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

WCC FILE 1818059

JAMES A. PALMER,
Claimant,
Employee/Appellant.

vs.

KEMIRA CHEMICALS, INC.,
Employer,

and

AMERICAN HOME ASSURANCE COMPANY,
Carrier,
Defendants/Respondents.

Appellate Panel Review
Columbia, South Carolina
April 19, 2021

Appellate Panel Decision & Order filed
on July 29, 2021.

AFFIRMED WITH AMENDMENTS

The Employee/Claimant, pro se.

Leslie M. Whitten, of Chartwell Law, on behalf of the Employer/Carrier.

STATEMENT OF THE CASE

The above case was heard before Commissioner Avery B. Wilkerson in Goose Creek, South Carolina, on September 22, 2020 pursuant to notice timely and properly given to all parties of record. On January 13, 2021, Commissioner Williams issued the following Findings of Fact and Rulings of Law:

FINDINGS OF FACT

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. That the Undersigned Commissioner sent his Order Notes to the parties on October 6, 2020.
3. That the Claimant verified at the hearing that he did not wish to retain an attorney.
4. That the Claimant testified that he is 47 years old with seven children.
5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.
6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for $50,000 in 2016.
7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.
8. That the Claimant testified that he continues to have pain and fragment issues in his back.
9. That the Claimant was terminated by the Employer.
10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.
11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.

12. That the Claimant did not return to Dr. Poletti after February 13, 2019.

13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.

14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.

15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.

16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant "requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue where the incident happened and what actions the patient was taking that the time of the injury."

17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.

18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.

19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.

20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.

21. That, based on the greater weight of the evidence, I find that the Claimant sustained a compensable injury on November 7, 2018.

22. That the November 7, 2018 incident was minor in nature.

23. That the Carrier paid authorized, causally related medicals in November and December of 2018.

24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.

25. That the Claimant had no lost time from the November 7, 2018 accident.

26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.

27. That I find no disability benefits due to the Claimant from this minor injury/accident.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann. § 42-1-160 defines injury by accident;

2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Café, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).

3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;

4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

ORDER

Based on the foregoing, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018; it is further

ORDERED, ADJUDGED, AND DECREED that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018.

No hearing costs or penalties are assessed in this matter.

Within the statutory period, the unrepresented Claimant filed a Form 30, Application for Review, in this case setting forth the appeal grounds, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 19, 2021. All proffered testimony had been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Appellate Panel and has since been under study and consideration.

In his appeal, the Claimant respectfully submitted the following:

1. Did the Commissioner err in failing to award additional medical care for the claimant's compensable injury sustained on November 7, 2018?

2. Did the Commissioner err in finding that claimant reached maximum medical improvement for the claimant's compensable injury sustained on November 7, 2018?

STANDARD OF REVIEW

When reviewing evidence in the award of the Single Commissioner, the Appellate Panel makes its own findings of fact and reaches its own conclusions of law either consistent or inconsistent with those of the Single Commissioner. S.C. Code Ann. § 42-17-50 (1985); Lowe v. Am-Can Trans. Servs., Inc., 283 S.C. 534, 324 S.E.2d 87 (Ct. App. 1984). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000). An award of benefits may not rest on surmise, conjecture, or speculation but, rather, must be founded on evidence of sufficient substance to afford it a reasonable basis. Linen v. Ruscon Constr. Co., 286 S.C. 67, 332 S.E.2d 211 (1985).

EVIDENCE OF THE CASE

Prior to working for Kemira Water Solutions, the Claimant worked for International Paper for about 20 years. (Transcript of Hearing, p. 14, lines 23-25). He then left International Paper to start a landscaping business. He still has this business, which requires him to operate tractors and dump trucks. (Transcript of Hearing, p. 15, lines 4-11).

When working with International Paper, the Claimant had a workers' compensation claim involving his knees and ankles in 2013. (Exh B p. 340). He had another work injury to his lumbar spine with International Paper in 2016. (Transcript of Deposition p. 10, lines 3-17 & Exh B p. 297). The 2016 back claim settled for $50,000. (Exh B p. 297-302). The Claimant's testimony was that his injury to his back in 2016 was to the same part of his back as his injury on November 7, 2018. (Exh A, p.238 & Transcript of Deposition p. 21, lines 10-13).

In the Claimant's recorded statement taken by an insurance adjuster at AIG on November 20, 2018, he indicated that his only prior back injury was a pulled muscle in his back in high school. (Exh A, p. 240-241). He also indicated that he had never had a prior workers' compensation claim or injury before. (Exh A p. 241). At the hearing, the Claimant testified that he was in pain on November 20 and does not recall what he said. (Transcript of Hearing, p. 19, lines 10-25).

The Claimant started working for Kemira in early 2018 and mainly worked on presses on the chemical floor. (Transcript of Hearing, p. 20, lines 17-19). In October of 2018, he was suspended for being aggressive with a co-worker. (Exh E, p. 380).

The Claimant alleged that on November 7, 2018, he was shoveling chemical and felt a pop in his low back. (Transcript of Hearing, p. 21, lines 12-15). He admitted that he waited two weeks before telling his supervisor or requesting to see a doctor. (Transcript of Hearing, p. 27, lines 17-20).

Larry Richardson testified for the Employer/Carrier and indicated that he did work with the Claimant shoveling product at some point in November of 2018. (Transcript of Hearing, p. 64, lines 5-7). However, he did not have any recollection of the Claimant saying he hurt his back. He said the Claimant may or may not have said something, but he does not recall. (Transcript of Hearing, p. 64, lines 8-15).

The Claimant submitted a copy of a text dated November 7, 2018, where someone asked "are feeling at least a little better about things?," and he responded "No. I think I'm in trouble. My back is acting up really bad. May have reaggravated my injury." (Claimant's Exh B). The Claimant's testimony at the hearing was that he was texting with his wife and that he was talking about the incident at work. (Transcript of Hearing, p. 22, lines 19-21).

Medical records from McLeod Regional Medical Center on November 24, 2018 and November 26, 2018 indicate that the Claimant hurt his back doing yard work at home. (APA 8, p. 126 & 147). On September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant had told McLeod Regional that his records were incorrect and that he was actually injured at work. (Claimant's APA 2). The letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done. The letter, verbatim, states "[p]atient, James Palmer, has requested that his medical record for the episode of care on November 24, 2018, be amended to

reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor this request to amend the medical record to document the true venue where the incident happened and what actions the patient was taking at the time of the injury."

The medical records indicate that the Claimant received authorized medical care for his lumbar spine in November and December of 2018 with Concentra Medical Care in the form of physical therapy and steroids. (APA 3). On December 3, 2018, the Claimant indicated that he was pain free. (APA 3, p. 41).

The Claimant testified that he is currently working at a waste water treatment plant full time. (Transcript of Hearing, p. 42, lines 9-18). He has not had to call in sick or leave early due to back pain since starting that job over a year ago. (Transcript of Hearing, p. 42, lines 19-23). When asked about playing sports with his children, he denied that he did this at all. (Transcript of Hearing, p. 42, line 24-p. 43, line 1). However, in his deposition the Claimant testified that he did still play basketball with his children. (Transcript of deposition p. 27, lines 14-16). When confronted with this at the hearing, the Claimant said he just meant he could no longer play sports without pain. (Transcript of Hearing, p. 43, lines 2-22). In his deposition, the Claimant admitted that he had no issues with activities of daily living. (Transcript of deposition p. 26, lines 21-24).

The medical records indicate that the Claimant treated with Dr. Mohamed starting January 14, 2019 because he needed a new primary care physician. (APA 2, p. 12). The Claimant denied

that this was the purpose of the visit, but acknowledged that he treated with Dr. Mohamed to address his diabetes and a pulmonary emboli issue. (Transcript of Hearing, p. 50, line 2 – p. 52, line 10). The Claimant alleged at the hearing that he did tell Dr, Mohamed that his back was hurting, (Transcript of Hearing, p. 52, lines 11-14), but there is nothing in Dr. Mohamed's notes that mention the back. (APA 2). In addition, his physical exam, including the musculoskeletal exam, was normal. (Exh 2. p. 13). Also, according to the APA submissions, the Claimant underwent a DOT physical for People Facts on January 31, 2019. (APA 5, p. 91). The records indicate that the Claimant had no complaints, and his physical was normal. (APA 5, p. 108). At the hearing, the Claimant said that he just needed the job. (Transcript of Hearing, p. 54, line 20 – p. 55, 4).

Two weeks after the normal DOT physical, the Claimant attended an independent medical evaluation with Dr. Poletti on February 13, 2019. (Claimant APA 10). Dr. Poletti indicated that the Claimant's back injury in November of 2018 was a new injury. The medical report indicates that the Claimant should return for further treatment as further symptoms arise, to include a microdiscectomy. Dr. Poletti noted that this particular injury would not respond to injection based therapy. Id. The Claimant testified at the hearing that he had not returned to Dr. Poletti because he needs to continue to work. (Transcript of Hearing, p. 60, line 18 – p. 61, line 15).

On September 25, 2019, the Claimant went to MUSC and noted a history of back pain, though he said he had been doing well up until September of 2019. (APA 9, p. 197). He also noted that previously injections had helped him with this back pain. (APA 9, p. 198). He was able to return to work the next day, (APA 9, p. 199), and the Claimant admitted at the hearing that he had not seen a doctor for his back since that September MUSC visit. (Transcript of Hearing, p.

55, lines 15-21). He did, however, return to MUSC on May 13, 2020 to follow up regarding a pulmonary embolism, and the notes from that day make no mention of back pain. (APA 9, p. 225).

FINDINGS OF FACT

IT IS FOUND AS A FACT THAT:

1. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.

2. That the Single Commissioner sent his Order Notes to the parties on October 6, 2020.

3. That the Claimant verified at the hearings that he wished to go forward without an attorney.

4. That the Claimant testified that he is 47 years old with seven children.

5. That the Claimant testified that he was scared to report his work injury for fear of losing his job.

6. That the Claimant had two prior worker's compensation claims, to include a back injury that settled for $50,000 in 2016.

7. That the Claimant was nervous providing testimony and had a hard time answering questions; he said he wanted to tell his story.

8. That the Claimant testified that he continues to have pain and fragment issues in his back.

9. That the Claimant was terminated by the Employer.

10. That this claim was initially accepted by the Employer/Carrier but was denied after further investigation revealed evidence inconsistent with the Claimant's recorded statement.

11. That the Claimant saw Dr. Poletti on February 13, 2019, who advised him that he required a microdiscectomy and should return as further symptoms arise.

12. That the Claimant did not return to Dr. Poletti after February 13, 2019.

13. That Larry Richardson acknowledged working with the Claimant shoveling product in November of 2018 but did not recall either way whether the Claimant mentioned hurting his back.

14. That only the medical bills from Concentra were paid for and authorized by the Employer/Carrier.

15. That the medical records from McLeod Regional indicate that the Claimant was injured doing yard work at home.

16. That, on September 5, 2019, Shari Donley, the Corporate HIPAA Officer for McLeod Regional, indicated in a letter that the Claimant "requested that his medical record for the episode of care on November 24, 2018, be amended to reflect that the Primary Complaint Details stating 'he was doing yard work when he developed severe pain in this [sic] lower back' while at home did not happen as documented. Per Mr. Palmer, the incident happened at his place of work on November 7, 2018 while he was shoveling product out of a trash bin. McLeod Regional Medical Center accepts that the primary complaint was documented in error and will honor his request to amend the medical record to documents the true venue

where the incident happened and what actions the patient was taking that the time of the injury."

17. That the September 5, 2019 letter does not indicate that any of the nurses or doctors seen in November of 2018 acknowledged an error or that a specific investigation was done.

18. That the Claimant treated for a pulmonary embolism in 2019 and 2020 without mention of back pain.

19. That Concentra Medical returned the Claimant to full duty work on November 13, 2018.

20. That the medical history provided by the Claimant in November and December of 2018 to Concentra Medical and McLeod Regional is inconsistent.

21. That, based on the greater weight of the evidence, we find that the Claimant sustained a compensable injury on November 7, 2018.

22. That the November 7, 2018 incident was minor in nature.

23. That the Carrier paid authorized, causally related medicals in November and December of 2018.

24. That all other medical care is not consistent or causally related to the work injury of November 7, 2018.

25. That the Claimant has failed to satisfy his burden of proving that his current condition emanates from the November 7, 2018 injury.

25. That the Claimant had no lost time from the November 7, 2018 accident.

26. That the Claimant reached Maximum Medical Improvement on December 12, 2018.

27. That no disability benefits are due to the Claimant from this minor injury/accident.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. S.C. Code Ann.§ 42-1-160 defines injury by accident;

2. "Maximum medical improvement" (MMI) is a term used to indicate that a workers' compensation claimant has reached such plateau that there is no further medical care or treatment that will lessen the degree of impairment. Lee v. Harborside Cafe, 564 S.E.2d 354, 350 S.C. 74 (Ct. App. 2002).

3. S.C. Code Ann. § 42-9-30 sets forth compensation to be paid for a scheduled disability to the back;

4. S.C. Code Ann. § 42-15-60 and Dodge v. Brucolli, 514, S.E. 2d 593 (S.C. App. 1999) define medical care and treatment to be provided.

ORDER

Based on the foregoing, the Single Commissioner's order is

AFFIRMED WITH AMENDMENTS

It is hereby:

ORDERED, ADJUDGED, AND DECREED that the Single Commissioner's Order finding the Claimant has not sustained any permanent partial disability relative to his work injury of November 7, 2018 is affirmed;

IT IS FURTHER ORDERED that the Single Commissioner's Order finding that the Employer/Carrier is not obligated to provide any continuing medical treatment to the Claimant at this time related to his work injury of November 7, 2018 is affirmed;

IT IS FURTHER ORDERED that the Claimant has failed to satisfy his burden of proving that his current condition emanates from the November 7, 2018 injury

No hearing costs or penalties are assessed in this matter.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

By:

Commissioner T. Scott Beck

CONCURRING:

Commissioner Gene McCaskill

Commissioner Susan S. Barden