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SC Court of Appeals

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

Theodore Ladson,

CLAIMANT,

vs.

Condustrial,

Employer,

and

United Wisconsin Insurance,

Carrier

DEFENDANTS.

WCC FILE NO: 1903006

Appellate Panel Review held in Columbia, South Carolina on

April 19, 2021,

Appellate Panel Decision and Order filed on July 7, 2021.

Appearances: Claimant represented by William L. Smith II, Esquire
Defendants represented by George D. Gallagher, Esquire

STATEMENT OF THE CASE

This case came before the Single Commissioner pursuant to a Form 50 filed by the Claimant, Theodore Ladson, and a Form 51 filed by Defendants. Claimant contended that he suffered an admittedly compensable accident on February 27, 2019, when large stones fell on his back. Claimant alleged that he suffered low back problems, thoracic spine problems; and cervical disc herniation with myelopathy that causes pain all the way down his back. Claimant further alleged that he needs emergency surgery for his cervical spine and seeks an order requiring provision of treatment for his cervical spine.

Defendants admitted that claimant suffered a low back injury but denied any causally related cervical spine issues and further denied claimant's entitlement to cervical spine surgery.

The hearing was held before the Single Commissioner on September 23, 2020, in Columbia, South Carolina pursuant to timely and proper notice served on all interested parties. No objection was raised by either party regarding jurisdiction or venue.

On January 26, 2020, the Single Commissioner issued his Decision and Order, making the following Findings of Fact.

- 1) The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Worker's Compensation Act.
- 2) Claimant sustained an admitted work-related injury to his back arising out of and in the course and scope of his employment on February 27, 2019.
- 3) Claimant's injury by accident was not just to his lumbar spine. Claimant also suffered injury to his entire back including his cervical spine and claimant also has radiculopathy as a result of his cervical disc herniation and myelopathy.
- 4) Claimant underwent various evaluations and treatments for his admitted and alleged work-related injuries.
- 5) On April 18, 2019, in the medical notes, Dr. Shannon Conrad of Doctors Care noted under patient instructions: "Back and neck pain, general, follow-up with specialist within 5 to 7 days, follow up with orthopedics in the next week."

- 6) On September 30, 2019, in deposition testimony, authorized treating physician Dr. James Aymond testified to a reasonable degree of medical certainty that claimant's cervical disc herniation was most probably caused by claimant's incident on the job. Further, Dr. Aymond testified claimant needs the surgery sooner rather than later.
- 7) On December 3, 2019, in deposition testimony, defendant's IME doctor, Dr. Philip J Hodge, testified to a reasonable degree of medical certainty that the event of February 28, 2019 most probably caused claimant's cervical disc herniation. In addition, Dr. Hodge further testified it would be important to have the surgery as soon as possible.
- 8) On September 23, 2020, at a hearing before the undersigned, claimant testified regarding his admitted work-related injury, the medical treatment he has received, his light duty and his alleged neck injury, the reporting of his neck injury and the issues he continues to have.
- 9) While I appreciate the sworn testimony and opinions of biomechanics engineer, Brian Boggess, I give greater weight to the opinions of the medical experts, Dr. Aymond and Dr. Hodge.
- 10) Based upon the preponderance of the evidence, I find claimant has met his burden of proof that that he sustained a causally related, compensable injury to his neck arising out of in the course and scope of his employment.
- 11) Claimant is entitled to all causally related medical treatment for his neck, including surgery, as recommended by Dr. James Aymond.
- 12) Claimant has an average weekly wage of \$519.54 and a corresponding compensation rate of \$346.37.
- 13) Claimant continues to receive temporary total compensation at the rate of \$346.37.
- 14) Claimant has not reached maximum medical improvement.

The Single Commissioner further made the following Conclusions of Law:

- 1) Pursuant to Section §42-15-10 and Section §42-17-20, jurisdiction and venue are proper.
- 2) Pursuant to Section §42-1-160, claimant sustained a compensable injury to his cervical spine as well as his lumbar spine on February 27, 2019 while employed with Condustral Inc.
- 3) Pursuant to Section §42-15-60, claimant is entitled to medical care for his cervical spine including surgery with Dr. James Aymond as treating physician.
- 4) Pursuant to Section §42-9-10, claimant is to continue receiving weekly temporary total compensation at the rate of \$346.37.

The Single Commissioner then made the following Order:

- 1) IT IS ORDERED that Claimant has sustained a compensable injury by accident arising out of and in the course of his appointment to his neck and is entitled to treatment including surgery to be provided by Dr. James Aymond.
- 2) IT IS ORDERED that Claimant has not reached maximum medical improvement and is entitled to continuing temporary total compensation at the rate of \$346.37 per week.

Within the statutory period, the defendants timely filed an application for review and Form 30 in the case setting forth their numerous grounds for review copies of which were furnished to all interested parties. The Appellant asserted the Single Commissioner erred as follows:

1. Did the Hearing Commissioner err in his Finding of Fact# 3 to the extent he finds that Claimant sustained compensable and causally related injury to his cervical spine in his accident on February 27, 2019 when such finding is against the greater weight of the evidence in the Record and is controlled by an error of law?
2. Did the Hearing Commissioner err in his Finding of Fact # 5 regarding a contemporaneous report of neck pain stemming from the admitted accident when such finding mischaracterizes the actual medical record?
3. Did the Hearing Commissioner err in failing to find as a matter of fact that the lack of contemporaneous complaints and/or objective signs on physical examination of the alleged cervical injury following the accident belies causal relation?
4. Did the Hearing Commissioner err in his Finding of Fact # 6 to the extent he concludes that Dr. Aymond's deposition testimony on medical causation of the disputed cervical condition is determinative of the issue of

compensability of such condition, when Dr. Aymond gave contradictory testimony against causation in the very same deposition and the Commissioner failed to explain or specify why he relied upon the testimony supporting causation to the exclusion of the testimony disfavoring causation?

5. Did the Hearing Commissioner err in his Finding of Fact# 7 to the extent he concludes that Dr. Hodges's deposition testimony on medical causation of the disputed cervical condition is determinative of the issue of compensability of such condition, when Dr. Hodge gave contradictory testimony against causation and the Commissioner failed to explain or specify why he relied upon the testimony supporting causation to the exclusion of the testimony disfavoring causation?
6. Was the Hearing Commissioner's reliance on medical testimony from Dr. Aymond and Dr. Hodge supporting medical causation arbitrary and capricious?
7. Did the Hearing Commissioner err as a matter of law by concluding that compensability of the alleged cervical condition was strictly a medical causation issue and that a doctor's opinion on same is outcome determinative of the issue to the exclusion of other evidence in the Record, including, but not limited to, an unrefuted expert biomechanical opinion that it was physically impossible for the accident to have caused the cervical injury?
8. Did the Hearing Commissioner err as a matter of law by failing to make a requisite finding of fact regarding the physics of the accident itself and/or mechanism of injury, when such failure necessarily invalidates the

foundation of Dr. Hodge's and Dr. Aymond's respective medical opinions supporting medical causation of the alleged cervical condition?

9. Did the Hearing Commissioner err in failing to find that Claimant's testimony regarding the accident- i.e. that he was struck by boulder sized refractory material falling from a height of 10 feet- was not credible and physically impossible based on the physical characteristic, setting, and location of the accident?
10. Did the Hearing Commissioner err in awarding ongoing compensation and further medical benefits for Claimant's alleged cervical condition based on the aforementioned erroneous findings of fact and errors of law?

Briefs were submitted prior to oral arguments, which were presented before the Appellate Panel on April 19, 2021. All proffered testimony has been taken. Such together with all documentary evidence has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration. In an appellate review, the Appellate Panel shall, pursuant to SC Code Section §42-17-50 (1976 as amended), review the award and, if good grounds be shown therefore, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the hearing Commissioner. Counsel for the Claimant and for the Defendants appeared at the scheduled hearings to present oral arguments on behalf of the parties.

A review of the record in its entirety shows that the evidence supports the Single Commissioner's findings and rulings. The reports and depositions of Dr. Aymond and Dr. Hodge establish the causal connection between the injury and claimant's cervical myelopathy. The testimony of claimant and his supervisor support the existence of the injury. The report and

deposition of engineer, Brian Boggess, while contrary to these opinions, is outweighed by the other evidence.

Having heard oral arguments on behalf of the parties, considered the briefs, and viewed the record as a whole, the Appellate Panel affirms the hearing Commissioner's order in full and makes the following finding of facts and conclusions of law:

FINDINGS OF FACT

- 1) The parties to the proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
- 2) Claimant sustained an admitted work-related injury to his back arising out of and in the course and scope of his employment on February 27, 2019.
- 3) Claimant's injury by accident was not just to his lumbar spine. Claimant also suffered injury to his entire back including his cervical spine and claimant also has radiculopathy as a result of his cervical disc herniation and myelopathy.
- 4) Claimant underwent various evaluations and treatments for his admitted and alleged work-related injuries.
- 5) On April 18, 2019, in the medical notes, Dr. Shannon Conrad of Doctors Care noted under patient instructions: "Back and neck pain, general, follow-up with specialist within 5 to 7 days, follow up with orthopedics in the next week."
- 6) On September 30, 2019, in deposition testimony, authorized treating physician Dr. James Aymond testified to a reasonable degree of medical certainty that claimant's cervical disc herniation was most probably caused by claimant's incident on the job. Further, Dr. Aymond testified claimant needs the surgery sooner rather than later.
- 7) On December 3, 2019, in deposition testimony, defendant's IME doctor, Dr. Philip J Hodge, testified to a reasonable degree of medical certainty that the event of February 28, 2019 most probably caused claimant's cervical disc herniation. In addition, Dr. Hodge further testified it would be important to have the surgery as soon as possible.
- 8) On September 23, 2020, at a hearing, claimant testified regarding his admitted work-related injury, the medical treatment he has received, his light duty and his alleged neck injury, the reporting of his neck injury and the issues he continues to have.

- 9) While we appreciate the sworn testimony and opinions of biomechanics engineer, Brian Boggess, we give greater weight to the opinions of the medical experts, Dr. Ayrmond and Dr. Hodge.

CONCLUSIONS OF LAW

- 1) Pursuant to §42-15-10 and §42-17-20, jurisdiction and venue are proper.
- 2) Pursuant to §42-160, claimant sustained a compensable injury to his cervical spine as well as his lumbar spine on February 27, 2019 while employed with Condustrual Inc.
- 3) Pursuant to §42-15-60, claimant is entitled to medical care for his cervical spine including surgery with Dr. James Aymond as treating physician.
- 4) Pursuant to §42-9-10, claimant is to continue receiving weekly temporary total compensation at the rate of \$346.37.

ORDER

IT IS THEREFORE ORDERED: The Decision and Order of the Single Commissioner filed in the above entitled matter on January 26, 2021 is hereby affirmed by the Appellate Panel of the South Carolina Workers' Compensation Commission. We hereby order:

- 1) IT IS ORDERED that claimant has sustained a compensable injury by accident arising out of and in the course of his employment to his neck and is entitled to treatment including surgery to be provided by Dr. James Aymond.
- 2) IT IS ORDERED that Claimant has not reached maximum medical improvement and is entitled to continuing temporary total compensation at the rate of \$346.37 per week.

AND IT IS SO ORDERED!



Susan S. Barlen, Commissioner



Gene McCaskill, Commissioner



T. Scott Beck, Commissioner

7/2/2021

Dated: _____

Order Served via E-Mail:

William L. Smith Chappell, Smith, & Arden bsmith@csa-law.com	George D. Gallagher Speed, Seta, Martin, Trivett, & Stublely ggallagher@speed-seta.com
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on July 7, 2021