

DECISION AND ORDER OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

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 process. 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 and 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