Lobel ordered an MRI of his right knee. After the MRI, Claimant was referred to Dr. Kingery at Lexington Orthopaedics. (Tr. p. 25, lines 20 - 25; p. 26, lines 1 - 16). Dr. Kingery performed 4 - 5 knee injections in order to lessen the Claimant's period of disability. (Tr. p. 27, lines 2 - 11).

On June 10, 2010, the date of the work-related accident, the Claimant went to his family doctor, Lexington Family Practice White Knoll, and saw Dr. Keith Lobel. The medical record states:

> This is a 65-year old male who presents with acute onset of right knee pain after jamming his leg about an hour ago. He was hopping out of his truck at the time. He felt the knee pop. It sounds like it was locked in place when he hit the ground. He misjudged the distance to the ground causing the event. He is now having pain with bearing weight, difficulty walking. No previous injury to the knee. No swelling yet. (Claimant's APA 4, p. 6).

On June 14, 2010, Claimant returned to Dr. Lobel. The medical record states:

> The patient is a 65-year old male who presents for a 4-day recheck of acute right knee pain after having an injury while at work. This is a worker's comp case. I sent home him for the weekend with activity as tolerated. He was using crutches initially but is now off those. Symptomatically, he is feeling about 50% better with respect to pain. He is not needing any pain medication at this time. He is not quite ready to go back to work. He is a truck driver, does a lot of climbing in and out of his truck cab. He does need clearance when appropriate to go back to work without restrictions. (Claimant's APA 1, p. 5).

On June 18, 2010, Claimant went back to Dr. Lobel. The medical record states, "The patient returns for a recheck for right knee injury after stepping out of this truck on June 10. This is a Worker's Compensation case. He felt the knee pop at the time... His pain is persisting with positive McMurray test. Set up MRI..." (Claimant's APA 1, p. 4).

On July 24, 2010, Claimant had an MRI of his right knee. The MRI results were. "Nonspecific marrow edema or bone bruise for the medial femoral condyle. Degenerative myxoid signal present posterior horn of the medical meniscus. Moderate sized joint effusion with sizeable Baker's cyst as discussed above. No other acute internal derangement notes. Degenerative changes for the medial tiblofemoral joint. Minimal strain for the medial collateral ligament complex." (Claimant's APA 3, p. 43).

On August 5, 2010, Claimant went to see Dr. David Kingery at Lexington Orthopaedics. The record states, "Patient is 65 year old truck driver seen with right knee pain and history of Baker's cyst. He has undergone MRI prior to his visit here, which has shown a large Baker's cyst and some minimal meniscal changes..." (Claimant's APA 2, p. 33).

On August 12, 2010, Claimant returned to Dr. Kingery and received a right knee injection with 2 cc of Depro-Medrol 40 mg per cc. (Claimant's APA 2, p. 32).

On August 30, 2010, Claimant returned to Dr. Kingery. Both the bursa and plica were injected in hopes of giving him symptomatic relief. Dr. Kingery estimated that Claimant "should be able to return to his trucking work by the end of September and have written appropriate work note documenting this." (Claimant's APA 2, p. 28).

On October 11, 2010, Dr. Kingery provided the following addendum to his medical records:

> The patient when first seen on August 5, 2010 indicated his original injury occurred when he stepped out of his truck and twisted his knee. Prior to me seeing

him, he had treatment by other physicians and underwent MRI where degenerative meniscal changes were identified along with a Baker cyst. I have treated him for this condition. Most of his symptoms are resolved. We have released him to return to his work.

It is my medical opinion that the patient's knee problem for which I treated him for initially on August 5, 2010 was either directly caused by or aggravated by his injury on June 10, 2010 when he stepped from his truck in the Pelion, SC work yard twisting his knee. Based upon his last visit, I believe he has reached maximum medical improvement but has 0% partial permanent impairment. It is likely that he may require future care for his meniscal tear or Baker cyst in the future. (Claimant's APA 2, p. 26).

Claimant followed up with Dr. Kingery on December 16, 2010, and January 13, 2011. Dr. Kingery states in his medical record, "Patient is seen today with symptoms of pes anserine bursitis with pain below his medial knee, exquisitely tender to touch... In my opinion, this is directly related to his earlier knee injury, all of which was related to his work..." (Claimant's APA 2, p. 21).

On March 17, 2011, Claimant returned to Dr. Kingery and received an injection of the knee and pes anserine bursa with 80 mg of Depo-Medrol. (Claimant's APA 2, p. 20).

On August 8, 2011, Dr. Kingery completed a medical questionnaire where he stated to reasonable degree of medical certainty that the Claimant's right knee injury most probably results from his performance of his job activities and/or work-related aggravation of a pre-existing condition. (Claimant's APA 2, p. 14). Dr. Kingery also stated most probably to a reasonable degree of medical certainty that Claimant will need future medical care to include an occasional injection to his knee and one follow up medical visit per year, which will tend to lessen Claimant's period of disability for his right knee work-related injury through maintaining his present level of functioning. (Claimant's APA 2, p. 15).

Dr. Lobel completed a medical questionnaire where he stated to reasonable degree of medical certainty that the Claimant's right knee injury most probably results from his

performance of his job activities and/or work-related aggravation of a pre-existing condition. (Claimant's APA 2, p. 17).

On August 11, 2011, Dr. W. Daniel Westerkam performed an Independent Medical Examination on the Claimant at the request of the Defendant's. Dr. Westerkam stated:

> This is a 66 year old gentleman who injured his right knee on June 10, 2010... The patient's MRI scan revealed some degenerative changes as well as a Baker's cyst which were pre-existing conditions that were exacerbated by stepping off his truck on June 10, 2010. The patient subsequently retired and is no longer working, but I do believe he will need to take non-steroidal anti-inflammatories indefinitely. I do recommend that he perform a home exercise program and I think walking in the pool is ideal. Because of his morbid obesity, weightbearing exercises will only exacerbate the degeneration of his knee. I would recommend that he be placed on a weight reduction program. I agree with Dr. Kingery that removal of the Baker's cyst is probably not going to resolve any of his issues and they frequently reoccur. I think the patient would benefit from a knee brace and a cane which would help unload the knee. I do think he has a permanent impairment of the right knee because of weakness in the knee extension. I would use the table on 17-8 on page 532 which would give him a 12% right knee impairment. (Claimant's APA 4, p. 47).

On January 13, 2012, Dr. Westerkam stated in a medical questionnaire that most probably to a reasonable degree of medical certainty that Claimant's right knee injuries most probably result from his performance of a job activities and/or work-related aggravation of a pre-existing condition (Claimant's APA 4, p. 44). Most probably to a reasonable degree of medical certainty, Dr. Westerkam gave Claimant a 12% right lower extremity impairment (Claimant's APA 4, pp. 44, 47). Most probably to a reasonable degree of medical certainty, Dr. Westerkam stated that Claimant will need a knee brace, cane, and nonsteriodal anti-inflammatory meds for the remainder of his lifetime. (Claimant's APA 4, p. 45). Most probably to a reasonable degree of medical certainty, Dr. Westerkam stated that Claimant will need future medical care two times a year for his lifetime. (Claimant's APA 4, p. 45).

2. The Claimant has a 12% disability to the right lower extremity. I base this conclusion on the medical evidence submitted pursuant to the APAs and the testimony offered at the hearing.

Most probably to a reasonable degree of medical certainty, Dr. W. Daniel Westerkam, the doctor hired by the Defendants to perform an independent medical examination of Claimant, gave Claimant a 12% right lower extremity impairment (Claimant's APA 4, pp. 44, 47). Most probably to a reasonable degree of medical certainty, Dr. Westerkam stated that Claimant will need future medical care two times a year for his lifetime. (Claimant's APA 4, p. 45).

From the day of the accident until October 1 or 2, 2010, Claimant was unable to work and received no income or TTD from the Defendants. The Employer had no light duty work available. (Tr. p. 27, lines 22 - 25; p. 28, lines 1 - 25; p. 29, lines 1 - 3).

When the Claimant returned to work for the Employer, he was not able to do the unloading part of his job. Claimant worked for Employer until July 8, 2011, when he retired. (Tr. p. 29, lines 4 - 23).

The Claimant cannot fish any more since this accident as his knee hurts too much with sitting. (Tr. p. 32, lines 11 - 25; p. 33, line 1 - 5).

The treatment provided to the Claimant by Dr. Kingery helped ease his pain. The injections were effective for 2 ½ to 3 months and then the Claimant had to return to Dr. Kingery for more care. (Tr. p. 30, lines 7 - 17).

The Claimant takes prescription Celebrex, which helps reduce his pain and allows him to still drive a truck. (Tr. p. 33, lines 12 - 24). The Claimant saw Dr. Daniel Westerkam for an IME at the request of the Defendants, and Claimant wants Dr. Westerkam's recommendations

regarding a knee brace, cane, non-steroid anti-inflammatory medicine, and lifetime medical care approved and ordered by the Commission. (Tr. p. 35, lines 18 - 25; p. 36, lines 1 - 4).

The Defendants shall pay to the Claimant $16,139.21 in a lump sum amount based on a 12% disability to the right lower extremity.

3. According to Dr. Kingery, the treating orthopaedic physician, the Claimant reached MMI on October 11, 2010. (Claimant's APA 2, p. 26).

4. In the IME conducted by Dr. Daniel Westerkam at the request of the Defendants, Dr. Westerkam opines that the Claimant will need, "a knee brace, cane, and nonsteroidal anti-inflamnatory medications." (Claimant's APA 4, p. 47). The Defendants shall provide Claimant a knee brace, cane, and nonsteroidal anti-inflammatory medications.

5. The Defendants can choose an authorized treating physician to prescribe those nonsteroidal anti-inflammatory medications (NSAIDS) as well as provide medical care which would tend to lessen the Claimant's disability. The Defendants shall provide future medical care and medications which tend to lessen Claimant's disability including, but not limited to, injections and nonsteroidal anti-inflammatory medications. (Claimant's APA 2, p. 15; Claimant's APA 4, pp. 45, 47).

6. The Claimant is entitled to temporary total disability (TTD) benefits from June 10, 2010, through October 11, 2010. (Claimant's APA 2, pp. 26, 28, 30). I base this conclusion on the medical evidence submitted pursuant to the APAs and the testimony offered at the hearing. The Defendants shall pay to the Claimant $12,217.72 in a lump sum amount for back temporary total disability benefits, which is 17.7143 weeks multiplied by the stipulated maximum compensation rate of $689.71.

From the day of the accident until October 1 or 2, 2010, Claimant was unable to work and received no income or TTD from the Defendants. The Employer had no light duty work available. (Tr. p. 27, lines 22 - 25; p. 28, lines 1 - 25; p. 29, lines 1 - 3).

7. The Claimant is not entitled to a weight loss program or surgery.

8. Four motions were filed in this case. The information found at tabs B, C, D, and E was not required to reach a decision in this case. As such, that information was given no weight.

9. Therefore, I find those four motions are moot.

10. The Defendants are responsible and shall pay for all causally related medical care including, but not limited to, the care of Dr. Keith Lobel, Dr. David Kingery, and any diagnostic tests.

11. The Defendants are responsible and shall pay for all causally related medications.

12. The Defendants are responsible and shall pay for all causally related medical mileage.

13. The Claimant gave proper and timely notice of the accident to the Defendants based on Claimant's testimony and the Form 12A.

Claimant hoped that the right knee pain might lessen, but when it did not, Claimant called Ferri in the Defendant's transportation office and told her what happened. (Tr. p. 21, lines 21 - 25). The Claimant told Ferri that when he stepped out of the truck, that he thought he had jammed his knee. (Tr. p. 22, lines 9 - 14). After dropping the other driver off, the Claimant called Ferri again to tell her that he had to go to his family doctor. (Tr. p. 22, lines 15 - 23).

14. The Claimant timely filed this claim.

15. The Claimant's average weekly wage is $1,173.81, yielding a maximum

compensation rate of $689.71.

16. The Claimant is 66 years old. (Tr. p. 16, lines 18-19).

17. The Claimant is 5 foot, 4 inches tall and weighs 240 pounds. (Tr. P. 16, lines 20 -23).

18. The Claimant has a tenth grade education and has worked as a truck driver for 42 years. (Tr. p. 17, lines 5-14).

19. The Claimant started working for the Defendants in 2005. (Tr. p. 18, lines 4-13)

20. The Claimant fully cooperated with the Defendants' investigation and gave their insurance adjuster, Mr. Steve Anthony, a detailed, recorded statement of how the accident occurred on June 17, 2010, and the injury he sustained. The Claimant's statement was consistent with what Claimant told the Employer and all of the doctors he saw.

(Verbatim excerpt from Hearing Transcript): 65

...

BY MR. TRUITT:

Q. All right. This is -- you remember Mr. Anthony coming to talk to you on June 17th which is a week after the accident?

A. Yes.

Q. And I'm going to ask you, did you tell him the date the accident was?

A. Yes.

Q. What did you tell him? This is Page 1 and it's several lines down.

A. June the 10th.

66

Q. That was the 10th? That was your answer?

A. Yes, sir.

Q. All right. Did you also tell Mr. Anthony how the accident happened?

A. Yes, sir.

Q. I'm going to direct your attention to page 6 of the statement, and this is a little further down where it says -- where it's highlighted.
A. I said, "Well, I thought I jammed my knee when I stepped out of the truck. But the doctor says maybe pulled a liter (sic) or muscle in back of my leg. He x-rayed my knee and said that I didn't hurt nothing or break anything."
Q. Okay. All right. A few lines further down on Page 6, what did you further explain what is says right there?
A. "I stepped out of the truck when I hit -- hit the" -- it's supposed to be ground, but it ain't on here. "When I stepped on the ground, I felt something in my leg give. It sounded like something cracked."
Q. Okay. And this was one week after the accident?
A. Yes.
Q. All right. Then he asked you the next question, "Did you fall," on Page 6. And on Page 7, the

first line, what is your answer?
A. "Yep. I fell. I caught ahold of the truck, but I couldn't stand up and put no weight on my leg at all." He said, "Did you fall to the ground completely?" "No. I caught -- see, I caught ahold of the truck before I hit the ground, but I will -- was going to hit to the ground when my knee of leg give away."
Q. Okay. All right. And that's what happened; is that correct?
A. Yes.
Q. And that's what you told Ferri, that's what you told Steve Anthony, and that's what you told any doctor you've been to?
A. Yes.
Q. And that's what you're telling Commissioner McCaskill today?

17 A. Yes.
18 ...

CONCLUSIONS OF LAW

Commissioner McCaskill made the following conclusions of law:

1. This matter is governed by the South Carolina Workers' Compensation Act, §42-1-10 *et seq.* of the South Carolina Code (1976, as amended).

2. The Claimant sustained an injury by accident pursuant to §42-1-160 of the Act on June 10, 2010, within the course and scope of his employment and that Defendants were given proper notice of Claimant's injury.

To sustain an award under the Workers' Compensation Act, an injury must result from an accident which both "arose out of" and occurred "in the course of" the employment. *Williams v. The South Carolina State Hospital,* 245 S.C. 377, 140 S.E. 2d 601 (1965). The phrases "arising out of" and "in the course of employment" are used conjunctively. One of these elements without the other will not sustain an award. The two elements must co-exist. *Dicks v. Brooklyn Cooper Ridge Co.*, 208 S.C. 139, 37 S.E. 2d 286 (1946); *Brady v. Sacony of St. Matthews,* 232 S.C. 84, 101 S.E. 2d 50 (1957). "Arising out of refers to the origin of the cause of the accident. *Eaddy v. Smurfit-Stone Container Corporation,* 355 S.C. 154, 584 S.E. 2d 390 (Ct. App. 2003). (*rehearing denied.*) The employee's injury must bear a "logical causal relation" to his employment. *Dukes v. Rural Metro Corp.*, 356 S.C. 107, 587 S.E.2d 687 (2003), *quoting, Bright v. Orr Lyons Mill,* 285 S.C. 58, 59, 328 S.E.2d 68, 70 (1985).

"It (the injury) arises 'out of the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury

can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and have flowed from that source as a rational consequence." *Douglas v. Spartan Mills*, 245 S.C. 265, 140 S.E.2d 173 (1965), *quoting, Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960).

"Under the 'increased-risk doctrine' for workers' compensation purposes, an injury arises out of the employment if some risk inherent to the employment was a contributing cause of the injury; the risk must be one to which the general public would not be equally exposed." *Simmons v. City of Charleston* (S.C. App. 2002) 349 S.C. 64, 562 S.E.2d 476, *rehearing denied certiorari dismissed.*"

"The adjective 'accidental' qualifies and describes the injuries contemplated by the statute as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected. If, however, there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so

as to make it accidental. Neither is it necessary that the accidental quality or condition be created by wound or external violence." *Riley v. South Carolina Ports Authority*, 253 S.C. 621, 172 S.E. 2d 657 (1970). In other words, the injury itself can be the accident; however, proximate causation must still be proven by preponderant evidence.

In a compensable workers' compensation case, *Ellis v. Spartan Mills*, 276 S.C. 218, 277 S.E.2d 590 (1981), the claimant bent forward and twisted in order to retrieve something involved with her employment ("Ellis testified that a thread had run off the machine and was lying on the floor. As she bent forward and to her right, twisting her body in an attempt to retrieve the thread, she testified that she felt something 'pop' in her back." *Id.* at 219, 591. "The facts as found by the Commission in this action reveal that Ellis suffered her injury when she twisted her back. Here, the injury resulted from the work activity.") *Id.* at 219, 592.

In another compensable workers' compensation case, *Sigmon v. Dayco Corp.*, 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994), the claimant knelt down to tighten bolts, thereby placing pressure on his knee. ("In 1992, Sigmon knelt to tighten bolts on a machine that Dayco had assigned him to rebuild. His knee locked when he attempted to stand up.") *Id.* at 261, 498.

In another compensable workers' compensation case, *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995), the claimant bent down to pick up a filter rack from the floor. ("On July 12, 1993, Creech claimed he injured his back as he reached down to pick up a filter rack from the floor.") *Id.* at 559, 115. Although the filter was of insignificant weight, the task involved the bodily mechanics of bending down and reaching.

3. Under §42-1-40, the Claimant's average weekly wage is $1,173.81, yielding a maximum compensation rate of $689.71.

4. Under §42-9-10 and §42-1-120, the Claimant reached maximum medical

improvement on October 11, 2010, in accord with Dr. David Kingery's findings.

5. Under §42-9-30, the Claimant has 12% disability to the right lower extremity.

6. Under §42-15-20, proper notice of the injury was given.

7. Under §42-15-60 and *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999), Claimant shall receive and Defendants shall provide lifetime future medical care, medications, and medical equipment including, but not limited to, follow-up visits, a knee brace, a cane, non-steroidal anti-inflammatory medications, and injections, which tend to lessen Claimant's period of disability and maintain his current level of functioning.

8. The Defendants can choose an authorized treating physician to prescribe those NSAIDS as well as provide medical care which would tend to lessen the Claimant's disability.

ORDER

BASED ON THE FINDING OF FACT AND CONCLUSIONS OF LAW, Commissioner McCaskill ordered as follows:

ORDERED, ADJUDGED AND DECREED that Defendants shall pay to the Claimant $16,139.21 in a lump sum amount based on a 12% disability to the right lower extremity.

ORDERED, ADJUDGED AND DECREED that the Defendants shall pay to the Claimant $12,217.72 in a lump sum amount for back temporary total disability benefits, which is 17.7143 weeks multiplied by the stipulated maximum compensation rate of $689.71.

ORDERED, ADJUDGED AND DECREED that the Defendants shall provide Claimant lifetime future medical care, medications, and medical equipment including, but not limited to, follow-up visits, a knee brace, a cane, non-steroidal anti-inflammatory medications, and injections, which tend to lessen Claimant's period of disability and maintain his current level of functioning.

ORDERED, ADJUDGED AND DECREED that the Defendants shall provide Claimant an authorized treating physician to provide causally related medical care and prescribe causally related medications.

ORDERED, ADJUDGED AND DECREED that the Defendants shall pay for all causally related medical care including, but not limited to, the care of Dr. Keith Lobel, Dr. David Kingery, and any diagnostic tests.

ORDERED, ADJUDGED AND DECREED that the Defendants shall pay for all causally related medication and medical mileage.

AND IT IS SO ORDERED.

On June 7, 2012, Defendants filed a Form 30, raising the below issues on appeal:

1. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant suffered an injury by accident, the error being that this finding of fact, conclusion as a matter of law and order are not supported by preponderance of evidence?

2. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant suffered and injury by accident, the error being that the Claimant did not meet his burden of proof?

3. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant is entitled to T.T.D. benefits, the error being that this finding of fact, conclusion as a matter of law and order are not supported by preponderance of evidence?

4. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant is entitled to T.T.D. benefits, the error being that the Claimant did not meet his burden of proof?

5. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant is entitled to 12% in permanent disability, the error being that this finding of fact, conclusion as a matter of law and order are not supported by preponderance of evidence?

6. Did the Single Commissioner err in finding as fact, concluding as a matter of law

and ordering that the Claimant is entitled to 12% in permanent disability, the error being that the Claimant did not meet his burden of proof?

7. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant is entitled to past and future medical care and treatment, the error being that this finding of fact, conclusion as a matter of law and order are not supported by preponderance of evidence?

8. Did the Single Commissioner err in finding as fact, concluding as a matter of law and ordering that the Claimant is entitled to past and future medical care and treatment, the error being that the Claimant did not meet his burden of proof?

9. Did the Single Commissioner err in Finding of Fact #1 that the force exerted onto claimant's right knee during a 22 inch step down from the tractor trailer cab at work is greater than any force Claimant would encounter outside of his employment and the danger was peculiar to his employment, the error being that this finding is based upon conjecture, surmise, and speculation?

10. Did the Single Commissioner err in Finding of Fact #4 that the claimant was entitled to a knee brace, cane and non-steroidal anti-inflammatory medications, the error being that the evidence does not support that these modalities will tend to lessen the claimant's disability?

11. Did the Single Commissioner err in Concluding as a Matter of Law #7 that the claimant was entitled to a knee brace, cane and non-steroidal anti-inflammatory medications, the error being that the claimant did not meet his burden of proof?

12. Did the Single Commissioner err in Concluding as a Matter of Law #7 that the claimant was entitled to lifetime future medical care pursuant to Dodge v. Broccoli, the error being that the claimant was not found to be permanently and totally disabled?

FULL COMMISSION DECISION

Based on the evidence submitted and the arguments presented at the Appellate Panel Review Hearing held in Columbia, South Carolina, on October 22, 2012, the undersigned Commissioners make the following findings of fact and conclusions of law based upon the preponderance of the evidence:

FINDINGS OF FACT

1. The Claimant suffered a work-related injury by accident to his right knee on June

10, 2010, arising out of and in the course of his employment. We base this conclusion on the testimony of the Claimant, the medical evidence contained in the APA submissions, and the medical questionnaires of Dr. Keith Lobel and Dr. David Kingery. Both of these doctors treated the Claimant.

After parking the tractor trailer truck on the Defendant's lot, the Claimant got out of the cab and stepped down with his right foot. When his right foot touched the ground, he heard something like a pop and he had so much pain in his knee that he could not put any weight on it. Claimant grabbed the truck to keep from falling to the ground. (Tr. p. 20, lines 3-11). After the injury, the Claimant hopped on his left leg to his personal truck, which was only three feet away. The Claimant, at the instruction of the Defendants, then took another employee to pick up a truck Defendants had rented. (Tr. p.21, lines 9-20).

The Claimant had to step down 22 inches from his tractor trailer cab when he was injured on June 10, 2010. Claimant's personal vehicles require a step down of a foot or less. (Tr. p. 31, lines 13-20; p. 32, lines 2-10). No other vehicle Claimant has ridden in has a step down as far as his tractor trailer cab. (Tr. p. 32, lines 8-10). Claimant is 5 feet, 4 inches tall and weighs 240 pounds. (Claimant's APA 4, p. 47). We find that the force exerted onto Claimant's right knee during this 22 inch step down from the tractor trailer cab at work is greater than any force Claimant would encounter outside of his employment and that this danger was peculiar to his employment. We find that the causative danger of the 22 inch step down from the tractor trailer cab was peculiar to Claimant's work and not common to the neighborhood.

The Claimant treated with Dr. Lobel at Lexington Family Practice for his right knee injury. Dr. Lobel ordered an MRI of his right knee. After the MRI, Claimant was referred to Dr. Kingery at Lexington Orthopaedics. (Tr. p. 25, lines 20-25; p. 26, lines 1-16). Dr. Kingery

performed 4-5 knee injections in order to lessen the Claimant's period of disability. (Tr. p. 27, lines 2-11).

On June 10, 2010, the date of the work-related accident, the Claimant went to his family doctor, Lexington Family Practice White Knoll, and saw Dr. Keith Lobel. The medical record states:

> This is a 65-year old male who presents with acute onset of right knee pain after jamming his leg about an hour ago. He was hopping out of his truck at the time. He felt the knee pop. It sounds like it was locked in place when he hit the ground. He misjudged the distance to the ground causing the event. He is now having pain with bearing weight, difficulty walking. No previous injury to the knee. No swelling yet. (Claimant's APA 4, p. 6).

On June 14, 2010, Claimant returned to Dr. Lobel. The medical record states:

> The patient is a 65-year old male who presents for a 4-day recheck of acute right knee pain after having an injury while at work. This is a worker's comp case. I sent home him for the weekend with activity as tolerated. He was using crutches initially but is now off those. Symptomatically, he is feeling about 50% better with respect to pain. He is not needing any pain medication at this time. He is not quite ready to go back to work. He is a truck driver, does a lot of climbing in and out of his truck cab. He does need clearance when appropriate to go back to work without restrictions. (Claimant's APA 1, p. 5).

On June 18, 2010, Claimant went back to Dr. Lobel. The medical record states, "The patient returns for a recheck for right knee injury after stepping out of this truck on June 10. This is a Worker's Compensation case. He felt the knee pop at the time... His pain is persisting with positive McMurray test. Set up MRI..." (Claimant's APA 1, p. 4).

On July 24, 2010, Claimant had an MRI of his right knee. The MRI results were, "Nonspecific marrow edema or bone bruise for the medial femoral condyle. Degenerative myxoid signal present posterior horn of the medical meniscus. Moderate sized joint effusion with sizeable Baker's cyst as discussed above. No other acute internal derangement notes. Degenerative changes for the medial tiblofemoral joint. Minimal strain for the medial collateral

ligament complex." (Claimant's APA 3, p. 43).

On August 5, 2010, Claimant went to see Dr. David Kingery at Lexington Orthopaedics. The record states, "Patient is 65 year old truck driver seen with right knee pain and history of Baker's cyst. He has undergone MRI prior to his visit here, which has shown a large Baker's cyst and some minimal meniscal changes..." (Claimant's APA 2, p. 33).

On August 12, 2010, Claimant returned to Dr. Kingery and received a right knee injection with 2 cc of Depro-Medrol 40 mg per cc. (Claimant's APA 2, p. 32).

On August 30, 2010, Claimant returned to Dr. Kingery. Both the bursa and plica were injected in hopes of giving him symptomatic relief. Dr. Kingery estimated that Claimant "should be able to return to his trucking work by the end of September and have written appropriate work note documenting this." (Claimant's APA 2, p. 28).

On October 11, 2010, Dr. Kingery provided the following addendum to his medical records:

> The patient when first seen on August 5, 2010 indicated his original injury occurred when he stepped out of his truck and twisted his knee. Prior to me seeing him, he had treatment by other physicians and underwent MRI where degenerative meniscal changes were identified along with a Baker cyst. I have treated him for this condition. Most of his symptoms are resolved. We have released him to return to his work.
>
> It is my medical opinion that the patient's knee problem for which I treated him for initially on August 5, 2010 was either directly caused by or aggravated by his injury on June 10, 2010 when he stepped from his truck in the Pelion, SC work yard twisting his knee. Based upon his last visit, I believe he has reached maximum medical improvement but has 0% partial permanent impairment. It is likely that he may require future care for his meniscal tear or Baker cyst in the future. (Claimant's APA 2, p. 26).

Claimant followed up with Dr. Kingery on December 16, 2010, and January 13, 2011. Dr. Kingery states in his medical record, "Patient is seen today with symptoms of pes anserine bursitis

with pain below his medial knee, exquisitely tender to touch... In my opinion, this is directly related to his earlier knee injury, all of which was related to his work..." (Claimant's APA 2, p. 21).

On March 17, 2011, Claimant returned to Dr. Kingery and received an injection of the knee and pes anserine bursa with 80 mg of Depo-Medrol. (Claimant's APA 2, p. 20).

On August 8, 2011, Dr. Kingery completed a medical questionnaire where he stated to reasonable degree of medical certainty that the Claimant's right knee injury most probably results from his performance of his job activities and/or work-related aggravation of a pre-existing condition. (Claimant's APA 2, p. 14). Dr. Kingery also stated most probably to a reasonable degree of medical certainty that Claimant will need future medical care to include an occasional injection to his knee and one follow up medical visit per year, which will tend to lessen Claimant's period of disability for his right knee work-related injury through maintaining his present level of functioning. (Claimant's APA 2, p. 15).

Dr. Lobel completed a medical questionnaire where he stated to reasonable degree of medical certainty that the Claimant's right knee injury most probably results from his performance of his job activities and/or work-related aggravation of a pre-existing condition. (Claimant's APA 2, p. 17).

On August 11, 2011, Dr. W. Daniel Westerkam performed an Independent Medical Examination on the Claimant at the request of the Defendant's. Dr. Westerkam stated:

This is a 66 year old gentleman who injured his right knee on June 10, 2010... The patient's MRI scan revealed some degenerative changes as well as a Baker's cyst which were pre-existing conditions that were exacerbated by stepping off his truck on June 10, 2010. The patient subsequently retired and is no longer working, but I do believe he will need to take non-steroidal anti-inflammatories indefinitely. I do recommend that he perform a home exercise program and I think walking in the pool is ideal. Because of his morbid obesity, weightbearing exercises will only exacerbate the degeneration of his knee. I would recommend that he be placed on a weight reduction program. I agree with Dr. Kingery that removal of the Baker's cyst is probably not going to resolve any of his issues and they frequently reoccur. I think the patient would benefit from a knee brace and a cane which would help unload the knee. I do think he has a permanent

impairment of the right knee because of weakness in the knee extension. I would use the table on 17-8 on page 532 which would give him a 12% right knee impairment. (Claimant's APA 4, p. 47).

On January 13, 2012, Dr. Westerkam stated in a medical questionnaire that most probably to a reasonable degree of medical certainty that Claimant's right knee injuries most probably result from his performance of a job activities and/or work-related aggravation of a pre-existing condition (Claimant's APA 4, p. 44). Most probably to a reasonable degree of medical certainty, Dr. Westerkam gave Claimant a 12% right lower extremity impairment (Claimant's APA 4, pp. 44, 47). Most probably to a reasonable degree of medical certainty, Dr. Westerkam stated that Claimant will need a knee brace, cane, and nonsteriodal anti-inflammatory meds for the remainder of his lifetime. (Claimant's APA 4, p. 45). Most probably to a reasonable degree of medical certainty, Dr. Westerkam stated that Claimant will need future medical care two times a year for his lifetime. (Claimant's APA 4, p. 45).

2. The Claimant has a 12% disability to the right lower extremity. We base this conclusion on the medical evidence submitted pursuant to the APAs and the testimony offered at the hearing.

Most probably to a reasonable degree of medical certainty, Dr. W. Daniel Westerkam, the doctor hired by the Defendants to perform an independent medical examination of Claimant, gave Claimant a 12% right lower extremity impairment (Claimant's APA 4, pp. 44, 47). Most probably to a reasonable degree of medical certainty, Dr. Westerkam stated that Claimant will need future medical care two times a year for his lifetime. (Claimant's APA 4, p. 45).

From the day of the accident until October 1 or 2, 2010, Claimant was unable to work and received no income or TTD from the Defendants. The Employer had no light duty work available. (Tr. p. 27, lines 22 - 25; p. 28, lines 1 - 25; p. 29, lines 1 - 3).

When the Claimant returned to work for the Employer, he was not able to do the unloading part of his job. Claimant worked for Employer until July 8, 2011, when he retired. (Tr. p. 29, lines 4-23).

The Claimant cannot fish any more since this accident as his knee hurts too much with sitting. (Tr. p. 32, lines 11 - 25; p. 33, line 1 - 5).

The treatment provided to the Claimant by Dr. Kingery helped ease his pain. The injections were effective for 2 ½ to 3 months and then the Claimant had to return to Dr. Kingery for more care. (Tr. p. 30, lines 7 - 17).

The Claimant takes prescription Celebrex, which helps reduce his pain and allows him to still drive a truck. (Tr. p. 33, lines 12 - 24). The Claimant saw Dr. Daniel Westerkam for an IME at the request of the Defendants, and Claimant wants Dr. Westerkam's recommendations regarding a knee brace, cane, non-steroid anti-inflammatory medicine, and lifetime medical care approved and ordered by the Commission. (Tr. p. 35, lines 18 - 25; p. 36, lines 1 - 4).

The Defendants shall pay to the Claimant $16,139.21 in a lump sum amount based on a 12% disability to the right lower extremity.

3. According to Dr. Kingery, the treating orthopaedic physician, the Claimant reached MMI on October 11, 2010. (Claimant's APA 2, p. 26).

4. In the IME conducted by Dr. Daniel Westerkam at the request of the Defendants, Dr. Westerkam opines that the Claimant will need, "a knee brace, cane, and nonsteroidal anti-inflammatory medications." (Claimant's APA 4, p. 47). The Defendants shall provide Claimant a knee brace, cane, and nonsteroidal anti-inflammatory medications.

5. The Defendants can choose an authorized treating physician to prescribe those

nonsteroidal anti-inflammatory medications (NSAIDS) as well as provide medical care which would tend to lessen the Claimant's disability. The Defendants shall provide future medical care and medications which tend to lessen Claimant's disability including, but not limited to, injections and nonsteroidal anti-inflammatory medications. (Claimant's APA 2, p. 15; Claimant's APA 4, pp. 45, 47).

6. The Claimant is entitled to temporary total disability (TTD) benefits from June 10, 2010, through October 11, 2010. (Claimant's APA 2, pp. 26, 28, 30). We base this conclusion on the medical evidence submitted pursuant to the APAs and the testimony offered at the hearing. The Defendants shall pay to the Claimant $12,217.72 in a lump sum amount for back temporary total disability benefits, which is 17.7143 weeks multiplied by the stipulated maximum compensation rate of $689.71.

From the day of the accident until October 1 or 2, 2010, Claimant was unable to work and received no income or TTD from the Defendants. The Employer had no light duty work available. (Tr. p. 27, lines 22 - 25; p. 28, lines 1 - 25; p. 29, lines 1 - 3).

7. The Claimant is not entitled to a weight loss program or surgery.

8. Four motions were filed in this case. The information found at tabs B, C, D, and E was not required to reach a decision in this case. As such, that information was given no weight.

9. Therefore, I find those four motions are moot.

10. The Defendants are responsible and shall pay for all causally related medical care including, but not limited to, the care of Dr. Keith Lobel, Dr. David Kingery, and any diagnostic tests.

11. The Defendants are responsible and shall pay for all causally related medications.

12. The Defendants are responsible and shall pay for all causally related medical

mileage.

13. The Claimant gave proper and timely notice of the accident to the Defendants based on Claimant's testimony and the Form 12A.

Claimant hoped that the right knee pain might lessen, but when it did not, Claimant called Ferri in the Defendant's transportation office and told her what happened. (Tr. p. 21, lines 21 - 25). The Claimant told Ferri that when he stepped out of the truck, that he thought he had jammed his knee. (Tr. p. 22, lines 9 - 14). After dropping the other driver off, the Claimant called Ferri again to tell her that he had to go to his family doctor. (Tr. p. 22, lines 15 - 23).

14. The Claimant timely filed this claim.

15. The Claimant's average weekly wage is $1,173.81, yielding a maximum compensation rate of $689.71.

16. The Claimant is 66 years old (Tr. p. 16, lines 18-19).

17. The Claimant is five feet, four inches tall and weighs 240 pounds. (Tr. p. 16, lines 20-23).

18. The Claimant has a tenth grade education and has worked as a truck driver for 42 years. (Tr. p. 17, lines 5-14).

19. The Claimant started working for the Defendant in 2005. (Tr. p. 18, lines 4-13).

20. The Claimant fully cooperated with the Defendants' investigations and gave their insurance adjuster, Mr. Steve Anthony, a detailed, recorded statement of how the accident occurred on June 17, 2010, and the injury he sustained. The Claimant's statement was consistent with what Claimant told the employer and all of the doctors he saw.

(Verbatim excerpt from Hearing Transcript): 65

14 ...

15 BY MR. TRUITT:

Q. All right. This is -- you remember Mr. Anthony coming to talk to you on June 17th which is a week after the accident?
A. Yes.
Q. And I'm going to ask you, did you tell him the date the accident was?
A. Yes.
Q. What did you tell him? This is Page 1 and it's several lines down.
A. June the 10th.

Q. That was the 10th? That was your answer?
A. Yes, sir.
Q. All right. Did you also tell Mr. Anthony how the accident happened?
A. Yes, sir.
Q. I'm going to direct your attention to page 6 of the statement, and this is a little further down where it says -- where it's highlighted.
A. I said, "Well, I thought I jammed my knee when I stepped out of the truck. But the doctor says maybe pulled a liter (sic) or muscle in back of my leg. He x-rayed my knee and said that I didn't hurt nothing or break anything."
Q. Okay. All right. A few lines further down on Page 6, what did you further explain what is says right there?
A. "I stepped out of the truck when I hit -- hit the" -- it's supposed to be ground, but it ain't on here. "When I stepped on the ground, I felt something in my leg give. It sounded like something cracked."
Q. Okay. And this was one week after the accident?
A. Yes.
Q. All right. Then he asked you the next question, "Did you fall," on Page 6. And on Page 7, the

first line, what is your answer?
A. "Yep. I fell. I caught ahold of the truck, but I couldn't stand up and put no weight on my leg at all." He said, "Did you fall to the ground completely?"
"No. I caught -- see, I caught ahold of the truck before I hit the ground, but I will -- was going to hit to the ground when my knee of leg give away."
Q. Okay. All right. And that's what happened; is that correct?
A. Yes.
Q. And that's what you told Ferri, that's what you told Steve Anthony, and that's what you told any doctor you've been to?
A. Yes.
Q. And that's what you're telling Commissioner McCaskill today?
A. Yes.
...

CONCLUSIONS OF LAW

Accordingly, it is the determination and finding of the undersigned Commissioners that:

1. This matter is governed by the South Carolina Workers' Compensation Act, §42-1-10 *et seq.* of the South Carolina Code (1976, as amended).

2. The Claimant sustained an injury by accident pursuant to §42-1-160 of the Act on June 10, 2010, within the course and scope of his employment and that Defendants were given proper notice of Claimant's injury.

To sustain an award under the Workers' Compensation Act, an injury must result from an accident which both "arose out of" and occurred "in the course of" the employment. *Williams v. The South Carolina State Hospital,* 245 S.C. 377, 140 S.E. 2d 601 (1965). The phrases "arising out of" and "in the course of employment" are used conjunctively. One of these elements without

the other will not sustain an award. The two elements must co-exist. *Dicks v. Brooklyn Cooper Ridge Co.*, 208 S.C. 139, 37 S.E. 2d 286 (1946); *Brady v. Sacony of St. Matthews*, 232 S.C. 84, 101 S.E. 2d 50 (1957). "Arising out of refers to the origin of the cause of the accident. *Eaddy v. Smurfit-Stone Container Corporation*, 355 S.C. 154, 584 S.E. 2d 390 (Ct. App. 2003). (*rehearing denied.*) The employee's injury must bear a "logical causal relation" to his employment. *Dukes v. Rural Metro Corp.*, 356 S.C. 107, 587 S.E.2d 687 (2003), *quoting, Bright v. Orr Lyons Mill*, 285 S.C. 58, 59, 328 S.E.2d 68, 70 (1985).

"It (the injury) arises 'out of the employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises 'out of' the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workman would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and have flowed from that source as a rational consequence." *Douglas v. Spartan Mills*, 245 S.C. 265, 140 S.E.2d 173 (1965), *quoting, Fowler v. Abbott Motor Co.*, 236 S.C. 226, 113 S.E.2d 737 (1960).

"Under the 'increased-risk doctrine' for workers' compensation purposes, an injury arises out of the employment if some risk inherent to the employment was a contributing cause of the

injury; the risk must be one to which the general public would not be equally exposed." *Simmons v. City of Charleston* (S.C. App. 2002) 349 S.C. 64, 562 S.E.2d 476, *rehearing denied certiorari dismissed.*"

"The adjective 'accidental' qualifies and describes the injuries contemplated by the statute as having the quality or condition of happening or coming by chance or without design, taking place unexpectedly or unintentionally. If one becomes ill while at work from natural causes, the state or condition is not accidental since it is a natural result or consequence and might be termed normal and to be expected. If, however, there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental. Neither is it necessary that the accidental quality or condition be created by wound or external violence." *Riley v. South Carolina Ports Authority,* 253 S.C. 621, 172 S.E. 2d 657 (1970). In other words, the injury itself can be the accident; however, proximate causation must still be proven by preponderant evidence.

In a compensable workers' compensation case, *Ellis v. Spartan Mills,* 276 S.C. 218, 277 S.E.2d 590 (1981), the claimant bent forward and twisted in order to retrieve something involved with her employment ("Ellis testified that a thread had run off the machine and was lying on the floor. As she bent forward and to her right, twisting her body in an attempt to retrieve the thread, she testified that she felt something 'pop' in her back." *Id.* at 219, 591. "The facts as found by the Commission in this action reveal that Ellis suffered her injury when she twisted her back. Here, the injury resulted from the work activity.") *Id.* at 219, 592.

In another compensable workers' compensation case, *Sigmon v. Dayco Corp.*, 316 S.C. 260, 449 S.E.2d 497 (Ct. App. 1994), the claimant knelt down to tighten bolts, thereby placing

pressure on his knee. ("In 1992, Sigmon knelt to tighten bolts on a machine that Dayco had assigned him to rebuild. His knee locked when he attempted to stand up.") *Id.* at 261, 498.

In another compensable workers' compensation case, *Creech v. Ducane Co.*, 320 S.C. 559, 467 S.E.2d 114 (Ct. App. 1995), the claimant bent down to pick up a filter rack from the floor. ("On July 12, 1993, Creech claimed he injured his back as he reached down to pick up a filter rack from the floor.") *Id.* at 559, 115. Although the filter was of insignificant weight, the task involved the bodily mechanics of bending down and reaching.

3. Under §42-1-40, the Claimant's average weekly wage is $1,173.81, yielding a maximum compensation rate of $689.71.

4. Under §42-9-10 and §42-1-120, the Claimant reached maximum medical improvement on October 11, 2010, in accord with Dr. David Kingery's findings.

5. Under §42-9-30, the Claimant has 12% disability to the right lower extremity.

6. Under §42-15-20, proper notice of the injury was given.

7. Under §42-15-60 and *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999), Claimant shall receive and Defendants shall provide lifetime future medical care, medications, and medical equipment including, but not limited to, follow-up visits, a knee brace, a cane, non-steroidal anti-inflammatory medications, and injections, which tend to lessen Claimant's period of disability and maintain his current level of functioning.

8. The Defendants can choose an authorized treating physician to prescribe those NSAIDS as well as provide medical care which would tend to lessen the Claimant's disability.

ORDER

BASED ON THE FINDING OF FACT AND CONCLUSIONS OF LAW, the

undersigned Commissioners order as follows:

ORDERED, ADJUDGED AND DECREED that Defendants shall pay to the Claimant $16,139.21 in a lump sum amount based on a 12% disability to the right lower extremity.

ORDERED, ADJUDGED AND DECREED that the Defendants shall pay to the Claimant $12,217.72 in a lump sum amount for back temporary total disability benefits, which is 17.7143 weeks multiplied by the stipulated maximum compensation rate of $689.71.

ORDERED, ADJUDGED AND DECREED that the Defendants shall provide Claimant lifetime future medical care, medications, and medical equipment including, but not limited to, follow-up visits, a knee brace, a cane, non-steroidal anti-inflammatory medications, and injections, which tend to lessen Claimant's period of disability and maintain his current level of functioning.

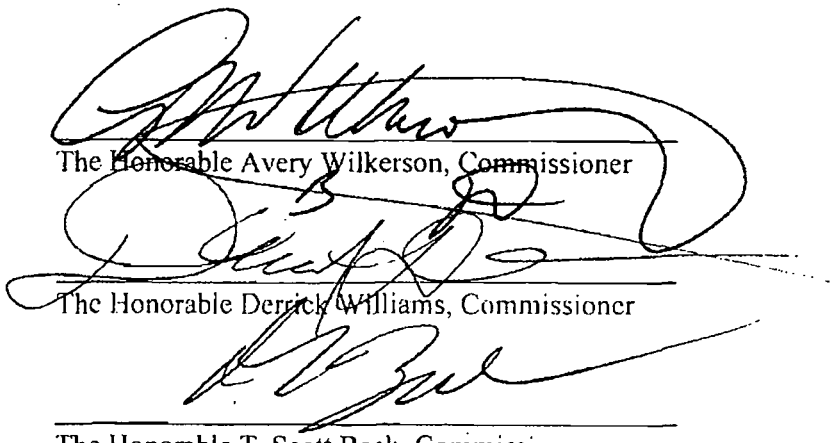
ORDERED, ADJUDGED AND DECREED that the Defendants shall provide Claimant an authorized treating physician to provide causally related medical care and prescribe causally related medications.

ORDERED, ADJUDGED AND DECREED that the Defendants shall pay for all causally related medical care including, but not limited to, the care of Dr. Keith Lobel, Dr. David Kingery, and any diagnostic tests.

ORDERED, ADJUDGED AND DECREED that the Defendants shall pay for all causally related medication and medical mileage.

AND IT IS SO ORDERED.

FULL AFFIRMATION. Absent claimant)
Jurisdiction
Issue



The Honorable Avery Wilkerson, Commissioner

The Honorable Derrick Williams, Commissioner

The Honorable T. Scott Beck, Commissioner

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 mail addressed to any unrepresented party.

By Valerie Deller on January 3, 2013