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SC Court of Appeals

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1717573

Jeffrey W. McCoy,

Claimant,

v.

Cromed, LLC,

Employer,

and

Guarantee Ins. Co. (*in liquidation*)/S.C. Property & Casualty Ins. Guaranty Assoc.,

Carrier,

Defendants,

FULL COMMISSION DECISION AND ORDER

HEARING:	Held by video conference in Columbia, South Carolina on July 16, 2020.
APPEARANCES:	Claimant represented by Stephen B. Samuels, Esquire, of Samuels Law Firm, LLC. Employer represented by Mark D. Cauthen, Esquire, of Cauthen Law Group, LLC.
PURPOSE OF THE HEARING:	To determine issues raised on the Form 30.
DECISION AND ORDER:	by Susan S. Barden, Gene McCaskill, and Aisha Taylor, Commissioners.

ISSUES ON APPEAL

Claimant's Appeal:

1. Whether the Single Commissioner erred as a matter of fact and law in ruling that McCoy was limited to 12 weeks of TTD covering the "period from October 10, 2017 through January 1, 2018," when Dr. Poletti put him on "out of work status" and Dr. LaMotta "put him on an indefinite 15-pound lifting restriction thus entitling him to a running award of TTD until he reaches MMI and/or returns to work at the same or similar employment?

Defendants' Appeal:

1. Whether the hearing Commissioner erred in finding as a fact, and/or concluding as a matter of law, that the Claimant sustained a compensable injury or aggravation of his lumbar spine on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law.

2. Whether the hearing Commissioner erred in finding a documented worsening of disc deformities after Claimants alleged accident and in disregarding or assigning less weight to the opinions of Dr. Douglas Bull, Board Certified radiologist, relating to interpretation of various imaging studies, the error being such finding is against the most competent, probative medical evidence and/or clearly erroneous as a matter of law?

3. Whether the hearing Commissioner erred in finding a causally related injury or aggravation to Claimant's lumbar spine arising out of an in the course of his employment on October 9, 2017, the error being such finding is against the greater weight of the evidence and/or clearly erroneous as a matter of law?

4. Whether the hearing Commissioner erred in finding that Claimant reported injuring his back while lifting a wheelchair on October 9, 2017, and in finding that Claimant's testimony was "more complete and credible" than Defendant's supervisor, Malcolm Young, the error being such finding is inconsistent with and against the greater weight of the evidence and that the credibility finding violates the Commissioner's Order directives?

5. Whether the hearing Commissioner erred in finding the employer Cromed, LLC had no suitable employment available to Claimant and that Claimant was not offered work within his restrictions, the error being Claimant either resigned or gave notice of resignation of his employment on the alleged date

of injury, Claimant never sought or attempted to return to work with Cromed, LLC on restricted duty or otherwise, and such finding is against the greater weight of the evidence, and/or clearly erroneous?

6. Whether the hearing Commissioner erred in designing Dr. LaMotta as treating physician, (in the event Claimant's injury is determined compensable), the error being that Defendants are entitled to appoint a treating physician pursuant to S.C. Code Ann. § 42-15-60?

STATEMENT OF THE CASE

This is an appeal from a Form 50 hearing in a denied case involving a back injury caused by lifting a wheelchair into the trunk of a work vehicle on October 9, 2017. The Single Commissioner found the claim compensable. He ordered additional medical treatment through an orthopaedic surgeon, Dr. Ivan LaMotta, along with 12 weeks of TTD from the date of the accident.

Based on a review of the record and arguments of the Parties , the Decision and Order of the Single Commissioner is **AFFIRMED.**

SINGLE COMMISSIONER FINDINGS OF FACT

The Single Commissioner made the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.

2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.

3. Claimant alleges he injured his low back with sciatica and radiculopathy into his left leg on October 9, 2017.

4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.

5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.

6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.

7. McCoy developed back and abdominal pain with radiation into his left groin on or about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. I note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, I find that 4-5 minutes is ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

14. When McCoy loaded the wheelchair into the back of his car, he injured his back and left leg (radiculopathy). McCoy clearly, honestly and directly described the immediate onset of symptoms. These symptoms were different from his previous symptoms as (1) he felt a sharp pain down his left leg; (2) the pain was a lot sharper than the dull pain he had previously experience; and (3) the previous pain was limited to his back, abdomen and groin, whereas the new pain extended down his left leg.

15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't – I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but

did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job – which Young conveyed to Cronan.

I specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. I further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's statements in the first phone call.

16. McCoy placed a second phone call to Young on October 9, 2017. In that call, McCoy requested an appointment with the workers' compensation doctor. Young interpreted the call as a request to file a workers' compensation claim. Young conveyed this information to Cronan. Cronan reported a claim to the Carrier based on a September 17, 2017 date of accident because Young did not inform Cronan of the October 9, 2017 injury by accident. Cronan tested McCoy advising that his claim had been filed.

17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy's restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined "This was a work related injury." [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

19. Following the MRI, McCoy followed up with Dr. LaMotta at Midlands

Orthopaedics and Neurosurgery on October 26, 2017. Dr. LaMotta documented the history of lower back problems beginning with stiffness on September 14, 2017 combined with "attempting to pick up a wheelchair at work on 10/9/2017 when he experienced a flare-up of pain in his lower back and left upper extremity." [APA page 42]. On February 20, 2018, Dr. LaMotta completed a questionnaire in which he opined:

> The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

Defendants deposed Dr. LaMotta on September 11, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for injections and, depending on the outcome of the injections, potentially surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

20. McCoy saw Dr. Steven Poletti on January 29, 2018. Dr. Poletti opined "To a reasonable degree of medical certainty most probably, this man has a herniated disc, which occurred as consequence of his lifting injury." [APA pages 52-53]. Dr. Poletti was deposed on August 14, 2019. In his deposition, Dr. Poletti confirmed his opinions concerning causation, treatment, aggravation of a preexisting condition and work status. He further confirmed his reading of the scans, specifically that the MRI showed a worsening of condition versus the pre-accident CT scan. Dr. Poletti also explained the discrepancy between his initial draft and final report.

21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me to be the same between the two exams."

22. I find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified "in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although – Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is – there is a clear difference there." [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a

dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is $367.82, yielding a compensation rate of $245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

SINGLE COMMISSIONER CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable

degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Bruccoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician. Id.; Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App.2006).

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

APPELLATE PANEL FINDINGS OF FACT

Based on a preponderance of the evidence, the Appellate Panel makes the following findings of fact:

1. Order instructions were sent to the parties on October 21, 2020. The attorneys were trying to settle but were unable to do so. This Order was delayed due to settlement negotiations. The hearing itself was delayed due to the Carrier (Guarantee Insurance Company) entering into receivership.

2. The Commission's file reflected a date of accident of September 17, 2017. Based on evidence presented at this hearing, the Commission's file is hereby amended to reflect a date of accident of October 9, 2017.

3. Claimant alleges he injured his low back with sciatica and radiculopathy into his

left leg on October 9, 2017.

4. Defendants deny the claim, alleging Claimant's back problems are preexisting from September 17, 2017.

5. The Employer, Cromed, provides medical transportation to Medicaid patients. Claimant Jeffrey McCoy was hired to provide these transportation services on June 26, 2017.

6. McCoy's testimony was clear, honest and direct. His testimony provides an understanding of what actually happened in September 2017 and October 2017.

7. McCoy developed back and abdominal pain with radiation into his left groin on or about September 17, 2017. There was no accident at that time, this did not occur at work, and Claimant does not allege that this pain was the result of a work-related injury by accident.

8. McCoy was given a week off for his unrelated back and abdominal pain. He briefly returned to work on September 25, 2017 but was sent home due to pain.

9. McCoy returned to the Providence Hospital Emergency Department on September 26, 2017 for "continued back pain with radiation into abdomen." There was no weakness or numbness of his extremities. A CT scan showed diffuse bulging of the disc at L4-5 with mild central central biforaminal stenosis, and mild bulging of the L5-S1 disc. McCoy was referred to Midlands Orthopaedics. He scheduled the appointment for October 12, 2017.

10. McCoy returned to work on October 2, 2017. His pain was getting better and was controlled with Motrin. McCoy worked uneventfully for the entire week.

11. On October 9, 2017, McCoy was scheduled to pick up Dolores and Jonathan in that order. McCoy believed he would be late if he picked up Dolores first, so he picked up Jonathan first. Robert Cronan was monitoring McCoy's route on the GPS. He called McCoy shortly after he picked up Jonathan and before he picked up Dolores. Cronan was "angrier than normal" when

he told McCoy to follow the prescribed route.

12. McCoy arrived to pick up Dolores at 8:03 a.m. He left her location at 8:08 a.m. for a duration of 4-5 minutes. Defendants contend it is "implausible" that McCoy could have picked up Dolores, loaded the wheelchair into the trunk of the car and injured his back in this time frame. On cross-examination, Claimant's attorney reenacted the incident with a stopwatch. He was able to complete the demonstration in one minute and fifty seconds. We note that the time entry for Jonathan's pickup (not involving a wheelchair) was 1-2 minutes. Considering all the evidence, particularly McCoy's credible testimony about the incident, We find that 4-5 minutes is ample time for McCoy to have completed his tasks, even allowing for him to be slowed down by his back injury.

13. Based on testimony of all witnesses, loading wheelchairs is an expected part of the job.

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15. Shortly thereafter, McCoy reported the injury by accident to the co-owner of Cromed, Malcolm Young, by telephone. McCoy testified: "when I picked up [the wheelchair] I had that sharp pain down my leg and I was in a lot of pain. He asked me did I want to take the rest of that day off. I told him at that point, no, I couldn't – I couldn't afford to take the rest of the day off and then I told him than that this may or may not be my last day; I will let you know by the

end of the day." [Tr. Page 58, lines 8-15]. Young testified that McCoy spoke about his pain but did not recall discussing the wheelchair. Young also interpreted McCoy's statement as notice that he was quitting his job – which Young conveyed to Cronan.

We specifically find that McCoy reported injuring his back lifting the wheelchair in the trunk of the car. We further find McCoy's statement that "this may or may not be my last day" to be a statement of concern over his physical condition rather than giving notice that he was quitting. McCoy's testimony is more complete and credible than Young's. His testimony is more consistent with the events as they happened. Young simply misinterpreted McCoy's statements in the first phone call.

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17. As of October 9, 2017, Cromed had no suitable employment available to McCoy. Cromed has not offered work within McCoy's restrictions (as set forth by Dr. LaMotta).

18. McCoy followed up on October 12, 2017 with Dr. Ulrich at Midlands Orthopaedics and Neurosurgery. He reported an initial onset of pain on September 17, 2017 with a worsening of pain on October 9, 2017. Dr. Ulrich ordered an MRI. Dr. Ulrich opined "This was a work related injury." [APA page 37]. Defendants deposed Dr. Ulrich on December 4, 2018. He maintained his opinion on causation although deferred to Dr. LaMotta as Dr. LaMotta is a spine surgeon.

19. Following the MRI, McCoy followed up with Dr. LaMotta at Midlands Orthopaedics and Neurosurgery on October 26, 2017. Dr. LaMotta documented the history of lower back problems beginning with stiffness on September 14, 2017 combined with "attempting to pick up a wheelchair at work on 10/9/2017 when he experienced a flare-up of pain in his lower back and left upper extremity." [APA page 42]. On February 20, 2018, Dr. LaMotta completed a questionnaire in which he opined:

> The MRI shows worsening of the disk deformities compared to the previous CT scan consistent with an acute injury from lifting the wheelchair as reported by the patient. The lifting of the wheelchair on October 9, 2017 most probably aggravated a preexisting condition leading to the need for treatment. [APA pages 50-51].

Defendants deposed Dr. LaMotta on September 11, 2018. Dr. LaMotta restated his opinion that the work accident on October 9, 2017 caused the need for injections and, depending on the outcome of the injections, potentially surgery, particularly noting the objective findings on the post-accident MRI compared to the pre-accident CT scan.

20. McCoy saw Dr. Steven Poletti on January 29, 2018. Dr. Poletti opined "To a reasonable degree of medical certainty most probably, this man has a herniated disc, which occurred as consequence of his lifting injury." [APA pages 52-53]. Dr. Poletti was deposed on August 14, 2019. In his deposition, Dr. Poletti confirmed his opinions concerning causation, treatment, aggravation of a preexisting condition and work status. He further confirmed his reading of the scans, specifically that the MRI showed a worsening of condition versus the pre-accident CT scan. Dr. Poletti also explained the discrepancy between his initial draft and final report.

21. Dr. Douglas Bull, a radiologist retained by Defendants, to review the two scans, disagreed with Drs. LaMotta and Poletti. He opined "The degree of disc protrusion appears to me

to be the same between the two exams."

22. We find McCoy has proven by both lay and expert medical testimony that he suffered an injury by accident arising out of and in the course of his employment on October 9, 2017 which aggravated a preexisting condition in his lumbar spine. In making this finding, great weight is given to the documented worsening of condition with new symptoms after the accident as stated in the medical records and in McCoy's credible testimony. The lay testimony is confirmed by the expert opinions of Dr. LaMotta and Poletti. Dr. LaMotta testified "in my opinion, looking at the CT examination, there was a disc bulge without any evidence of stenosis, and now on the MRI examination, you have a disc protrusion with evidence of nerve compression. So, to me, there is clear change, although – Yes, I can tell you that we don't have the same level of detail as we did on the MRI examination on the CT, but there is – there is a clear difference there." [LaMotta Tr. Page 31, line 22- page 32, line 5]. Dr. Poletti opined there is an objectively determinable disc herniation on the MRI which is substantially different than the CT scan. Greater weight is given to the opinions of Drs. LaMotta and Poletti as they are spine surgeons who regularly review imaging studies. Unlike Dr. Bull, these two surgeons were able to conduct a physical examination of McCoy. Although Dr. Bull's opinion was considered, the more complete reports and deposition testimony of Drs. LaMotta and Poletti are far more persuasive.

23. McCoy has not reached MMI. Dr. LaMotta explicitly states he has not reached MMI.

24. Additional treatment recommended by both Dr. LaMotta and Dr. Poletti will tend to lessen his period of disability. Treatment would include medication, physical therapy and injections. If conservative treatment fails to provide relief, surgery shall be provided if recommended by Dr. LaMotta.

25. Dr. LaMotta is designated as the attending physician per § 42-15-60. As there is a dispute between the parties and Defendants have not provided any treatment, good cause exists for the Commission to appoint Dr. LaMotta. Dr. LaMotta is most familiar with the patient, he is well-known to the Commission, and he has already provided a treatment plan. Defendants are required to provide all treatment under the Workers' Compensation fee schedule.

26. Defendants are responsible for payment of past treatment after October 9, 2017, specifically including the hospital and Midlands Orthopaedics. Defendants are not required to pay for Dr. Poletti's evaluation.

27. The average weekly wage is $367.82, yielding a compensation rate of $245.21. This is based on McCoy's pay records for each full week in which he worked prior to the accident. This method is adopted as being fair to both parties considering McCoy worked less than 52 weeks.

28. Dr. Poletti put him in "out of work status." Dr. LaMotta put him on an indefinite 15-pound lifting restriction. In his deposition, Dr. LaMotta opined this "would be a temporary restriction depending on the outcome and need for future treatment." [LaMotta dep. Tr. Page 42, lines 1-14]. McCoy testified that although he feels he has improved, he still has difficulty lifting.

29. McCoy is entitled to 12 weeks of temporary total disability compensation covering the period from October 10, 2017 through January 1, 2018. This specific time period is based on the type of injury as shown by the greater weight of the documented medical evidence.

30. Defendants' surveillance video does not show much other than normal daily activities. The video provides no probative evidence of McCoy's condition.

APPELLATE PANEL CONCLUSIONS OF LAW

1. Claimant sustained an injury by accident arising out of and in the course of employment on October 9, 2017, within the meaning of S.C. Code Ann. § 42-1-160 (2007). He

aggravated a preexisting condition as shown by competent medical evidence stated to a reasonable degree of medical certainty.

2. Claimant is entitled to additional medical treatment necessary to lessen the period of disability. S.C. Code Ann. § 42-15-60 (2005); Dodge v. Bruccoli, Clark, and Layman, Inc., 518 S.E.2d 593 (S.C. 1999); Dykes v. Daniel Constr. Co., 202 S.E.2d 646 (S.C. 1974). When the employee has not reached maximum medical improvement, medical care to treat injuries related to the injury by accident tends to lessen the period of disability. Additional medical care after reaching maximum medical improvement must be provided if it tends to lessen the period of disability.

3. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. S.C. Code Ann. § 42-15-60 (2007).

4. The employer's representative shall provide and pay for medical care while a claimant is receiving or entitled to receive temporary compensation benefits. Reg. 67-509. Medical, surgical, hospital and other treatment which will tend to lessen the period of disability within the judgment of the Commission shall be provided by the employer. For good cause shown, the Commission may order such further medical, surgical, hospital or other treatment as may in the discretion of the Commission be necessary. S.C. Code Ann. § 42-15-60 (2007). The Commission has discretion to designate the authorized treating physician and require the employer's representative to pay for causally related treatment, particularly where, as here, the employer refuses to authorize causally-related treatment prescribed by the attending physician.

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

5. Good cause being shown, Dr. Ivan LaMotta and other providers within his practice are designated as the attending physician per the authority granted to the Commission under § 42-15-60. Defendants shall furnish all treatment considered necessary by Dr. LaMotta and other providers within his practice.

6. Disability is defined as "Incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 25A S.C. Reg. 67-502 (1997). Claimant was disabled within the meaning of the Act on October 10, 2017. § 42-9-10; 42-9-190. Disability is presumed to continue until the employee returns to work or compensation is otherwise suspended or terminated according to Section 42-9-260.

7. An employer has the option of providing employment suitable to the employee's capacity. As no such work was offered or made available, Claimant is entitled to temporary total disability compensation during the period of his disability.

AWARD

IT IS HEREBY ORDERED that the Decision and Order of the Single Commissioner is **AFFIRMED;**

IT IS FURTHER ORDERED that Defendants shall pay for past causally-related medical treatment and shall continue to provide to Claimant causally related medical treatment for so long as such treatment will tend to lessen Claimant's disability;

IT IS FURTHER ORDERED that Dr. Ivan LaMotta and his practice are designated the authorized treating physician;

IT IS FURTHER ORDERED that Defendants shall immediately and without delay authorize and pay for all medical and surgical treatment prescribed or recommended by the

authorized treating physician related to Claimant's work-related injuries, including prescriptions, testing, physical therapy and all other treatment including treatment rendered by other providers to whom Claimant is referred by the authorized treating physician. Treatment shall be provided until the authorized treating physicians opine Claimant has reached maximum medical improvement and thereafter so long as such post-MMI treatment tends to lessen Claimant's period of disability. Treatment shall include such modalities considered necessary by the authorized treating physician;

IT IS FURTHER ORDERED that Defendants shall pay temporary total disability compensation for 12 weeks pursuant to this Order;

IT IS FURTHER ORDERED that determination of permanency is premature pending maximum medical improvement;

IT IS FURTHER ORDERED that no hearing costs or penalties are assessed;

AND IT IS SO ORDERED.

AND IT IS SO ORDERED.

Susan J. Barden

Gene McCaskill

Aisha Taylor

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 September 20, 2021