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SC Court of Appeals

DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL
W.C.C. FILE NO.1908703

KYLE R. BAGELY,

Employee/Claimant/Respondent,

v.

JN FIBERS INC D/B/A SUN FIBER, LLC,
Defendant Employer/Appellant,

and

GREAT AMERICAN ALLIANCE INSURANCE COMPANY,
Defendant Carrier/Appellant.

Appellate Panel Review held in Columbia, South Carolina,
via Zoom teleconference on August 30, 2021, per notices timely
and properly served on all parties in interest
December 21, 2021

APPEARANCES:

Bryan N. Sanchez, Esquire, of Lewis Law Firm, of Rock Hill, SC, on behalf of
Claimant/Respondent.

C. Barrett Burley, Esquire, of Holder Padgett Littlejohn + Prickett, LLC, of Columbia, SC,
on behalf of Defendants/Appellants JN Fibers Inc d/b/a Sun Fiber, LLC and Great American
Alliance Insurance Company.

STATEMENT OF THE CASE

This matter arises out of an admitted work-related injury to the back sustained by Claimant when a large bale of fiber material rolled down a short ramp and hit him in the head on June 14, 2019.

In the Form 58 Pre-Hearing Brief (9/2/2020), Claimant alleged injuries to his “Neck/Back, Head/Brain (TBI), both legs (L>R), Left Arm and Radiculopathy down to back of his leg/scrotum and bottom of L-foot (L-foot drop as well).” Claimant was primarily seeking determination of compensability for his alleged injuries, further medical treatment, as well as a determination of average weekly wage/compensation rate and whether Claimant “is entitled to underpaid/back-owed TTD as [Defendants] previously paid [Claimant] at a [compensation rate] lower than it should be.”

Defendants admitted Claimant sustained a minor compensable injury to the back, but denied the remainder of the alleged injuries and denied the extent of the disability alleged. Defendants further sought a determination that Claimant was at maximum medical improvement pursuant to the medical evidence.

APA SUBMISSIONS AND EXHIBITS

The following APA Submissions and Exhibits were submitted on behalf of the Employee/Claimant:

<u>Claimant's APA No.</u>	<u>Provider Name</u>	<u>Date of Service</u>	<u>Bates numbered</u>
#1 (23 pp.)	MUSC Health – Chester Regional Medical Center from 06/17/19 <i>(as well as 07/03/19 diagnostics ordered by Riverview Medical)</i>	06/17/19 and 07/03/19	1-23
#2 (1 pp.)	Chester Chiropractic	06/20/19	24
#3 (4 pp.)	Lowry's Family Medicine	06/25/19	25-28
#4 (13 pp.)	Riverview Medical / Occumed	06/27/19	29-41
#5 (23 pp.)	Midlands Ortho & Neurosurgery (Dr. Brown) and Form 14-B	07/05/19 to 07/11/19	42-64

#6 (76 pp.)	Your Life Wellness – PT	7/22/19 to 10/16/19	65- 140
#7 (16 pp.)	Carolina Neurosurgery & Spine	08/22/19 to 09/05/19	141-156
#8 (24 pp.)	OrthoCarolina Records and out of work note (Dr. DuPuy)	09/05/19 to 10/15/19	157-180
#9 (12 pp.)	Dr. Rao- Neurological Institute	10/31/19- 11/19/19	181-192
#10 (21 pp.)	Deposition of Dr. Brown (Midlands Ortho and Neurosurgery)	12/12/19	193-213
#11 (55 pp.)	Deposition Dr. Hernan Rao (The Neurological Institute)	02/14/2020	214-269
#12 (54 pp.)	Deposition of Dr. David DuPuy (Orthocolina)	04/29/2020	270-324
#13 (54 pp.)	Deposition of Dr. Gunter and 5 pages of the Office note of 07/08/20	07/08/2020 (office note) and 09/08/2020 (Deposition)	325-379

OTHER DOCUMENTS FROM CLAIMANT:

<u>Exhibit No.</u>	<u>Document Description</u>	<u>Date(s)</u>	<u>Bates Numbered</u>
#4	First Report of Injury / Work Comp Injury Reporting Form and Photos of similar Bale that hit Claimant	06/24/19	001-009 (uploaded to the e-case, pages 374-383, after APA #13 ends)

The following APA Submissions and Exhibits were submitted on behalf of the Employer-Carrier/Defendants:

<u>Defendant's APA No.</u>	<u>Provider Name</u>	<u>Date of Service</u>	<u>Bates numbered</u>
#14	Dr. Joseph Boland & Associates Doris, Paez, PHD, NCSP	12/13/2019	353 – 361
#15	Chester Medical Group	12/16/2014 – 7/5/2018	362 – 379
#16	Carolina Neurological & Spine Associates	9/5/2019	380 - 388
#17	Chester Chiropractic	6/20/2019	389 – 390
#18	OrthoCarolina	9/19/2019 – 4/20/2020	391 -- 419

#19	Novant Health	6/9/2020	420 - 422
#20	Lexington Brain and Spine Institute	3/10/2020 - 7/8/2020	423 - 431
#21	Lowrys Family Medicine	12/16/2014-6/29/2020	432 - 461

OTHER DOCUMENTS FROM DEFENDANTS:

Exhibit No.	Document Description	Date(s)	Bates Numbered
#3	Video from Employer showing the incident where claimant was injured	06/14/19	<i>Video file</i>

A hearing was held on the Forms 50, 51, and 21, before the Honorable Gene McCaskill (“Hearing Commissioner”) on September 28, 2020. All parties agreed that venue was proper for the hearing. On May 13, 2021, the Hearing Commissioner issued a Decision and Order with the following Finds of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

I find that:

1. *On 06/14/2019, Claimant was struck in the head by a large bale of fiber weighing approximately 600-700 pounds which the Claimant was welding.*
2. *The accident is arising out of and within the course and scope of his employment.*
3. *The questions at bar in this hearing are;*
 - a. *Has the Claimant reached MMI as to this work-related accident?*
 - b. *Is the claim ripe for a determination of permanency, if any?*
 - c. *Are his current issues causally-related to this work-related accident?*
 - d. *Are the Defendants responsible for any future medical care and treatment?*
 - e. *Are the Defendants entitled to a credit for an overpayment of TTD, in any?*
4. *The claim was accepted by the Defendants only to the back. Medical care and treatment have been provided. Temporary total disability has been paid.*

5. *Claimant asserts that, in addition to his back, he has suffered injuries to his neck, head, left upper extremity and left lower extremity.*
6. *This case is replete with medical records to include extensive and repetitive imaging. Both parties have entered medical records into evidence.*
7. *Claimant has seen a number of medical providers.*
8. *There are four doctors who have opined as to Claimant's condition. Drs. Matthew Brown, Brett Gunter, David DuPuy and T. Hemanth Rao.*
9. *All four have been deposed. I have read all of those depositions in their entirety.*
10. *All were generous with their time as well as cooperative and complete in their answers.*
11. *The Claimant testified at the hearing. Claimant is clearly not today as he was before the accident. That being said, are the physical issues that he presents with today causally-related to this accident or are they disabilities that cannot be related back to the work-related accident on 06/14/2019?*
12. *Dr. Brown, who is the authorized treating physician, testifies in his deposition that the Claimant, "...had, in a flex position, both his shoulder, the elbow, the wrist, and his – and his fist."*
13. *Claimant also presents with left foot drop as well.*
14. *This case is puzzling. The Claimant was clearly hurt at work. No one disputes that fact. So, question then becomes what is causally related to the accident.*
15. *The doctors opining in this case have examined and/or treated the Claimant. Their opinions differ as to certain aspects of the Claimant's condition.*
16. *Dr. Brown testified that the Claimant had a closed head injury. He provided the Claimant with injections and physical therapy.*

17. *As to whether the Claimant is a surgical candidate, Dr. Brown nor any other doctor opines that the Claimant would benefit from surgery.*
18. *The Claimant has been found to be at MMI from a neurosurgical standpoint by the authorized treating physician, Dr. Brown who released him to return to work full duty.*
19. *Dr. Jarrell gave the Claimant a full duty release in July of 2019 pending an appointment with Ortho Carolina.*
20. *Dr. Gunter testified that he could not identify a neurological explanation for Claimant's symptoms.*
21. *He testified that Claimant does not have a permanent, severe brain injury.*
22. *Dr. Gunter further testifies that he cannot say Claimant's current issues were caused by a work accident on 06/14/2019.*
23. *Dr. Gunter testifies that the Claimant is at MMI from a neurological neurosurgical standpoint.*
24. *Dr. Gunter further testifies that the Claimant is not suffering any sort of permanent physical impairment as a result of his injury.*
25. *As to Claimant's contractures, Dr. Gunter also testifies, "he has contractures of that left and upper and lower extremity without physical explanation. The contractures exist, we found them on physical exam, but they're without – without clear neurological explanation. He continues, "...the cause of his current syndrome is unknown to me."*
26. *Dr. Gunter testified that Claimant need treatment for his contractures. He simply cannot opine that the contractures are caused by this work-related accident. Dr. Gunter cannot find the medical evidence necessary to make such a diagnosis.*

27. *Claimant treated on his own with Dr. Taylor Jarrell. On 09/06/2019, Dr. Jarrell released the Claimant to return to work full time with restrictions, pending an appointment with OrthoCarolina, date to be determined.*
28. *Claimant then saw Dr. DuPuy who a practicing orthopedic surgeon since has been 1976. Dr. DuPuy testified that in his forty years of practice he has seen about 300,000 patients and performed about 20,000 surgeries.*
29. *Dr. DuPuy testified after examining the Claimant that it was his impression that, "this contracted hand, closed injury to the hand and to the foot, is from the accident and it involved the brain.*
30. *He also testified that he saw no evidence of symptom magnification or malingering in his physical exam of the Claimant.*
31. *Dr. DuPuy is asked if it is his opinion that Claimant's presentation is consistent with the strike to his head from the bale of fiber as described. He testified, "Yes. I do."*
32. *When questioned about Claimant's negative scans, Dr. DuPuy testified, That's a surprise to me that those scans are essentially normal."*
33. *When asked if he would defer to Dr. Rao for issues related to the neurological problems and Claimant's brain injury. His answer was -- yes.*
34. *Dr. DuPuy has written the Claimant out of work. Dr. DuPuy opines that the Claimant is not at MMI.*
35. *While Drs. Brown, Gunter and DuPuy are neurosurgeons, Dr. Rao is a neurologist. Dr. Rao was deposed on 02/14/2020. Defendants spent some time in the deposition focused on the fact that Dr. Rao had in the past paid a large civil fine in a Medicare case. The time period addressed was 2003-2006. The news release was dated 2013.*

36. *While not insignificant, that matter dealt with money and billing. It was as described as a "civil fine". Nothing about that matter has any bearing on this case. There is nothing in that settlement agreement questioning Dr. Rao's medical credentials or his medical license.*
37. *Given that Dr. Rao is the only neurologist in this case, I give his opinion great weight.*
38. *Dr. Rao opines, "...he certainly, in my opinion, had a head injury. And that could explain much or all of the symptoms." He states that to a reasonable degree of medical certainty.*
39. *When asked if the Claimant can currently work, Dr. Rao testifies that he cannot.*
40. *Dr. Rao summarizes his testimony near the end of his deposition, "I believe the symptoms he has are a direct result of injury. And, again, that's based upon the temporal relationship of his symptoms with the injury and the course he has had since.*
41. *It must be noted that the contractures that the Claimant now presents with were not present until after this work-related injury. Prior to his injury, Claimant was working as a welder for the Employer.*
42. *There are also records and testimony as to the Claimant's psychogenic condition.*
43. *Claimant underwent a Neuropsychological Evaluation with Doris Paez, PhD. Dr. Paez is a SC licensed psychologist.*
44. *I have read her report in its entirety.*
45. *Dr. Paez concludes that, "Psychotherapy is highly recommended to address current adjustment issues as well as historical difficulties managing work and personal stress.*
46. *Dr. Paez includes several very specific recommendations in her report.*
47. *When the evidence -- both lay and medical -- is viewed as a whole, I find that the Claimant is not at MMI for injuries suffered in a work-related accident on 06/14/2019.*

48. *The neurosurgeons have opined that the Claimant's condition is nonsurgical. Dr. Gunter has been even more definitive in his opinion that the Claimant's current condition is not work-related while Dr. DuPuy opines that it is.*
49. *Dr. DuPuy defers to Dr. Rao was to diagnosis and treatment. I am persuaded as to the wisdom of that assessment.*
50. *Dr. Rao is a neurologist and, given that the Claimant is non-surgical, I give the greatest weight to the opinion of the only neurologist to opine in the case -- Dr. Rao.*
51. *As such, I find the Claimant has suffered a compensable head injury.*
52. *Claimant is entitled to medical care and treatment with a neurologist of the Defendants choosing who is subject to jurisdiction of the Act.*
53. *Claimant is entitled to treat the authorized treatment provides or directs for his head injury and any other casually-related treatment for conditions that emanate from that injury with the exception of surgery which is not provided by this Order.*
54. *As to Claimant's psychological condition, Dr. DuPuy, when asked if the Claimant experienced an aggravation to some of his psychological issues that may have been preexisting, his testimony was, "I think at the very least, yes."*
55. *As such, I find that the Claimant is entitled to psychotherapy with a provider chosen by the Defendants who is subject to the jurisdiction of the Act.*
56. *Claimant's TTD is to continue.*
57. *Defendants provided the Claimant with seven (7) weeks of Temporary total disability ("TTD") benefit checks, covering the date range of: 06/27/19 through 07/19/19.*
58. *Claimant's Compensation Rate in this is \$585.20 and for these seven (7) weeks of TTD's that he received from Defendants initially, he was paid at a lower, incorrect rate, resulting in him being owed \$155.40 for the underpaying during this period.*

59. *Going forward, the Claimant's TTD's shall be paid at the correct compensation rate of \$585.20.*
60. *Defendants shall pay the Claimant TTD's beginning from the day after he last received them (07/20/19), through the present, and ongoing each week until he reaches MMI or until further Order of this Court, in accordance with the South Carolina Workers Compensation Act.*
61. *Thus, for the time frame of 07/20/19 through 05/05/21, a total of 94 weeks has elapsed for which TTD benefits are owed to the Claimant. Using the Claimant's \$585.20 Compensation Rate the amount Defendants owe and shall pay to the Claimant for these 94 weeks is approx. \$49,742.20 approx. Adding in the \$155.40 that the Claimant is owed from the underpaid TTD's, which were previously paid in this, the total amount owed to Claimant is \$54,538.80 and which shall be paid in one lump-sum and this is also subject to a claim for Attorney Fees by the Claimant's counsel of record. Counsel for Claimant shall submit a Form 61 in relation to this aspect.*

CONCLUSIONS OF LAW

1. *Pursuant to S.C. Code Ann §42-1-130 (1976), the Claimant was a covered Employee and pursuant to the S.C. Code Ann §42-1-140 (1976), the Employer was a covered Employer under the Workers' Compensation Act.*
2. *Pursuant to S.C. Code Ann. §42-1-160 (1976), Claimant sustained a compensable injury to his head/brain, neck/back, left hand, left foot, and psychologically (depression/anxiety and adjustment) by accident arising out of and during the course of his employment with the Defendant Employer on June 14, 2019.*
3. *Pursuant to S.C. Code Ann. §42-9-10 and §42-15-60 (1976), Defendants shall pay for the past causally related medical treatment Claimant has received, and they shall further*

provide additional causally-related medical care for the Claimant's injuries until he reaches MMI or until further order of this Court in accordance with the Act. Defendants shall also provide Claimant with a Neurologist to treat his head/brain injury, as well as provider for psychotherapy and someone to treat the other 'non-neuro/psyche' injuries, of their choosing and who is subject to the jurisdiction of the Act.

4. *Pursuant to S.C. Code Ann. §42-9-10 (1976), the Average Weekly Wage is \$877.76 with a corresponding Compensation Rate of \$585.20.*
5. *Pursuant to S.C. Code Ann., §42-9-10 (1976)) the Defendants shall pay unto the Claimant weekly benefits at the compensation rate until he reaches MMI or until further order of this Court in accordance with the Act.*

ORDER AND AWARD

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants shall pay unto the Claimant weekly benefits at the compensation rate of \$580.20, from 07/20/20 until present and on-going until MMI or upon further order of this Court. Thus, for the 94-week period of time, which has elapsed from the date Claimant last received TTD benefits (07/20/19) through the date of this order (as I am using 05/05/21 currently). Additionally, Claimant is owed \$155.40 for the previous underpayment of TTDs at the lower/incorrect Comp Rate. Thus, the total amount owed to Claimant for this period of indemnity totals \$54,538.80. This amount shall be paid in one-lump and it is also subject to a claim for Attorney's fees made by the Claimant's counsel of record.

IT IS FURTHER ORDERED that the Defendants shall pay for the past and future causally-related medical treatment for the head/brain, neck/back, left hand/left upper-extremity, left foot/lower-extremity and psychologically (for depression/anxiety and adjustment to this all). Defendants shall provide Claimant with a Neurologist to treat his head/brain injury, as well as

provider for psychotherapy and someone to treat the other 'non-neuro/psyche' injuries (i.e. an Orthopedic for the contractures, etc.), of their choosing and who is subject to the jurisdiction of the Act.

IT IS SO ORDERED.

APPEAL TO FULL COMMISSION

On May 25, 2021, Defendants timely filed a Form 30 Request for Commission Review setting forth their grounds for appeal. Defendants submitted the following assignments of error to the Hearing Commissioner's Decision and Order:

- 1) Did the Hearing Commissioner err in finding, as a matter of law, that Claimant has met his burden of proving that he sustained compensable physical injuries to the brain?
- 2) Did the Hearing Commissioner err in finding, as a matter of law, that Claimant has met his burden of proving that he sustained a compensable aggravation of a pre-existing psychological condition?
- 3) Did the Hearing Commissioner err in finding, as a matter of law, that Claimant has met his burden of providing that he sustained compensable injuries to the left hand and left foot?
- 4) Did the Hearing Commissioner err in finding, as a matter of fact, that Claimant's orthopedist (Dr. David DuPuy) is a neurosurgeon who was qualified to opine beyond his scope of expertise concerning Claimant's brain and psychological condition?
- 5) Did the Hearing Commissioner err in finding, as a matter of fact, that the opinion of Claimant's neurologist (Dr. Hermanth Rao) was entitled to greater weight than the opinions of three neurosurgeons (Dr. Matthew Brown, Dr. Taylor Jarrell, and Dr. Brett Gunter) concerning whether Claimant sustained a physical injury to the brain?
- 6) Did the Hearing Commissioner err in finding, as a matter of fact, that Claimant was not at maximum medical improvement?
- 7) Did the Hearing Commissioner err in finding, as a matter of fact, that Claimant has met his burden of proving he is entitled to temporary benefits and medical treatment?

In their Brief to the Full Commission, Defendants consolidated their issues on appeal as follows:

- 1) Whether the Hearing Commissioner erred in finding Claimant met his burden of proving he sustained compensable physical injuries to his brain, left hand, left foot, and a compensable aggravation of a pre-existing psychological condition.
- 2) Whether the Hearing Commissioner erred in finding, as a matter of fact, that Claimant's orthopedist (Dr. David DuPuy) is a neurosurgeon who was qualified to opine beyond his scope of expertise concerning Claimant's brain and psychological condition.
- 3) Whether the Hearing Commissioner erred in finding, as a matter of fact, that the opinion of Claimant's neurologist (Dr. Hermanth Rao) was entitled to greater weight than the

opinions of three neurosurgeons (Dr. Matthew Brown, Dr. Taylor Jarrell, and Dr. Brett Gunter) concerning whether Claimant sustained a physical injury to the brain.

- 4) Whether the Hearing Commissioner erred in finding, as a matter of fact, that Claimant was not at maximum medical improvement, and that Claimant has met his burden of proving he is entitled to temporary benefits and medical treatment.

Pursuant to S.C. Code § 42-17-50, the Appellate Panel shall review the award and weigh evidence as presented at the initial hearing, 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.

Based upon a review of the foregoing, and after full consideration of the evidence in the record and the parties' respective arguments, the Appellate Panel **REVERSES** the findings of the Hearing Commissioner, and hereby substitutes the below Findings of Fact, Conclusions of Law, and Order in place of the Hearing Commissioner's Decision and Order.

FULL COMMISSION'S FINDINGS OF FACT

The Appellate Panel, having fully reviewed the evidence and considered arguments presented, hereby determines the greater weight of the evidence supports the following Findings of Fact:

1. The South Carolina Workers' Compensation Commission has jurisdiction to hear this claim.
2. The Claimant has an average weekly wage of \$877.79, with a corresponding compensation rate of \$585.20.
3. Notice of Hearing was timely and properly served upon both parties.
4. The Claimant sustained an admitted compensable injury to his back within the course and scope of his employment on June 14, 2019, when a large bale of fiber material rolled down a short ramp and hit him in the head.
5. On June 17, 2019 (three days after the accident), Claimant presented to the

emergency room at MUSC Health Chester Medical Center with complaints of “pain all over,” but the report of symptoms appears to be limited to acute, non-radiating pain in Claimant’s posterior cervical, thoracic, and lumbar areas. (APA No. 1).

6. At the Chester Medical Center, Claimant was referred for CT scans of the cervical, thoracic, and lumbar spine. According to the radiology reads, the CT scans revealed no acute fractures, normal spinal alignment, normal vertebral discs, and no advanced canal stenosis. Claimant was diagnosed with a contusion of his lower back and pelvis and discharged to follow up as needed with medication.

7. On June 20, 2019, Claimant treated with Dr. James Stauffer, a chiropractor (APA 2, p. 24). Dr. Stauffer noted complaints of headaches, neck pain, with an arm in a fixed position up at his chest/sternum area bent at the elbow (left arm), left leg pain, an antalgic lean forward or anterior when standing and lower back pain. Dr. Stauffer indicated the Claimant needed to see a specialist.

8. On June 25, 2019, Claimant treated with Dr. Poulos, his primary care provider at Lowry’s family medicine (APA 3, p. 25), who diagnosed Claimant with Cervical/Thoracic/Lumbar Strains, Left-shoulder impingement syndrome with contusion, among others. Dr. Poulos recommended medications, MRIs of Neck, shoulder and thoracic, as well as PT and follow-up with the workers comp doctor.

9. On June 27, 2019, Claimant was sent to Riverview by the Defendants, with a nurse case manager, for medical care in connection with this workers compensation injury (APA 4, p. 29). At this visit complaints were noted at the top of Claimant’s head, left-shoulder, left-arm/hand, left-leg/thigh/foot, neck and back. Claimant also noted headaches, back/joint/muscle pain, swelling, weakness, tremors, skin tingling/burning/numbness, among others.

10. On July 5, 2019, Claimant treated with Dr. Matthew Brown, a neurosurgeon with

Midlands Orthopaedics and Neurosurgery. (APA No. 5). Dr. Brown noted complaints of neck pain radiating from the occiput up the vertex, as well as low back pain which “feels like glass,” left-sided posterior buttock pain radiating to the thigh into the proximal calf, left upper extremity pain radiating down to the left hand with a tingling sensation in the fingers with a flexed position of the whole left upper extremity. Dr. Brown’s notes also state Claimant complained of diffuse left-sided upper and lower-extremity sensory abnormalities, contractures with his left-upper extremity and endorsed a history of trembling and cold sweats since this injury.

11. Despite these diffuse complaints, Dr. Brown opined Claimant’s MRIs of the cervical, thoracic, and lumbar spine (7/3/2019) revealed “no significant acute pathology,” and that there was “no neurological structure impingement throughout his cervical, thoracic, or lumbar spine with no central canal stenosis or significant foraminal stenosis which would explain any of the patient’s symptoms at this time.”

12. Dr. Brown diagnosed Claimant with cervico-occipital neuralgia and a neck strain and performed bilateral greater and lesser occipital nerve blocks.

13. On July 11, 2019, Dr. Brown released Claimant at maximum medical improvement from a neurosurgical perspective and back to the care of occupational medicine for further nonoperative management for his muscular complaints. Dr. Brown assigned a 0% whole person impairment for Claimant’s lumbar and thoracic spine, plus a 5% whole person impairment for the cervical spine for “nonverifiable radicular complaints, and muscle tenderness, though no true muscle guarding was observed at the time of the visit.” Dr. Brown memorialized this medical opinion by way of a Form 14B (dated 8/28/2019).

14. Claimant was seen by physical therapy (APA 6, p. 65-140) for his alleged injuries.

15. On August 22, 2019, Claimant was referred by his primary care physician to Dr. S. Taylor Jarrell, a neurosurgeon at Carolina Neurosurgery and Spine (APA Nos. 7 and 16). Dr.

Jarrell agreed with Dr. Brown that Claimant did not require any surgery. However, given the alleged headaches, Dr. Jarrell referred Claimant for a CT Scan of the head (which took place on 8/28/2019).

16. On September 5, 2019, Dr. Jarrell reviewed the CT Scan of the head and noted that the “neuro imaging is normal.” For further treatment, Dr. Jarrell opined Claimant “would probably benefit from a referral to orthopedics,” but that Dr. Jarrell did “not have anything to offer at this point.”

17. On September 12, 2019, Claimant was evaluated by Dr. David DuPuy, a general orthopedic surgeon with OrthoCarolina (APA Nos. 8 and 18). Dr. DuPuy opined that Claimant’s symptoms of left hand contracture and left foot drop were “coming from the brain, as opposed to the spinal cord, either cervical, thoracic, or lumbar.” (Dr. DuPuy Dep. 13:25-14:2). On this first visit, Dr. DuPuy referred Claimant for an MRI of the brain (which took place on 9/24/2019). According to Dr. DuPuy, the brain MRI revealed a “hot spot” which was the “only abnormality of the brain MRI.” According to Dr. DuPuy, he could not be certain that the “hot spot” was causing Claimant’s alleged symptoms. (Dr. DuPuy Dep. 25:6-17).

18. On September 26, 2019, Dr. DuPuy referred Claimant for an EMG nerve study. According to Dr. DuPuy, the EMG nerve study “pretty much ruled out the neck and the back” as the cause of Claimant’s alleged symptoms. (Dr. DuPuy Dep. 24:20-22).

19. On October 31, 2019, Claimant was evaluated by Dr. T. Hermanth Rao, a neurologist at The Neurological Institute. (APA No. 9). Dr. Rao noted symptoms to include left upper extremity held in flexion, left foot held in inversion, and decreased muscle strength in the left upper and lower extremities with left foot drop, as well as various cognitive issues including headaches, loss of memory, dizziness, irritability, and depression. In the records, Dr. Rao provided a differential diagnosis of closed head injury versus spine injury and referred Claimant for an

electroencephalogram (“EEG”).

20. During a follow-up visit on November 19, 2019, Dr. Rao noted that Claimant’s EEG revealed “regular” findings. Dr. Rao then recommended Claimant for a 96-hour video EEG and an outpatient brain injury program.

21. On March 10, 2020, Claimant was evaluated by Dr. Brett Gunter, a neurosurgeon at the Lexington Brain and Spine Institute. (APA No. 20). Dr. Gunter reviewed an updated MRI of the lumbar spine (2/27/2020) and opined it showed no evidence of acute injury. Dr. Gunter diagnosed Claimant with lumbar myofascial syndrome and opined Claimant had no mechanical restriction on his ability to return to work.

22. On July 8, 2020, Dr. Gunter reviewed an updated MRI of Claimant’s brain (6/9/2020), which he opined was normal. Dr. Gunter further reviewed an updated MRI of the cervical spine, which demonstrated “cervical spondylosis with some canal stenosis and foraminal stenosis but without significant cord or nerve root compression. The stenosis appears largely congenital.” As such, Dr. Gunter opined he was “unable to identify either significant cervical spinal disease or intracranial ... disease to explain his current condition.” Dr. Gunter opined Claimant needed continued rehabilitation, but gave no indication for surgical intervention.

23. Over the course of this case, Claimant was evaluated by five medical specialists, including three neurosurgeons, one neurologist, and one orthopedic surgeon. Four of the specialists sat for depositions: Dr. Matthew Brown, Dr. Hermanth Rao, Dr. David DuPuy, and Dr. Brett Gunter. The expert opinions of the specialists referenced herein were all to a reasonable degree of medical certainty.

24. At his deposition on December 19, 2019, Dr. Brown (neurosurgeon) confirmed his diagnosis of nonverifiable radiculopathy and occipital neuralgia and explained that a single occipital nerve block (an injection of a numbing medication and steroid) traditionally treats a vast

majority of patients. (Dr. Brown Dep. 10:18-11:21, 13:7-9).

25. Dr. Brown opined that he did not observe any surgical pathology on Claimant, so he released Claimant for treatment of any non-surgical issues. (Dr. Brown Dep. 13:20-14:24). Given the traumatic nature of the injury, Dr. Brown testified he would not necessarily refer Claimant for neurology. (Dr. Brown Dep. 21:3-12).

26. Concerning Claimant's left sided foot drop, Dr. Brown opined that the symptoms were inconsistent with anatomic findings:

When I evaluated him, it was the presentation of the multiple locations that don't fit an anatomic finding without significant issues. You can certainly have a very large injury, either an expanding hematoma or a very large contusion, which can affect both of those places, or potentially within the deep basal ganglia certainly can happen, but those would typically be presenting with other findings, which he did not have on exam.

(Dr. Brown Dep. 23:1-9).

27. Concerning Claimant's left upper extremity contracture, Dr. Brown opined that the presentation of symptoms was also inconsistent with the known anatomical findings:

[Claimant's left-hand contracture] is something that is difficult to explain from an anatomic and neurologic perspective because he did have very good oppositional tone. Typically, you'll have unopposed tone for -- lead -- lead to contractures. So, if you don't have the muscle input from the extensor muscles and/or the -- the nerves that control the extensor fibers, rather than the contracting and the flexion fibers, then you'll have unopposed tone and get a -- get a contraction. During my exam he had good, full strength in both sides, which made it very difficult to see that as a discreet, reliable finding.

(Dr. Brown Dep. 23:15-24:2).

28. Dr. Brown opined that Claimant's alleged progressive weakness was also inconsistent with the symptom progression following a closed head injury:

...my expectation would be that a significant finding with a closed head injury would present early and then typically improve over time. If he had not had significant weakness at one month's time, I find it very unlikely that he would continue to develop weakness, which was not present even to a small degree at that point.

(Dr. Brown Dep. 32:16-23).

29. According to Dr. Brown, the problem attributing Claimant's alleged left hand contracture and left foot drop to the accident was two-fold. First, there were no anatomic findings on the exam to corroborate the alleged symptoms. Second, given the spatial relationship in the brain between the neurons that control the arms and the neurons that controls the legs, if a single traumatic lesion impacted both, that lesion would also have impacted other anatomical structures and create other problems which Claimant did not have. (Dr. Brown Dep. 33:2-23).

30. Dr. Brown also confirmed there was nothing structurally or mechanically wrong with Claimant's neck or back. (Dr. Brown Dep. 38:2-5).

31. Dr. Rao (neurologist) sat for a deposition on February 14, 2020. Concerning his diagnosis, Dr. Rao opined:

Well, I thought he had a closed-head injury, you know, given the temporal relationship of the injury and the symptoms when they began. And along with that he had a postconcussive syndrome. The issue was also could there have been a spinal injury. You know, in looking at that impact directly to the top of his head, that force can -- is also transmitted down into the spine. So with his left-sided weakness, the other possible location was not just the head injury, but also could there also have been a spinal injury.

(Dr. Rao Dep. 9:8-18).

32. Concerning the results Claimant's EEG study, Dr. Rao testified Claimant "seemed to have some slowing. It was intermittent in left frontal area. And that could be a sign of a head injury." (Dr. Rao Dep. 11:21-23). Claimant's father provided a medical history which motivated Dr. Rao to ultimately recommend a 96-hour EEG to investigate "episodes" which might be seizures or symptoms of a mild traumatic brain injury. (Dr. Rao Dep. 13:12-14:12). Dr. Rao opined that Claimant sustained a head injury and that could explain much or all of the symptoms and referred him to a Brain Injury Program to begin aggressive treatment of his condition as there would be a good chance of improving and also confirm that diagnosis. (Dr. Rao Dep. 11:6-13,

12:4-12). Dr. Rao also opined that Claimant could not work at this time because of these injuries, that he is not at MMI, that he needs further treatment for these issues or risks worsening of such. (Dr. Rao Dep. 15:11-17, 17:3-8). Dr. Rao also opined that the Claimant likely sustained an exacerbation of his underlying psychological issues in connection with this injury. (Dr. Rao Dep.16:18-25) (APA 11, p. 225-231).

33. Concerning the civil fraud allegations against Dr. Rao from the U.S. Department of Justice in 2013, Dr. Rao testified there were no fraud charges, but instead there was a technical issue which led to a business decision to “go ahead and pay back” the federal government. (Dr. Rao Dep. 30:19-31:4). Dr. Rao admitted entering into a settlement agreement with the United States Department of Justice which involved a judgment against him in the amount of \$2,000,000, which he argued was an overpayment not a fine. (Dr. Rao Dep. 36:18-25).

34. Concerning his board certification with the American Board of Psychiatry and Neurology, Dr. Rao testified that the notation of “MOC Status: Not meeting MOS requirements” on his certification involved continuing medical education credits which he had not yet submitted to the board. (Dr. Rao Dep. 37:5-38:18).

35. At his deposition on April 29, 2020, Dr. DuPuy (orthopedic surgeon) opined that from an orthopedic standpoint, there was nothing structurally or mechanically wrong with Claimant’s head or brain:

Q: . . . From an orthopaedic standpoint, is there anything structurally or mechanically wrong with Mr. Bagley's head or brain, from what you can tell?

A: No. That's a surprise to me that those scans are essentially normal. The -- but it doesn't mean that an injury can't have occurred at the cellular, microscopic level. But he didn't have a -- a subdural hematoma, and he doesn't have an area in the brain by MRI where it's just dark, where the brain tissue has died and the body has carried kind of cleaned it up. He doesn't have that.

And so that, to me this is an -- an irregular presentation and, of course, that's why I defer it to Dr. Rao and the -- the neurology subspecialist.

But from an orthopaedic standpoint, I do not think that there is an injury to the cervical nerves from the neck, shoulder, arm, out to the hand...

(Dr. DuPuy Dep. 43:18-44:11).

36. Dr. DuPuy testified he would defer to Dr. Rao or another neurologist in the evaluation of Claimant's brain:

Yes. Because I would say I have nothing from an orthopaedic standpoint to say this has anything to do with a neck injury or an arm injury or a back injury or a leg and foot injury. And if they say it's not coming from the brain, then I do not know why he is in that fixed position. And as I said, the fact that he was able to continue working and then presented to the workers' comp the next day, the CT scan was normal, that part doesn't make sense with this syndrome either. But, of course ... But, I mean, that's what I'm saying: It is what it is.

(Dr. DuPuy Dep. 49:7-20).

37. On the issue of expertise and scope of evaluation for his opinion, Dr. DuPuy testified:

Q . . . And so, at least from -- from an orthopaedic standpoint, you can't say what's causing -- what underlying pathology is causing Mr. Bagley's symptoms; is that fair to say?

A That is exactly what I say. Yes.

Q And then, of course, your -- your -- the scope of your evaluation is limited to the orthopaedic side of things?

A Yes. It is. My expertise is limited to the orthopaedic arms and legs part, not inside the brain.

(Dr. DuPuy Dep. 50:17-51:2).

38. Dr. DuPuy took issue with Claimant's deposition testimony concerning his physical examination. In his deposition, Claimant testified that during the physical examination, Dr. DuPuy advised Claimant that the accident "put [his] body through a safe zone which is kind of like having mini stroke." (Claimant Dep. 96:6-97:14). When confronted with this testimony, Dr. DuPuy adamantly denied the Claimant's description of the encounter:

I can say -- and even in his defense, I can say I absolutely did not say that. I would never have said such a statement. When I read it there, it is so inaccurate that "the memory talks about a safe zone," absolutely not.

(Dr. DuPuy Dep. 39:24-40:3). Dr. DuPuy later continued, "I have no idea what he's talking about.

And I even as I'm reading it today, I never said -- because I don't believe that anyway." (Dr. DuPuy

Dep. 40:6-8).

39. On September 8, 2020, Dr. Gunter (neurosurgeon) sat for a deposition. For the brain, Dr. Gunter testified he reviewed Claimant's CT Scan of the head (8/29/2019), MRI of the brain (9/24/2019), and second MRI of the Brain (6/9/2020), and none of these tests revealed any evidence of acute injury. (Dr. Gunter Dep. 9:21-10:22).

40. For the cervical spine, Dr. Gunter testified he reviewed Claimant's CT Scan of the neck (6/17/2019), MRI of the neck (7/3/2019), second MRI of the neck (6/9/2020), and a second CT Scan of the neck (6/9/2020), and opined that none of these tests revealed any evidence of acute injury. (Dr. Gunter Dep. 11:11-12:6).

41. For the lumbar spine, Dr. Gunter testified he reviewed Claimant's CT Scan of the lumbar spine (6/17/2019), MRI of the lumbar spine (7/3/2019), second MRI of the lumbar spine (2/27/2020), and none of these tests revealed any evidence of acute injury. (Dr. Gunter Dep. 12:12-23). Dr. Gunter further opined there was no evidence of acute injury on Claimant's EMG nerve study. (Dr. Gunter Dep. 13:12-17).

42. Like Dr. Brown, Dr. Gunter explained that there was no plausible medical explanation for Claimant's symptoms based upon the anatomical layout of the brain. According to Dr. Gunter, the part of the brain that controls leg function is located on the motor cortex and is interhemispheric (situated along the center between the two halves of the brain). (Dr. Gunter Dep. 26:25-27:3). The part of the brain that controls arm function is on the surface of the motor cortex next to the face, in a geographically different part of the brain. (Dr. Gunter Dep. 27:4-14).

43. In order to prove Claimant's left arm and left leg symptoms were the result of the accident, Dr. Gunter opined that there would have to be distinct lesions on these separate portions of the brain. (Dr. Gunter Dep. 27:10-14). Further, the singular traumatic event would have caused damage to these separate parts of the brain *while sparing the parts of the brain on either side*. (Dr.

Gunter Dep. 34:18-22).

44. Dr. Gunter further explained that if Claimant sustained a closed head injury to the motor cortex, it should have been visible on an initial CT scan as a contusion, and in the follow-up MRIs of the brain as an alteration of the anatomy of the motor cortex, but that is not the case with Claimant. (Dr. Gunter Dep. 26:14-21). Dr. Gunter was emphatic on the point, testifying the diagnostic imaging "... would pick this up. This would be big." (Dr. Gunter Dep. 28:3-5).

45. To summarize the diagnostic imaging, Dr. Gunter testified:

He doesn't have an acute injury of his cervical spine or his spinal cord or his nerve roots, because there's no evidence of that. And he doesn't have an injury to his brain, at least based on the evidence. And he doesn't have an injury to his lumbar spine, based on evidence.

(Dr. Gunter Dep. 30:16-21).

46. Concerning post-concussive syndrome, Dr. Gunter opined that of all the known clinical symptoms associated with post-concussive syndrome, Claimant's symptoms of contractures and alteration in muscle tone without radiographic evidence of injury would not be expected. (Dr. Gunter Dep. 31:22-33:16). Further, Dr. Gunter testified that if Claimant had a brain injury leading to his current alleged symptoms, his first symptom should have been paralysis of the extremity, followed by spasticity, followed by alternation of tone and contractures, which Claimant did not have. (Dr. Gunter Dep. 33:23-34:2). Concerning the possibility that Claimant's alleged "episodes" or seizures were related to the accident, Dr. Gunter testified "relating a seizure disorder to this trauma would be impossible." (Dr. Gunter Dep. 28:8-10).

47. Put succinctly, Dr. Gunter opined "there is no relationship between [Claimant's] injuries and the development of those contractures, physically." (Dr. Gunter Dep. 38:4-6).

48. Finally, having proven there was no physical explanation for Claimant's symptoms, Dr. Gunter opined there might be a psychological/behavior component, which he would not comment on as they are outside the scope of his expertise. (Dr. Gunter Dep. 35:24-36:16).

49. Dr. Gunter noted other factors to support his conclusion that Claimant did not sustain a brain injury on June 14, 2019. Concerning Claimant's motor strength, both Dr. Gunter and Dr. Brown opined that an acute brain injury would produce an immediate loss of motor strength that improves over time. (Dr. Gunter Dep. 16:10-19; Dr. Brown Dep. 32:16-23). However, in Claimant's case, Claimant had full strength in his early visits with Dr. Brown, but deteriorated over time, which was inconsistent with the typical timeline of a brain injury.

50. Another factor referenced by Dr. Gunter involved the loss of consciousness. According to Dr. Gunter, "most of the severe closed head injuries are associated with a loss of consciousness." (Dr. Gunter Dep. 25:6-9). In Claimant's case, however, Dr. Gunter testified Claimant did not lose consciousness, so he would not be expected to have long term functional deficits. (Dr. Gunter Dep. 25:15-24).

51. Concerning the comparison between neurologists and neurosurgeons, Dr. Gunter testified that both are specialists in brain and nerve function. (Dr. Gunter Dep. 6:14-21). According to Dr. Gunter, there are two differences between neurologists and neurosurgeons. The first difference is the treatment modalities, in which case only neurosurgeons employ surgical methods. The second difference is subject matter, in which case neurologists manage medical conditions like neurodegenerative conditions, where neurosurgeons address structural disorders to the spine itself. (Dr. Gunter Dep. 7:1-7). In terms of evaluating a patient with a closed head injury like Claimant, Dr. Gunter testified that "the evaluation would probably be very similar." (Dr. Gunter Dep. 7:8-17).

52. Based upon a preponderance of the evidence, including the medical evidence and testimony, we give greater weight to the medical opinions of Dr. Matthew Brown and Dr. Brett Gunter over the opinions of Dr. Hermanth Rao and Dr. David DuPuy.

53. We give less weight to the medical opinion of Dr. DuPuy because, based upon his

own deposition testimony, he is not an expert concerning neurological issues and is not qualified to opine as an expert on the brain.

54. We give less weight to the medical opinion of Dr. Hermanth Rao based upon his potential credibility issues, including his prior settlement with the Department of Justice concerning alleged Medicare fraud.

55. Notwithstanding any potential credibility issues, we also give less weight to Dr. Rao's opinion because of the evidence he relies upon to support his conclusions. Dr. Rao bases his opinion primarily upon Claimant's subjective statements concerning the timeline of symptoms. In his deposition, Dr. Rao admitted there was no objective evidence to support his opinion aside from an EEG that "*seemed*" to show some slowing which "*could*" be a sign of a head injury. (Dr. Rao Dep. 11:20-23, emphasis added). However, Dr. Rao was not able to identify a diagnosis beyond a description of Claimant's symptoms, so he recommended further testing to include a 96-hour EEG to investigate alleged seizures as reported by Claimant's father. (Dr. Rao Dep. 13:12-14:17).

56. We give greater weight to the opinions of Dr. Matthew Brown and Dr. Brett Gunter because as neurosurgeons, they are specially qualified by training and experience to opine on the mechanical and structural trauma of closed head injuries. Additionally, Dr. Brown and Dr. Gunter based their opinions on the objective diagnostic imaging and the medical science of closed head injuries. Finally, Dr. Brown and Dr. Gunter were substantially consistent in their descriptions of the medical science of closed head injuries and in their clinical application to Claimant's case.

57. In their depositions, Dr. Brown and Dr. Gunter explained that it is essentially medically impossible for Claimant to develop his specific symptoms (the left-hand contracture and left foot drop) from a single traumatic brain injury.

58. According to Dr. Brown and Dr. Gunter, Claimant's symptoms were inconsistent with the anatomical layout of the brain. Dr. Gunter testified that the part of the brain that controls

leg function is located on the motor cortex and is interhemispheric (situated along the center between the two halves of the brain). (Dr. Gunter Dep. 26:25-27:3). The part of the brain that controls arm function is on the surface of the motor cortex next to the face, in a geographically different part of the brain. (Dr. Gunter Dep. 27:4-14).

59. If Claimant had sustained a brain injury which caused his specific symptoms, the singular traumatic event would have had to cause damage to these geographically separate parts of the brain while also sparing the parts of the brain on either side. (Dr. Gunter Dep. 34:18-22).

60. Based upon the thorough explanation of the anatomical layout of the brain from Dr. Brown and Dr. Gunter, it is self-evident that a single traumatic event cannot damage two separate sections of the brain without also damaging the sections in between.

61. Therefore, the alleged symptoms of a left hand contracture and left foot drop – without functional impairment to any other body part – are essentially impossible based upon the Claimant’s known mechanism of injury and the anatomical layout of the brain.

62. Additionally, assuming such an injury was mechanically possible from this accident, Dr. Gunter opined that the pathology should have been visible on the diagnostic imaging: on an initial CT scan as a contusion in the brain, and on later MRIs of the brain as alteration of the anatomy of the motor cortex. (Dr. Gunter Dep. 26:14-21). Dr. Gunter was emphatic on the point, testifying that if Claimant sustained a brain injury as alleged, the diagnostic imaging “... would pick this up. This would be big.” (Dr. Gunter Dep. 28:3-5).

63. According to Dr. Gunter, the exhaustive diagnostic imaging (a CT Scan and two MRIs) of the brain was normal, and there was no evidence of any pathology in Claimant’s brain capable of producing the long-term symptoms as alleged. Additionally, Dr. Jarrell and Dr. DuPuy each confirmed that the brain imaging they reviewed was normal. (Dr. DuPuy Dep. 43:18-44:11; APA No. 7).

64. Further, as can be seen from the surveillance video, Claimant did not lose consciousness following the accident, which would have been expected if he had sustained a brain injury capable of causing long term functional deficits. (Dr. Gunter Dep. 25:15-24).

65. Finally, Claimant's development of symptoms (including progressive weakness and contracture without prior spasticity) were clinically inconsistent with the progression of long term functional symptoms from a severe closed head injury. (Dr. Gunter Dep. 16:10-19; Dr. Brown Dep. 32:16-23).

66. Based upon a preponderance of the evidence, including the surveillance video and the medical evidence, we find and conclude Claimant sustained a compensable injury to his back on June 14, 2019.

67. Based upon a preponderance of the evidence, including the medical evidence and testimony, we find and conclude Claimant's alleged symptoms of left hand contracture and left foot drop are medically inconsistent with the mechanism of injury due to: the anatomical layout of the brain; the absence of the objective diagnostic evidence of brain injury; the fact that Claimant did not lose consciousness, and; the presentation of symptoms which were clinically inconsistent with the progression of long term functional symptoms from a closed head injury.

68. Based upon a preponderance of the evidence, including the medical evidence and testimony, we find and conclude Claimant failed to satisfy his burden of proving he sustained a compensable injury to the head, brain, left arm and hand, left foot, and psyche.

69. We find Claimant is at maximum medical improvement for his back injury as of August 28, 2019. This finding is based upon a preponderance of the medical evidence as a whole.

70. Based upon a preponderance of the evidence, we find Claimant is not entitled to an award of temporary total/partial disability.

71. Based upon a preponderance of the evidence, including the medical evidence and

testimony, we find and conclude Claimant has sustained 10% permanent partial disability to his back as a result of his injury on June 14, 2019.

72. Based upon a preponderance of the evidence, including the medical evidence as a whole, Claimant is not entitled to future medical treatment.

73. No hearing costs are assessed.

FULL COMMISSION'S CONCLUSIONS OF LAW

It is hereby concluded that under the South Carolina Workers' Compensation Act, S.C. Code § 42-1-10, et seq., that:

1. Pursuant to S.C. Code § 42-15-10 and § 42-17-20, and based on the substantial evidence, jurisdiction, and venue are proper.

2. Pursuant to the South Carolina Workers' Compensation Commission Rules and Regulations, S.C. Reg. 67-210(B) and S.C. Reg. 67-213(C), and based on the substantial evidence, the parties were properly served with a Notice of Hearing.

3. Pursuant to S.C. Code § 42-1-130, Claimant was an employee of the Defendant-Employer at the time of the work accident and injury.

4. Pursuant to S.C. Code § 42-1-40, and based on the substantial evidence, Claimant has an average weekly wage of \$877.79, with a corresponding compensation rate of \$585.20.

5. Pursuant to S.C. Code § 42-1-160, and based on the substantial evidence, including the medical records, Claimant sustained a compensable injury to his back by accident arising out of and in the course and scope of his employment of June 14, 2019.

6. Pursuant to S.C. Code § 42-1-160, and based upon a preponderance of the evidence, Claimant failed to satisfy his burden of proving he sustained compensable injuries to his head, brain, left arm and hand, left foot, and psyche by accident arising out of and in the course and scope of his employment of June 14, 2019.

7. Pursuant to S.C. Code § 42-9-30, and based on the substantial evidence, including the medical records, the Claimant sustained a 10% permanent partial disability to his back as a result of his injury.

8. Pursuant to S.C. Code § 42-9-30(21), Claimant is awarded thirty (30) weeks of permanent partial disability benefits to his back.

9. Pursuant to S.C. Code § 42-15-60, Claimant is not entitled to any future medical benefits for this work-related injury.

ORDER OF THE FULL COMMISSION

IT IS HEREBY ORDERED that the greater weight of the evidence supports a finding that Claimant sustained a compensable injury to his back by accident arising out of and in the course and scope of his employment on June 14, 2019.

IT IS FURTHER ORDERED that the greater weight of the evidence supports a finding that Claimant failed to satisfy his burden of proving he sustained compensable injuries to his head, brain, left arm and hand, left foot, and psyche by accident arising out of and in the course and scope of his employment on June 14, 2019.

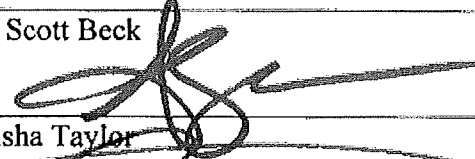
IT IS FURTHER ORDERED that the Claimant has sustained a permanent partial disability of 10% to his back entitling him to a total of 30 weeks of permanent partial disability benefits, for a permanent partial disability award of \$17,556.00.

AND IT IS SO ORDERED!

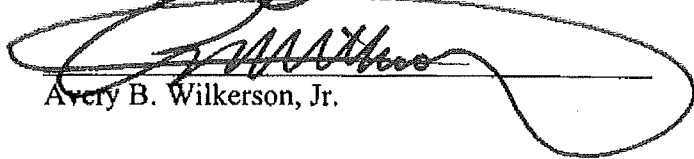
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



T. Scott Beck



Aisha Taylor



Avery B. Wilkerson, Jr.

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 December 21, 2021

**DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER 1908703
KYLE BAGLEY, CLAIMANT,
vs.
SUN FIBER, LLC, EMPLOYER,
AND
GREAT AMERICAN ALLIANCE INSURANCE COMPANY, CARRIER,
DEFENDANTS.**

HEARING: Held in Richland County, South Carolina, on September 28, 2020.

APPEARANCES: The claimant was represented at the hearing by Bryan N. Sanchez, of Lewis Law Firm, LLC.

The Defendants were represented by C. Barrett Burley, Holder Padgett Littlejohn + Prickett, LLC.

PURPOSE OF THE HEARING: To determine issues on Forms 50, 51, and the Form 21 and all other issues that were timely brought before the Commission.

DECISION AND ORDER BY: South Carolina Workers' Compensation Commission, Commissioner Gene McCaskill.

FILED: May 13, 2021

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the following records were submitted into evidence without objection:

BY THE CLAIMANT

MEDICAL EVIDENCE

<u>Claimant's APA No.</u>	<u>Provider Name</u>	<u>Date of Service</u>	<u>Bates numbered</u>
#1 (23 pp.)	MUSC Health – Chester Regional Medical Center from 06/17/19 <i>(as well as 07/03/19 diagnostics ordered by Riverview Medical)</i>	06/17/19 and 07/03/19	1-23
#2 (1 pp.)	Chester Chiropractic	06/20/19	24
#3 (4 pp.)	Lowry's Family Medicine	06/25/19	25-28
#4 (13 pp.)	Riverview Medical / Occumed	06/27/19	29-41
#5 (23 pp.)	Midlands Ortho & Neurosurgery (Dr. Brown) and Form 14-B	07/05/19 to 07/11/19	42-64
#6 (76 pp.)	Your Life Wellness – PT	7/22/19 to 10/16/19	65-140
#7 (16 pp.)	Carolina Neurosurgery & Spine	08/22/19 to 09/05/19	141-156
#8 (24 pp.)	OrthoCarolina Records and out of work note (Dr. DuPuy)	09/05/19 to 10/15/19	157-180
#9 (12 pp.)	Dr. Rao- Neurological Institute	10/31/19- 11/19/19	181-192
#10 (21 pp.)	Deposition of Dr. Brown (Midlands Ortho and Neurosurgery)	12/12/19	193-213
#11 (55 pp.)	Deposition Dr. Hernan Rao (The Neurological Institute)	02/14/2020	214-269
#12 (54 pp.)	Deposition of Dr. David DuPuy (Orthocarolina)	04/29/2020	270-324
#13 (54 pp.)	Deposition of Dr. Gunter and 5 pages of the Office note of 07/08/20	07/08/2020 (office note) and 09/08/2020 (Deposition)	325-379

OTHER DOCUMENTS FROM CLAIMANT:

<u>Exhibit No.</u>	<u>Document Description</u>	<u>Date(s)</u>	<u>Bates Numbered</u>
#4	First Report of Injury / Work Comp Injury Reporting Form and Photos of similar Bale that hit Claimant	06/24/19	001-009 (uploaded to the e-case, pages 374-383, after APA #13 ends)

BY THE DEFENDANTS

MEDICAL EVIDENCE

<u>Defendant's APA No.</u>	<u>Provider Name</u>	<u>Date of Service</u>	<u>Bates numbered</u>
1 (APA 14)	MUSC Chester	06/17/19	1-18
2 (APA 15)	Lowry's Family Medicine	12/16/14 to 06/25/19	19-40
3 (APA 16)	Riverview Medical Center / Occumed	06/27/19	41-59
4 (APA 17)	Midlands Orthopaedics & Neurosurgery (Dr. Brown)	07/05/19 to 08/28/19	60-85
5 (APA 18)	OrthoCarolina (Dr. Dupuy)	09/12/19 to 10/15/19	86-107
6 (APA 19)	Dr. Joseph Boland & Associates (Doris Paez)	12/13/19	108-116
7 (APA 20)	Carolina Neurosurgery & Spine Assoc. (Dr. Jarrell)	08/22/19 to 09/05/19	117-142
8 (APA 21)	Lowry's Family Medicine	12/16/14 to 06/29/20	432-461 (or 326-356)

OTHER DOCUMENTS FROM DEFENDANTS:

<u>Exhibit No.</u>	<u>Document Description</u>	<u>Date(s)</u>	<u>Bates Numbered</u>
#3	Video from Employer showing the incident where claimant was injured	06/14/19	<i>Video file</i>

STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the issues on the Form 50, Form 51 and all other issues that were timely brought before the Commission.
2. Notice of hearing was timely and properly served on all parties of interest.
3. Venue, set in Richland, is proper as agreed by all parties.
4. As a result of this workplace incident on June 14, 2019, the Defendants admitted that the Claimant sustained a back/spine injury, arising out of the course and scope of his employment with the Defendant-Employer. It was on this date that the Claimant was working as a welder for the Defendant-Employer when a bale of fiber, which weighed between 600-700 pounds (approx.), came off a roller and hit the Claimant in his upper extremity/head/neck area as the Claimant was kneeling down at the time to weld a part of the roller that this bale came off of, thereby causing him to become injured as a result.
5. Claimant has an Average Weekly Wage of \$877.79 and a Compensation Rate of \$585.20 and this is the agreed upon Compensation Rate that is to be used in this case going forward.
6. The Defendant's initially paid the Claimant a total of seven (7) weeks' of TTD benefits for the weeks of 06/27/19 to 07/19/19. However, these were paid at an incorrect (lower) rate of \$563.00. Thus, given that the Compensation Rate in this claim is \$585.20, the Claimant has an underpayment of TTD benefits that are owed to him, at \$22.20 per week, for these seven (7) weeks (06/27/19 to 07/19/19), thereby resulting in a total underpayment that is presently owed to him in the amount of \$155.40.

STATEMENT OF CASE

Defendants admit that the Claimant sustained a compensable injury to his back/spine in connection with this June 19, 2019 incident/injury, when the Claimant was injured within the course and scope of his employment with the Defendant-Employer, when he was hit with a bale of fiber while kneeling down to weld something. This bale of fiber weighed approx. 600-700 pounds and it was coming down a roller that the Claimant was welding at the time and it made contact with the Claimant's upper extremity/head/neck area.

Claimant filed a Form 50 hearing request, asking the Commission to determine various things, namely, to determine what the extent of the injuries he sustained in this accident, as well as seeking an award for medical and indemnity benefits as a result of this workplace incident of his. The Claimant's main positions asserted at this hearing were, among others, as follows:

- 1) in connection with this workplace incident the Claimant sustained other injuries, in addition to the compensable back/spine injury, namely that he sustained injuries to his head and other related aspects/injuries that are related to these injuries of his;
- 2) that he is entitled to receive payment for the underpayment of TTD's previously paid to him for the seven (7) weeks of TTD's he received at the lower/incorrect Compensation Rate, resulting in \$155.40 that is owed to him per the correct Compensation Rate in this claim;
- 3) that he is not yet at MMI in connection with his injuries sustained in this claim at hand;
- 4) that he is entitled to receive TTD's, from the date he was last paid TTD benefits (07/19/19) to the present and ongoing each week, in accordance with the Act; AND
- 5) that he is in need of additional medical treatment for all these injuries sustained in this.

6) Also, of note, in paragraph 12 of the Claimant's Form 58 pre-hearing brief, reference is made to the fact that there needed to be an 'amendment of matters originally outlined in the initial Form 50 hearing request the Claimant filed' as certain issues developed since the Form 50 hearing request was filed and they needed to be addressed by the Commission at the hearing on September 28, 2020.

The Defendants filed a Form 51 in response to Claimant's hearing request and their main positions asserted at the hearing were, in essence, as follows:

- 1) that the Claimant was at MMI for the compensable back/spine injury;
- 2) that the Claimant was not entitled to additional TTD's;
- 3) that the Defendants were entitled to a credit for overpayment of TTD's;
- 4) that the Claimant was not entitled to additional medical treatment; AND
- 5) that an assessment into what amount should be awarded to the Claimant as permanent partial disability benefits in connection herewith.

In connection with this hearing the parties submitted pre-hearing briefs and various APA submissions, which contained numerous medical records and evidence for the Commission's consideration at this hearing. Also, pre-hearing depositions of various medical providers associated with this Claim were taken by the parties. The following providers' deposition transcripts were submitted into evidence, they were read in their entirety and taken into consideration by this Court: i.) Dr. Matthew Brown, ii.) Dr. Brett Gunter, iii.) Dr. David DuPuy and iv.) Dr. T. Hermanth Rao.

Therefore, the issues to be decided by the Commission in connection with this September 28, 2020, hearing were determined to be as follows:

- 1) Has the Claimant reached MMI as to this work-related accident?

- 2) Is the Claim ripe for a determination of permanency, if any?
- 3) Are the Defendants responsible for any future medical care and treatment?
- 4) Are the Defendants entitled to a credit for an overpayment of TTD, if any?

EVIDENCE IN THE CASE (MEDICAL and OTHER)

This matter was scheduled for a hearing before the undersigned on September 28, 2020, with the consent of the parties, in Richland County, South Carolina. There were no objections to APA submissions.

The Claimant testified that on June 19, 2019, while working for the Defendant Employer at their manufacturing plant, he had to weld a piece of a machine that has rollers on it, which is where large bails of fiber come off as part of the production proves. As the Claimant was kneeling down to weld, a large 600-700 pound bale of fiber was coming down the rollers where he was welding at hit him in his upper extremity/head/neck area and flung him/his body backwards. He testified that was all he remembered. Claimant was then knocked backwards about 15 feet after this impact from the bale of fiber. [*Transcript Page 38, lines 17-24, Page 39, lines 1-22*]. Claimant further testified that “everything went black (he saw) his daughter’s eyes, the color of her eyes” after being hit. [*Transcript Page 38, lines 17-24, Page 39, lines 1-22*].

Claimant initially thought he was fine and did not seek medical care on the day of his accident and the Employer did not send him for medical care either. Claimant rested that evening and the following days but eventually went to Chester Regional Medical Center for medical care as he was nauseous and did not get out of bed that weekend. He then saw a Chiropractor one time but was told he needed more specialized help. At that time neither the Employer nor the carrier were directing the Claimant’s medical care nor were they telling him what needs to be done in

regard to getting medical care under workers compensation. Claimant was finally sent to Riverview Medical Center by the Carrier. Claimant testified that when he was filing out the intake documents there he made a 'drawing on the human figure they have' to indicate all of the areas of his body he was having issues at the time. He testified that his head, left shoulder, left arm, left leg, etc. was giving him issues. [*Transcript page 48, lines 5-25, see also APA 4*].

Claimant then testified about his current problems that he is having as a result of the work injury. He testified that he has "headaches all the time between the eyes and the top of the head, constant pain down the neck and the shoulder. The ligaments and tendons are tight from the elbow to the wrist. [His hand] is matted up and knotted together. My fingers don't stretch out, the foot drop, [pain from calf to foot] [for which he has] braces for all that." [*Transcript page 49, lines 8-24*].

Claimant testified that his memory is not too good and he keeps notebooks/paper around to help him remember and understand things, as he forgets a lot and has trouble processing things at times. He has issues turning his neck, as he sees stars and feels like he's going to pass out, ringing in ears and issues with chewing. He had none of these issues before this incident. [*Transcript page 50, lines 2-23*].

Claimant was initially sent to a see medical providers by Workers Compensation, who authorized/directed such at the time, as contained in the parties' APA's submitted in connection with this hearing. On July 5, 2019, Claimant was treated by Dr. Matthew Brown at Midlands Orthopaedics and Neurosurgery (*APA 5*). At the initial appointment and the subsequent one as well, as he only had two approved, the Claimant complained of "neck pain to his occiput radiating from the occiput up to the vertex, low back pain, left-sided posterior buttock pain radiating to the thigh into the proximal calf, left upper extremity pain that radiates down to his left hand with

tingling sensation within all distribution of all digits, contracture in his left-upper extremity, left-foot drop/dragging, right-sided compensatory pain, a slow/altered gait, constant headaches, dizziness, etc.” (among various other complaints; *see APA 5, pp. 42-63*). Claimant endorsed a positive history of trembling and cold sweats since this accident, as well as decreased appetite and weight-loss. Dr. Brown diagnosed Claimant with “Cervico-occipital neuralgia, Chronic Pain Syndrome, cervical/lumbar strains, after suffering a traumatic head injury” in connection with the claimant’s injuries in this workplace incident at hand. Dr. Brown reviewed the Claimant’s cervical, thoracic, and lumbar MRIs and stated that they revealed no acute significant pathology. He further stated that Claimant “has no neurological structure impingement throughout his cervical, thoracic, or lumbar spine with no central canal stenosis or significant foraminal stenosis which would explain any of [Claimant’s] symptoms at this time.

On July 11, 2019, Claimant returned to Dr. Brown for bilateral occipital nerve blocks. Dr. Brown noted a “good response” to the nerve block and released Claimant at maximum medical improvement from a neurosurgical standpoint, deferring further care to his occupational medical providers, and assigned him a 0% impairment to the whole person for the lumbar spine and a 5% whole person impairment for the cervical spine based upon “non-verifiable radicular complaints, and muscular tenderness...” (among others).

Claimant’s left hand is balled up in a ball, in a clenched/contracted position, and that is something that he developed after this incident and which he still has issues with. Claimant demonstrated such to the Commissioner, from the witness stand at the hearing. Claimant testified that Dr. Dupuy indicated to Claimant that his left hand was a contracture and that Claimant had foot drop of his left foot as well. Dr. Rao, a neurologist Claimant saw, also confirmed such in his

evaluation of Claimant. Claimant wears braces on his left hand and left foot as a result of these issues. *[Transcript page 54, lines 10-21 and page 55, lines 3-25 and page 56, lines 1-25]*.

Claimant was sent to physical therapy by the Carrier and his records contain a lot of evidence showing the issues he has a result of these injuries. Therapy was one of the approved treatments by the Carrier, for the accepted back claim, but after the Claimant's deposition was taken the therapy was no longer approved by the Carrier and it was cancelled without completing such. *[Transcript page 60, lines 4-25 and page 61, lines 1-4]*.

Since the Claimant was left without treatment by the Carrier, as they were no longer providing him with such, he presented to see Dr. Dupuy at OrthoCarolina for additional care for these injuries. Dr. DuPuy initially saw the Claimant on 09/12/2019 and wrote him out of work completely because of the injuries Claimant sustained in this workplace incident at hand. *[Transcript page 61, lines 21-25 and APA 8, page 157]*. Dr. DuPuy testified in his deposition that, after examining the Claimant and after reviewing his prior records and current scans ordered, it was his opinion that Claimant sustained a "decorticate brain injury" which caused the left-hand contracture/closed injury to hand and to his foot/the foot drop were all a result of this accident and it involved the brain. Dr. DuPuy objectively verified all of this by way of his physical examinations performed on the Claimant and that everything was consistent with such as there was no symptom magnification or malingering present either. *[Transcript page 62, lines 17-25 and APA 12, pages 284-290]*. Dr. Dupuy referred the Claimant to a Neurologist for further care and deferred to Dr. Rao, the Neurologist who examined Claimant, for treatment recommendations for the additional medical care that was needed to improve the Claimant's condition/injuries. *[APA 12, pages 295-296]*. Dr. Dupuy also testified in his deposition that "[Claimant was not at MMI], not even close in (his) opinion." *[APA 12, pages 295-290]*.

Dr. Rao, a board-certified neurologist, testified in his deposition that he examined Claimant initially on 10/31/19 and conducted an examination of Claimant that verified that he had a left-hand contracture, foot drop, left-sided weakness, hyperreflexia, gait issues, etc. [APA 11, pages 220-221]. Dr. Rao's opinion was that as a result of this incident the Claimant sustained a closed-head injury, had post-concussive syndrome and a possible spinal cord injury – which explains the symptoms Claimant was having. Dr. Rao ordered the Claimant to have a video monitored EEG and to attend his office's Brain Injury Program, which has multi-disciplinary treatments for these injuries, in hopes of better identifying things related to these injuries and to make him more functional and lessen his disability. [APA 11, pages 223-227]. Dr. Rao also testified that it was his opinion that Claimant could not work at all because of the injuries he sustained in this accident, namely the weakness, cognitive issues, impairments of consciousness and that he would pose a safety risk- which he has had ever since the injury date. That he also needed psychological care, as that was in the least exacerbated as a result of this. Dr. Rao further testified that Claimant was not at MMI either as he still needs to receive treatment for these issues to get him to that point, as there could still be a spinal cord issue and/or a peripheral nervous system issue but that there was certainly a central nervous system issue with the brain injury it just is hard to localize such without further evaluations/treatments. Further, Dr. Rao opined that all of these issues were related to his brain injury given their temporal relationship, his review of Claimant's medical history and Dr. Rao's examination/evaluation of Claimant. [APA 11, pages 229-232 and page 257].

On July 8, 2020, Claimant was sent by Defendants for an IME with Dr. Brett Gunter at Lexington Brain and Spine Institute. (APA No. 13). Dr. Gunter noted complaints of headaches with “occipital head pain that radiates to the top of his head and into the frontal region behind the eyes

bilaterally right great than left, brought on by physical activity” as well as “axial neck pain near his mid cervical spine with radiation into his cervical thoracic junction and into his interscapular region,” and “left shoulder and arm pain out of the left axilla number lateral aspect of the arm to the mid bicep/radiating pain from left-elbow to forearm and numbness into left-palm, weakness of the hand and difficulty with grip, grasp and manual dexterity, left-wrist flexion contractures in the 3rd-5th digits along with thickness/cording of the palm and diminished sensory exams on left-hand and left-foot” (among other complaints).

Dr. Gunter reviewed Claimant’s MRI of the brain (6/9/2020) and opined it was normal. Dr. Gunter further reviewed Claimant’s cervical MRI (6/9/2020) and opined it revealed “cervical spondylosis with some canal stenosis and foraminal stenosis but without significant cord or nerve root compression. The stenosis appears largely congenital.” Dr. Gunter indicated Claimant will need continued rehabilitation for the contractures of his left-upper and left-lower extremities, as well as noting no surgery intervention appears needed. Dr. Gunter concluded he was “unable to identify either significant cervical spinal disease or intracranial spinal disease to explain [Claimant’s] current condition.”

On September 8, 2020, Dr. Gunter sat for a deposition. (*APA 13, pp. 330-379*) and testified there was no objective evidence of an acute injury to Claimant’s brain, neck, or back. (Gunter Dep. 13:23-25). Dr. Gunter opined that – from a neurological standpoint – he cannot say Claimant’s current issues were caused by the work accident. (Gunter Dep. 18:3-6). Dr. Gunter testified Claimant was at maximum medical improvement for the lumbar spine as of March 10, 2020, and for the cervical spine as of July 8, 2020, with no physical impairment as a result of his work injury. (Gunter Dep. 19:6-22). In reference to Claimant’s left-hand contracture, Dr. Gunter testified he would “expect to see that kind of damage on an MRI” to the motor cortex, which should have been

visible immediately by bruise or contusion on a CT Scan (or subsequent MRIs), but Claimant did not have this pathology. (Gunter Dep. 25:25-28:2). In reference to an EEG, Dr. Gunter opined an EEG would not be helpful “unless you thought [Claimant] was having persistent seizure disorder. And relating a seizure disorder to this trauma would be impossible.” (Gunter Dep. 28:6-10). However, Dr. Gunter also testified that he “cannot say that [Claimant’s sensory] exam was normal when Dr. Brown examined him, despite the fact that the [Dr. Brown’s] records said it was normal.” (Gunter Dep. 24:10-12). He also caveated his statements with the fact that such was ‘based on the evidence to date’ and with further testing/treatment it may change accordingly. Dr. Brown concluded his deposition by stating that “based on his contractures, I would say he’s unemployable.” (Gunter Dep. 34:19-20).

Claimant was seen by Dr. Paz, as Defendants sent him there for an IME in connection this claim, and who recommended Claimant attend psychological therapy for his injuries sustained in this workplace incident. Claimant has prior anxiety related to stressor at work but that he was significantly more depressed now and that was “more than ever.” [*Transcript page 51, lines 2-15, see also Defendant’s APA 14*]. Dr. Paz evaluated Claimant and recommended that he “attend psychotherapy to address his adjustment issues” and to get used to his “new normal” because of this workplace incident and the injuries he sustained. [*Defendant’s APA 6, page 115*]. Claimant has not yet received psychological, nor Neurological, nor any further orthopedic and/or physical therapy, care either.

FINDINGS OF FACT

I find that:

1. On 06/14/2019, Claimant was struck in the head by a large bale of fiber weighing approximately 600-700 pounds which the Claimant was welding.

2. The accident is arising out of and within the course and scope of his employment.
3. The questions at bar in this hearing are;
 - a. Has the Claimant reached MMI as to this work-related accident?
 - b. Is the claim ripe for a determination of permanency, if any?
 - c. Are his current issues causally-related to this work-related accident?
 - d. Are the Defendants responsible for any future medical care and treatment?
 - e. Are the Defendants entitled to a credit for an overpayment of TTD, in any?
4. The claim was accepted by the Defendants only to the back. Medical care and treatment have been provided. Temporary total disability has been paid.
5. Claimant asserts that, in addition to his back, he has suffered injuries to his neck, head, left upper extremity and left lower extremity.
6. This case is replete with medical records to include extensive and repetitive imaging. Both parties have entered medical records into evidence.
7. Claimant has seen a number of medical providers.
8. There are four doctors who have opined as to Claimant's condition. Drs. Matthew Brown, Brett Gunter, David Dupuy and T. Hemanth Rao.
9. All four have been deposed. I have read all of those depositions in their entirety.
10. All were generous with their time as well as cooperative and complete in their answers.
11. The Claimant testified at the hearing. Claimant is clearly not today as he was before the accident. That being said, are the physical issues that he presents with today causally-related to this accident or are they disabilities that cannot be related back to the work-related accident on 06/14/2019?

12. Dr. Brown, who is the authorized treating physician, testifies in his deposition that the Claimant, "...had, in a flex position, both his shoulder, the elbow, the wrist, and his – and his fist."
13. Claimant also presents with left foot drop as well.
14. This case is puzzling. The Claimant was clearly hurt at work. No one disputes that fact. So, question then becomes what is causally related to the accident.
15. The doctors opining in this case have examined and/or treated the Claimant. Their opinions differ as to certain aspects of the Claimant's condition.
16. Dr. Brown testified that the Claimant had a closed head injury. He provided the Claimant with injections and physical therapy.
17. As to whether the Claimant is a surgical candidate, Dr. Brown nor any other doctor opines that the Claimant would benefit from surgery.
18. The Claimant has been found to be at MMI from a neurosurgical standpoint by the authorized treating physician, Dr. Brown who released him to return to work full duty.
19. Dr. Jarrell gave the Claimant a full duty release in July of 2019 pending an appointment with Ortho Carolina.
20. Dr. Gunter testified that he could not identify a neurological explanation for Claimant's symptoms.
21. He testified that Claimant does not have a permanent, severe brain injury.
22. Dr. Gunter further testifies that he cannot say Claimant's current issues were caused by a work accident on 06/14/2019.
23. Dr. Gunter testifies that the Claimant is at MMI from a neurological neurosurgical standpoint.

24. Dr. Gunter further testifies that the Claimant is not suffering any sort of permanent physical impairment as a result of his injury.
25. As to Claimant's contractures, Dr. Gunter also testifies, "he has contractures of that left and upper and lower extremity without physical explanation. The contractures exist, we found them on physical exam, but they're without – without clear neurological explanation. He continues, "...the cause of his current syndrome is unknown to me."
26. Dr. Gunter testified that Claimant need treatment for his contractures. He simply cannot opine that the contractures are caused by this work-related accident. Dr. Gunter cannot find the medical evidence necessary to make such a diagnosis.
27. Claimant treated on his own with Dr. Taylor Jarrell. On 09/06/2019, Dr. Jarrell released the Claimant to return to work full time with restrictions, pending an appointment with OrthoCarolina, date to be determined.
28. Claimant then saw Dr. DuPuy who a practicing orthopedic surgeon since has been 1976. Dr. DuPuy testified that in his forty years of practice he has seen about 300,000 patients and performed about 20,000 surgeries.
29. Dr. DuPuy testified after examining the Claimant that it was his impression that, "this contracted hand, closed injury to the hand and to the foot, is from the accident and it involved the brain.
30. He also testified that he saw no evidence of symptom magnification or malingering in his physical exam of the Claimant.
31. Dr. DuPuy is asked if it is his opinion that Claimant's presentation is consistent with the strike to his head form the bale of fiber as described. He testified, "Yes. I do."

32. When questioned about Claimant's negative scans, Dr. DuPuy testified, "That's a surprise to me that those scans are essentially normal."
33. When asked if he would defer to Dr. Rao for issues related to the neurological problems and Claimant's brain injury. His answer was – yes.
34. Dr. DuPuy has written the Claimant out of work. Dr. DuPuy opines that the Claimant is not at MMI.
35. While Drs. Brown, Gunter and DuPuy are neurosurgeons, Dr. Rao is a neurologist. Dr. Rao was deposed on 02/14/2020. Defendants spent some time in the deposition focused on the fact that Dr. Rao had in the past paid a large civil fine in a Medicare case. The time period addressed was 2003-2006. The news release was dated 2013.
36. While not insignificant, that matter dealt with money and billing. It was as described as a "civil fine". Nothing about that matter has any bearing on this case. There is nothing in that settlement agreement questioning Dr. Rao's medical credentials or his medical license.
37. Given that Dr. Rao is the only neurologist in this case, I give his opinion great weight.
38. Dr. Rao opines, "...he certainly, in my opinion, had a head injury. And that could explain much or all of the symptoms." He states that to a reasonable degree of medical certainty.
39. When asked if the Claimant can currently work, Dr. Rao testifies that he cannot.
40. Dr. Rao summarizes his testimony near the end of his deposition, "I believe the symptoms he has are a direct result of injury. And, again, that's based upon the temporal relationship of his symptoms with the injury and the course he has had since."

41. It must be noted that the contractures that the Claimant now presents with were not present until after this work-related injury. Prior to his injury, Claimant was working as a welder for the Employer.
42. There are also records and testimony as to the Claimant's psychogenic condition.
43. Claimant underwent a Neuropsychological Evaluation with Doris Paez, PhD. Dr. Paez is a SC licensed psychologist.
44. I have read her report in its entirety.
45. Dr. Paez concludes that, "Psychotherapy is highly recommended to address current adjustment issues as well as historical difficulties managing work and personal stress.
46. Dr. Paez includes several very specific recommendations in her report.
47. When the evidence – both lay and medical – is viewed as a whole, I find that the Claimant is not at MMI for injuries suffered in a work-related accident on 06/14/2019.
48. The neurosurgeons have opined that the Claimant's condition is nonsurgical. Dr. Gunter has been even more definitive in his opinion that the Claimant's current condition is not work-related while Dr. DuPuy opines that it is.
49. Dr. DuPuy defers to Dr. Rao was to diagnosis and treatment. I am persuaded as to the wisdom of that assessment.
50. Dr. Rao is a neurologist and, given that the Claimant is non-surgical, I give the greatest weight to the opinion of the only neurologist to opine in the case – Dr. Rao.
51. As such, I find the Claimant has suffered a compensable head injury.
52. Claimant is entitled to medical care and treatment with a neurologist of the Defendants choosing who is subject to jurisdiction of the Act.

53. Claimant is entitled to treat the authorized treatment provides or directs for his head injury and any other casually-related treatment for conditions that emanate from that injury with the exception of surgery which is not provided by this Order.
54. As to Claimant's psychological condition, Dr. DuPuy, when asked if the Claimant experienced an aggravation to some of his psychological issues that may have been preexisting, his testimony was, "I think at the very least, yes."
55. As such, I find that the Claimant is entitled to psychotherapy with a provider chosen by the Defendants who is subject to the jurisdiction of the Act.
56. Claimant's TTD is to continue.
57. Defendants provided the Claimant with seven (7) weeks of Temporary total disability ("TTD") benefit checks, covering the date range of: 06/27/19 through 07/19/19.
58. Claimant's Compensation Rate in this is \$585.20 and for these seven (7) weeks of TTD's that he received from Defendants initially, he was paid at a lower, incorrect rate, resulting in him being owed \$155.40 for the underpaying during this period.
59. Going forward, the Claimant's TTD's shall be paid at the correct compensation rate of \$585.20.
60. Defendants shall pay the Claimant TTD's beginning from the day after he last received them (07/20/19), through the present, and ongoing each week until he reaches MMI or until further Order of this Court, in accordance with the South Carolina Workers Compensation Act.
61. Thus, for the time frame of 07/20/19 through 05/05/21, a total of 94 weeks has elapsed for which TTD benefits are owed to the Claimant. Using the Claimant's \$585.20 Compensation Rate the amount Defendants owe and shall pay to the Claimant for these

94 weeks is approx. \$49,742.20 approx. Adding in the \$155.40 that the Claimant is owed from the underpaid TTD's, which were previously paid in this, the total amount owed to Claimant is \$54,538.80 and which shall be paid in one lump-sum and this is also subject to a claim for Attorney Fees by the Claimant's counsel of record. Counsel for Claimant shall submit a Form 61 in relation to this aspect.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann §42-1-130 (1976), the Claimant was a covered Employee and pursuant to the S.C. Code Ann §42-1-140 (1976), the Employer was a covered Employer under the Workers' Compensation Act.
2. Pursuant to S.C. Code Ann. §42-1-160 (1976), Claimant sustained a compensable injury to his head/brain, neck/back, left hand, left foot, and psychologically (depression/anxiety and adjustment) by accident arising out of and during the course of his employment with the Defendant Employer on June 14, 2019.
3. Pursuant to S.C. Code Ann. §42-9-10 and §42-15-60 (1976), Defendants shall pay for the past causally related medical treatment Claimant has received, and they shall further provide additional causally-related medical care for the Claimant's injuries until he reaches MMI or until further order of this Court in accordance with the Act. Defendants shall also provide Claimant with a Neurologist to treat his head/brain injury, as well as provider for psychotherapy and someone to treat the other 'non-neuro/psyche' injuries, of their choosing and who is subject to the jurisdiction of the Act.
4. Pursuant to S.C. Code Ann. §42-9-10 (1976), the Average Weekly Wage is \$877.76 with a corresponding Compensation Rate of \$585.20.


5. Pursuant to S.C. Code Ann., §42-9-10 (1976)) the Defendants shall pay unto the Claimant weekly benefits at the compensation rate until he reaches MMI or until further order of this Court in accordance with the Act.

ORDER AND AWARD

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants shall pay unto the Claimant weekly benefits at the compensation rate of \$580.20, from 07/20/20 until present and on-going until MMI or upon further order of this Court. Thus, for the 94-week period of time, which has elapsed from the date Claimant last received TTD benefits (07/20/19) through the date of this order (as I am using 05/05/21 currently). Additionally, Claimant is owed \$155.40 for the previous underpayment of TTDs at the lower/incorrect Comp Rate. Thus, the total amount owed to Claimant for this period of indemnity totals \$54,538.80. This amount shall be paid in one-lump and it is also subject to a claim for Attorney's fees made by the Claimant's counsel of record.

IT IS FURTHER ORDERED that the Defendants shall pay for the past and future causally-related medical treatment for the head/brain, neck/back, left hand/left upper-extremity, left foot/lower-extremity and psychologically (for depression/anxiety and adjustment to this all). Defendants shall provide Claimant with a Neurologist to treat his head/brain injury, as well as provider for psychotherapy and someone to treat the other 'non-neuro/psyche' injuries (i.e. an Orthopedic for the contractures, etc.), of their choosing and who is subject to the jurisdiction of the Act.

IT IS SO ORDERED.



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

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

May 13, 2021

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill