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SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1907252

Steven M. Brant,
Claimant/Respondent,

-vs-

Core Services, LLC and South Carolina Department of Transportation,
Employer(s)/Respondents,

Berkshire Hathaway Direct Insurance Co.,
Carrier/Appellant,

Markel Ins. Co. and South Carolina State Accident Fund
Carriers/Respondents,

-and-

South Carolina Workers' Compensation
Uninsured Employers' Fund,
Defendant/Respondent.

Appellate Panel Review held in Columbia, South Carolina on September 20, 2021, per notices timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed on January 11, 2022

APPEARANCES: Claimant/ Respondent represented by Alan M. Tanenbaum, Esquire, of Charleston, South Carolina.

Core Services, LLC is unrepresented and failed to appear.

South Carolina Department of Transportation and South Carolina State Accident Fund represented by Timothy B. Killen, Esquire, of Mt. Pleasant, South Carolina.

Markel Ins. Co. represented by D. Victoria Abercrombie, Esquire, of Mt. Pleasant, South Carolina

South Carolina Workers' Compensation Uninsured Employers' Fund represented by E. Courtney Gruber, Esquire of Charleston, South Carolina

STATEMENT OF THE CASE

A hearing was held in this case before Commissioner Susan S. Barden on August 12, 2020. As a result of that hearing, the Single Commissioner issued her Order on June 9, 2021. The Single Commissioner found, *inter alia*, that the Claimant is entitled to certain benefits and that Core and biBERK are responsible for the payment of those benefits, as the biBERK policy was not effectively cancelled prior to the date of accident. biBERK takes this appeal.

The Single Commissioner's Findings of Fact and Conclusions of Law are as follows:

FINDINGS OF FACT
(SINGLE COMMISSIONER)

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended;

2. Claimant alleges that injured both legs and his low back in work-related accident on May 6, 2019;

3. Claimant is thirty-six (36) years of age (medical evidence establishing Claimant's date of birth as June 7, 1984; Claimant's Deposition, p. 5, as contained in UEF's APA Submissions, Ex. H);

4. As to pre-existing conditions, Claimant sustained various prior knee injuries and underwent four (4) surgeries to his knees, at least two (2) of which were injuries attributable to workers' compensation claims and for which Claimant received settlements (UEF's APA 4, p. 84; Claimant's APA 5, pp. 113, 164, and 179; Claimant's APA 8, p. 716; Tr. pp. 36 – 37, 45 – 47; UEF's APA 1, pp. 1, 4, 13 – 15, 30, 32, and 48; Claimant's Depo. p. 3, as contained in UEF's APA Ex. H; Claimant's Deposition, pp. 21 – 23, as contained in UEF's APA, Ex. II, ll. 24 – 25 of p. 22, and lines 1 – 4 of p. 23.);

5. As to pre-existing conditions, Claimant was diagnosed with fibromyalgia in June 2017 (the year prior to the accident in issue), during which visit Claimant asked for an increase in his Gabapentin "because he continues to be in pain." Other records describe Claimant's prior medical history as involving peripheral neuropathy (UEF's APA 5, pp. 91 – 92; Claimant's APA 5, pp. 89 and 515);

6. In December 2014, Claimant sought treatment after he injured his back when he was thrown or dragged by a horse or donkey (UEF's APA 1, pp. 4 – 6; Claimant's Deposition pp. 29 –30, as contained in UEF's APA, Ex. H);

7. In 2015, Claimant sustained another back injury (Tr. p. 51);

8. In 2016, Claimant fell and injured his sacrum/coccyx (UEF's APA 1, p. 19);

9. In October 2018 (seven (7) months before the accident), Claimant had back pain after he "pulled muscle in back a few weeks ago" and/or had sciatica, and for which Claimant sought treatment (UEF's APA 1, p. 31; Tr. pp. 51 – 52);

10. Claimant attended high school and dropped out in the 12th grade (Claimant's Deposition, pp. 5 and 11, as contained in UEF's APA, Ex. H);

11. Claimant's employment history includes work (a) as a heavy equipment operator; (b) as a construction laborer; (c) bush hogging and taking care of cattle on a farm; (d) as a pallet builder; and (e) as a termite technician (Claimant's Deposition, pp. 11 – 21, as contained in UEF's APA, Ex. H);

12. Claimant was hired by Core Services, LLC (hereinafter "Core") to work as a tractor operator. This job required Claimant to mow grass on the sides or shoulders of roadways (Tr. pp. 34 and 51);

13. Core is a Kentucky company headquartered in Lexington, Kentucky (*e.g.*, Claimant's APA 12, pp. 758 and 762; Deposition of Renfro, pp. 4 – 5 and 13 – 14, as contained in UEF's APA, Ex. G);

14. Core is engaged in right-of-way mowing and tree services (Deposition of Renfro, pp. 4 – 5, as contained in UEF's APA, Ex. G);

15. Claimant was working full time on the date of the accident in issue. There is no evidence in the record that the Claimant was not working full duty on the date of accident (Claimant's APA 5, pp. 96 and 425; record in its entirety);

16. Claimant's supervisor at Core (a) had the right to fire Claimant, and (b) told Claimant what to do (Deposition of Renfro, pp. 13 – 17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 45 – 48, 71, as contained in UEF's APA, Ex. H);

17. Core furnished the equipment and told workers when to start work. Claimant did not supply any tools (Deposition of Renfro, pp. 13 –17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 44 – 45, as contained in UEF's APA, Ex. H);

18. Claimant was paid by the hour (*e.g.*, Tr. p. 34; Claimant's Deposition, p. 44, as contained in UEF's APA, Ex. H);

19. Claimant was told at what time he could take a lunch break (Claimant's Deposition, p. 47, as contained in UEF's APA, Ex. H);

20. Although Renfro testified that he only hired independent contractors, the evidence set forth in the preceding Findings of Facts leads the Undersigned to conclude that Claimant was an employee on the date of accident (Deposition of Renfro, pp. 6 – 7, 10, as contained in UEF's APA, Ex. G);

21. Based upon Claimant's testimony (Claimant's Deposition, p. 80, as contained in UEF's APA, Ex. H), Core employed at least five (5) individuals within South Carolina on the date of accident in issue. I also find that even though Renfro testified that his workers ("20 something") were all independent contractors, Core signed a compliance/capitulation agreement stating that Core was subject to the Act on the date of the accident (Deposition of Renfro, pp. 7 – 8, 12, as contained in UEF's APA, Ex. G; UEF's APA, Ex. A., p. 95; Claimant's APA 11, p. 754);

22. No one on behalf of Core appeared at the Hearing;

23. biBERK is a subsidiary of Berkshire Hathaway (hereinafter "biBERK"). *See* Deposition of Yoh, pp. 4 – 5; biBERK AP A22, p. 865 – letterhead; biBERK APA 24, p. 871; Tr. p. 10);

24. The South Carolina Department of Transportation (hereinafter "DOT) awarded a procurement contract to Core as subcontractor to perform mowing services in Beaufort County (*e.g.*, Claimant's APA 11, p. 757; Claimant's APA 12, pp. 758 – 762, 778; Claimant's APA 13; Deposition of Schwalk, pp. 8 – 10, as contained in UEF's APA, Ex. F; Deposition of Renfro, pp. 5 – 7, as contained in UEF's APA, Ex. G);

25. As a condition of the contract, DOT required Core to have workers' compensation insurance (*e.g.*, Claimant's APA 13, p. 830);

26. Core obtained insurance with biBERK (Tr. p. 10; APA Submissions);

27. In its application for workers' compensation insurance, Core stated that it (a) had clerical office employees and lawn maintenance workers, and (b) did no tree removal of excavation (biBERK APA 17, p. 858; biBERK APA 18, p. 859; biBERK APA 24, pp. 872, 874; UEF's APA, Ex. C, pp. 145 and 155);

28. The policy of workers' compensation insurance with biBERK was effective March 6, 2019, through March 6, 2020 (*e.g.*, biBERK APA 18, p. 859; Ex. A to Deposition of Yoh; biBERK APA 24, pp. 871 – 872; UEF's APA, Ex. C, pp. 144 and 153; Deposition of Yoh, pp. 6 – 7);

29. The mailing address of Core as stated in the application for insurance and in the policy is 828 E. High St., PMB 272, Lexington, KY 40502 (biBERK APA 24, p. 872; UEF's APA, Ex. C, pp. 144, 152 – 153; Deposition of Yoh, pp. 7, 12 – 13; biBERK APA 17, p. 857);

30. Kentucky is listed as the 3A endorsed state in the policy (biBERK APA 18, p. 859);

31. Under 3C (other states insurance), the policy was effective in all other states except for North Dakota, Ohio, Washington, and Wyoming. Thus, the policy was also effective in South Carolina (biBERK APA 18, p. 859);

32. Core provided a certificate of workers' compensation insurance to DOT, showing (a) workers' compensation coverage, (b) Core as the insured, (c) Core's address as Lexington, KY, and (d) the insurer as biBERK (Claimant's APA 12, p. 768, UEF's APA Ex. B, p. 95; Deposition of Renfro, pp. 19 – 20, as contained in UEF's APA Ex. G);

33. On April 2, 2019, biBERK attempted to cancel Core's workers' compensation policy (stating the cancellation's effective date as April 21, 2019) because of Core's material misrepresentation in obtaining coverage: Core had identified its business as landscape maintenance (performing no tree removal or excavation work). Tree work is a "more hazardous class code that a traditional landscaper" (Deposition of Yoh, pp. 7, 16; Ex. A to Deposition of Yoh; UEF's APA Ex. C, pp. 153, 174; Claimant's APA 12, pp. 769 – 770; biBERK APA 22, p. 866; biBERK APA 19, p. 860; biBERK APA 21, p. 863; biBERK APA 23, pp. 868 – 869);

34. Core's PMB (private mail box number) was listed on the notice of cancellation, but it was not shown on the proof of mailing (biBERK APA 19, p. 860; biBERK APA 20, p. 862; biBERK AP A22, p. 866; biBERK APA 23, pp. 868 – 869; Deposition of Yoh, pp. 13 – 156; Ex. C to Deposition of Yoh; UEF's APA Ex. C);

35. Pursuant to Reg. 67-405(C)(1), a carrier who desires to cancel a policy of insurance must file a notice of termination pursuant to Reg. 67-416. The termination/cancellation is not effective until thirty (30) days after receipt by NCCI, the Commission's authorized agent. NCCI received notice of the cancellation on April 2, 2019, and, by virtue of that fact alone and absent the circumstances described below, the policy would have been effectively cancelled as of May 2, 2019 – four (4) days prior to the date of accident in issue (biBERK APA 21, p. 863);

36. Another issue, however, renders the cancellation ineffective. Both S.C. Code Ann. § 38-75-730 and Core's policy require that the insured receive notice of the cancellation to the "addresses shown in the policy." In this case,

biBERK's proof of mailing does not show the entire, complete, or proper address as set forth in the policy. I do not find this deficiency to be a mere "scrivener's error" or "inconsequential", as stated in biBERK's legal memorandum. The legislature specifically allows Carriers to prove a cancellation by and through a proof of mailing: a proof of mailing showing the cancellation was sent somewhere other than required by law is most certainly not "inconsequential." Further, I do not find persuasive biBERK's privity argument – that the SAF and UEF are not parties to the contract and therefore have no standing to challenge the effectiveness of the cancellation. While Core may be the direct employer, its unwillingness or inability to pay benefits could and would directly affect the UEF, SAF, and DOT. I agree with the positions of the Defendants DOT, SAF, and UEF on this issue. The DOT, SAF, and UEF would be directly affected and could be harmed by this Commission finding that the BIBERK policy was properly cancelled. Simply because the UEF has the statutory right to file a lien in South Carolina on the Core's assets (Core being a Kentucky company) does not negate the harm that the UEF may see. The DOT and SAF, as potential statutory employer and Carrier, are entitled to indemnification from the direct employer under S.C. Code Ann. § 42-1-440, and may even "call in that subcontractor . . . as a defendant or codefendant." Thus, the Act expressly gives the DOT and SAF to argue that Core and biBERK are liable. It would strain credulity to think that (1) the DOT and SAF could argue that another party is liable but, yet, (2) cannot argue that the liable party's insurance policy, which was not cancelled in accordance with the governing law to which all parties are subject, was effective at the time of accident. *See* UEF's APA Ex. C, pp. 153, 167, and 174 – 175; S.C. Code Ann. §§ 38-75-730, 42-1-440.

37. biBERK cites both Kentucky statutory law and case law in its Memorandum. However, South Carolina law governs insurance policies effective in South Carolina, and this matter arises in South Carolina. I find that the workers' compensation policy was not properly cancelled in accordance with South Carolina law, and that any Kentucky law to the contrary is irrelevant. biBERK is subject to South Carolina law. *See, inter alia,* §§ 38-1-20, 38-5-10, and 38-75-730.

38. In the mechanics of the accident in issue, Claimant landed on both feet after jumping from a tractor that was tipping over (Tr. p. 33; Claimant's APA 1, pp. 3, 13; Claimant's APA 5, pp. 86, 113, and 515; UEF's APA 1, pp. 39, 44; UEF's APA 3, p. 70);

39. At Beaufort Memorial Hospital ER (hereinafter "BMH"), Claimant complained of leg and foot pain and weakness. X-rays showed bilateral tibial plateau fractures and aright fibular fracture. Claimant's left foot x-ray was "unremarkable" (Claimant's APA 1, *e.g.*, pp. 3, 6 – 8, 10, 13 – 14, 17, 19 – 20, 32 – 39, and 47; Claimant's APA 2, p. 65; Tr. p. 35);

40. Although not dispositive, BMH records are devoid of any complaint or problem regarding the back or spine. In fact, Claimant *denied*, to providers, any injuries to his neck, trunk, lower back, or hips (Claimant's APA 1, p. 13).

Claimant's neck and back were specifically *examined* and documented as having "full range of motion" and "absent: tenderness" (Claimant's APA 1, p. 15). These records would explain why BMH providers did not order any spinal x-rays. I base this Finding of the BMH records in their entirety. *See also* UEF's APA 3, pp. 70 and 72.

41. Claimant's testimony that he (a) injured his back in the accident, and (b) told BMH about his back pain is inconsistent with the medical records as set forth in the previous Finding of Fact (Claimant's Deposition pp. 66 – 67, 78, as contained in UEF's APA Ex. H; Tr. p. 38);

42. Because Claimant's left leg injury required a higher level of medical care that BMH was able to provide, Claimant was transferred by ambulance to MUSC where he was hospitalized/treated for eleven (11) days (*e.g.*, Claimant's APA 1, pp. 11 – 12, 16; Claimant's APA 4, pp. 69 – 72);

43. Consistent with the findings at BMH, MUSC providers also determined that Claimant had bilateral tibial fractures and a right leg fibular fracture (*e.g.*, Claimant's APA 5, pp. 92 – 93, 515, and 528 – 529; UEF's APA 1, pp. 34 – 37);

44. After Claimant's eleven (11) days of hospitalization at MUSC, the "final diagnosis" for Claimant's work injuries upon discharge was bilateral tibial fractures. During Claimant's stay, he denied any back pain and, instead, is documented as being "*[n]egative for back pain.*" During a physical examination, Claimant's cervical, thoracic, and lumbar levels of the spine are documented as "*normal*". Additionally, the nurses' notes as to location of pain are devoid of any back complaint or problem. On the date of discharge, there is no reference to or mention of the back. Unlike Claimant's legs, Claimant's spine was never x-rayed during his hospital stay (Claimant's APA 5, *e.g.*, pp. 75, 82 – 83, 86, 88, 113, 320, 327, 338, 345, 350, 359, 365, 377 – 383, and 515: "*denies any pain elsewhere*" [emphasis added]; Claimant's APA 5, 2nd page 279, 2nd page 286, 2nd page 302, 2nd page 308, and 2nd page 315; UEF's APA 1, pp. 40 – 41, 56; MUSC records in their entirety);

45. After being released from MUSC on May 17, 2019, Claimant followed up with MUSC on May 22, 2019. There is no complaint of – or reference to – the back in these records (Claimant's APA 6, pp. 703 – 705; UEF's APA 1, pp. 62 – 63);

46. The first time Claimant's back is mentioned in medical records (other than his back being "normal" or regarding his denial of back pain) is the report from Claimant's IME (Dr. McConnell, February 12, 2020) to whom the Claimant was sent by his attorney. Although Claimant's testimony at his deposition (two weeks later, on February 26, 2020) was that (a) his back was injured in the accident, and (b) he told BMH providers about his back pain on the date of accident

("they told me it was probably from the jarring where I landed"), BMH records refute this testimony. By contrast, Dr. McConnell states that the Claimant's back pain began because of abnormal gait mechanics – not the accident itself (Claimant's APA 8, pp. 716 – 717; Claimant's Deposition pp. 66 – 67, as contained in UEF's APA Ex. H; Tr. pp. 37 – 38, 45, and 57);

47. Although Claimant testified at the Hearing that his back is swollen all the time with a knot on the right side of his lower back, Claimant's expert's records are devoid of any reference to (a) spinal swelling, or (b) a spinal knot. Additionally, under Dr. McConnell's "Impression" regarding Claimant's injuries, *Dr. McConnell does not list/mention either Claimant's "back" or "spine" – Dr. McConnell only lists Claimant's legs* (Tr. p. 37; Claimant's APA 8 in its entirety);

48. Because of his left leg injury, Claimant underwent ORIF surgery at MUSC on May 9, 2019. Claimant's right leg was treated conservatively with a hinged knee brace (medical evidence int its entirety, *e.g.*, UEF's AP A1, pp. 54 – 55; Claimant's APA 5, pp. 118 – 119, 495, 500, 502, and 583);

49. I find that Claimant is entitled to temporary total disability (TTD) benefits from the date of accident through February 17, 2020: (a) after his surgery and upon his discharge from MUSC, Claimant was instructed (i) not to drive or operate machinery while using the narcotic pain medication he was prescribed, and (ii) to be non-weight bearing until months later (Claimant's APA 5, *e.g.*, pp. 166, 168, 170 – 172, 174 – 175, 181 – 183, 549, 658, 660, 664 – 665, and 670; UEF's APA 1, pp. 58 – 60); (b) Claimant was further instructed that *in six (6) weeks, he might be allowed to "being to put some of [his] weight down using crutches or a walker if things are healing well*" [emphasis added] (Claimant's APA 5, p. 175); (c) Claimant was further instructed that, in three (3) months, he could *begin* to bear weight [emphasis added] (Claimant's APA 5, pp. 175 and 668); and (d) Dr. McConnell – the only physician to weigh in on restrictions as Claimant has not been provided any authorized medical treatment – states that Claimant was unable to work as a landscape maintenance worker from the date of accident until "the present" – February 17, 2020 (Claimant's APA 8, p. 714);

50. Claimant reached maximum medical improvement (MMI) on February 17, 2020 (Claimant's APA 8, p. 714, Tr. p. 11);

51. Dr. McConnell assigned a five percent (5%) impairment rating to the left lower leg and a five percent (5%) impairment rating to the right lower extremity (Claimant's APA 8, p. 717);

52. Although Claimant testified at the *Hearing* that both legs give out such that he falls onto the floor, Dr. McConnell states (twice) that, upon clinical examination, there is no instability. Claimant inconsistently testified at his *deposition* that his right knee does not give out – only his left (Tr. pp. 41 – 42; Claimant's Deposition, pp. 66, 70, as contained in UEF's AP Ex. H);

53. As of the date of the Hearing, Claimant no longer uses a cane (Tr. p. 39);

54. Permanency award to the left leg pursuant to § 42-9-30(16): Ten Percent (10%). I base this finding on the nature of the injury, the fact that Claimant has implanted hardware, the fact that Dr. McConnell documented quadriceps atrophy, the impairment rating, and, to some extent, Claimant's testimony regarding his subjective complaints.

55. Permanency award to the right leg pursuant to § 42-9-30(16): Six Percent (6%).

56. Claimant to received causally related medicals, including but not limited to BMH, MUSC, mileage, medications, the ambulance ride from BMH to MUSC, and the wheelchair that was ordered upon Claimant's discharge from MUSC (Claimant's APA Submissions);

57. Claimant has an outstanding child support lien to be satisfied (UEF's APA Ex. D);

58. Claimant's APA Submissions are renumbered/repaginated after page 317 – instead of going to sequential page 318, they start over at 245 00 apparently using the hospital page numbers at the lower right-hand side. Therefore, there are two page 245's (containing different records, two page 246's, etc., through two page 317's (hence my reference to "2nd page" in these instructions). I did not discover this issue until my post-Hearing review of the evidence; otherwise, I would have had Claimant's counsel repaginate his APAs for the benefit of the other parties and the Commission;

59. Defendants Core Services, LLC and biBERK are responsible/liable for benefits;

60. biBERK shall receive credit for the One Thousand and no/100 Dollars ($1,000.00) Claimant earned mowing grass after the date of accident (Tr. pp. 43 – 44); and

61. Claimant's Average Weekly Wage is Six Hundred, Seventy-Five and no/100 ($675.00), yielding a Compensation Rate of Four Hundred Fifty and 02/100 Dollars ($450.02). I base this finding on Claimant's testimony that he worked forty (40) to fifty (50) hours per week at $15.00 per hour (Tr. pp. 34, 49 – 50: Claimant's Deposition, pp. 44, 82, as contained in UEF's APA Ex. H).

CONCLUSIONS OF LAW
(SINGLE COMMISSIONER)

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;

2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.

3. That S.C. Code Ann. § 42-1-160(D) is applicable in defining stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury.

4. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.

5. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.

6. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.

7. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation.

8. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.

9. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.

10. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.

11. That S.C. Code Ann. § 42-1-172 is applicable in defining a repetitive trauma injury.

12. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

13. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

14. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards.

15. Under S.C. Code Ann § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, Core was subject to the Act at the time in question;

16. Section 42-1-40 establishes the appropriate means of determining an injured employees average weekly wage and compensation rate;

17. Under § 42-15-20, proper notice was provided to Employers;

18. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to effect a cure, provide relief and/or tends to lessen the extent of disability; and

19. Under § 42-15-60, the Claimant is entitled to reimbursement for all past casually-related medical expenses.

DISCUSSION

Within the statutory period, biBERK filed an Application for Review in the case setting forth their assignments of error, copies of which were furnished to all interested parties prior to oral argument presented before the Appellate Panel on June 23. 2021. In its Form 30, Appellant respectfully submitted to the Full Commission that the Single Commissioner erred as follows:

1. Did the Hearing Commissioner err in her Finding of Fact #36 that biBERK's cancellation of Core Service's ("Core") worker's [sic] compensation insurance policy was "ineffective," when such finding is against the preponderance of the evidence and is based on an erroneous application of law?

2. Did the Hearing Commissioner err in failing to find that biBERK cancelled Core's policy in accordance with applicable law, thereby rendering Core Services uninsured on Claimant's date of accident?

3. Did the Hearing Commissioner err in failing to impose liability for this claim on the S.C. Department of Transportation ("SCDOT") as Claimant's statutory employer pursuant to S.C. Code Section 42-1-400, *et seq[.]*?

4. Did the Hearing Commissioner err in her Finding of Fact #36 to the extent she

concludes that SCDOT and the S.C. [Workers' Compensation] Uninsured Employers['] Fund ("UEF") have standing to contest cancellation of Core's insurance policy when a) those entities lacked privity and standing; b) Core did not make an appearance in this matter to dispute the cancellation of its own policy; and c) Core in fact entered a stipulation that it was illegally operating in South Carolina without workers['] coverage?

5. Did the Hearing Commissioner err as a matter of law in her Finding of Fact #36 to the extent that she concludes the Act confers standing to an upstream employer to contest cancellation of a direct employer's insurance policy, when the statute in question merely allows imposition of liability and/or indemnification from such employer, regardless of whether that employer has insurance coverage or not?

6. Did the Hearing Commissioner err in failing to recognize the elementary proposition that only parties in privity of contract and/or third party beneficiaries to an insurance policy have standing to dispute scope of coverage and cancellation issues?

7. Did the Hearing Commissioner err as a matter of law in Finding of Fact #37 to the extent she finds that South Carolina law governs the cancellation of Core's policy and Kentucky law is "irrelevant," when a) Core is a Kentucky corporation; b) its policy with biBERK was entered into under the laws of Kentucky via the 3A endorsement on the policy; c) efforts to cancel the policy were initiated over a month *prior to* South Carolina *subject matter jurisdiction* arising over this claim via the accident's occurrence in South Carolina; and d) the parties to the insurance contract otherwise had no minimum contacts with South Carolina that could possibly confer *personal jurisdiction* over them rendering them subject to South Carolina law at the time the policy was cancelled?

8. Did the Hearing Commissioner err in her Finding of Fact #59 and by Ordering

biBERK to be responsible for medical and compensation benefits awarded in this claim, when such finding/order is based on the aforementioned erroneous predicate findings of fact and conclusions of law?

In its Appellant's Brief to the Full Commission, biBERK respectfully submitted to the Full Commission that the Single Commissioner erred as follows:

1. UEF and SAF lack standing to contest cancellation of the policy when a) neither entity was a party or third-party beneficiary to the insurance contract between Core and BiBERK; and b) Core has not made an appearance in this case to protest the cancellation itself.

2. Even if the UEF and/or the SAF have standing to raise the issue, BiBERK effectively cancelled Core's policy under Kentucky law prior to the date of accident.

3. Core's policy was also effectively cancelled under South Carolina law prior to the Claimant's date of accident.

Pursuant to S.C. Code Ann. § 42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the briefs of the Appellant and Respondents, as well as those issues raised at the Full Commission Review hearing. After careful review, The Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, have determined that the Hearing Commissioner's Findings of Fact and Conclusion of Law are corrected as stated and should be affirmed.

Accordingly, after full consideration of the evidence in the record and the parties' respective arguments, we, the Appellate Panel, enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT
(APPELLATE PANEL)

1. The parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act (the Act), as amended;

2. Claimant alleges that injured both legs and his low back in work-related accident on May 6, 2019;

3. Claimant is thirty-six (36) years of age (medical evidence establishing Claimant's date of birth as June 7, 1984; Claimant's Deposition, p. 5, as contained in UEF's APA Submissions, Ex. H);

4. As to pre-existing conditions, Claimant sustained various prior knee injuries and underwent four (4) surgeries to his knees, at least two (2) of which were injuries attributable to workers' compensation claims and for which Claimant received settlements (UEF's APA 4, p. 84; Claimant's APA 5, pp. 113, 164, and 179; Claimant's APA 8, p. 716; Tr. pp. 36 – 37, 45 – 47; UEF's APA 1, pp. 1, 4, 13 – 15, 30, 32, and 48; Claimant's Depo. p. 3, as contained in UEF's APA Ex. H; Claimant's Deposition, pp. 21 – 23, as contained in UEF's APA, Ex. II, ll. 24 – 25 of p. 22, and lines 1 – 4 of p. 23.);

5. As to pre-existing conditions, Claimant was diagnosed with fibromyalgia in June 2017 (the year prior to the accident in issue), during which visit Claimant asked for an increase in his Gabapentin "because he continues to be in pain." Other records describe Claimant's prior medical history as involving peripheral neuropathy (UEF's APA 5, pp. 91 – 92; Claimant's APA 5, pp. 89 and 515);

6. In December 2014, Claimant sought treatment after he injured his back when he was thrown or dragged by a horse or donkey (UEF's APA 1, pp. 4 – 6; Claimant's Deposition pp. 29 –30, as contained in UEF's APA, Ex. H);

7. In 2015, Claimant sustained another back injury (Tr. p. 51);

8. In 2016, Claimant fell and injured his sacrum/coccyx (UEF's APA 1, p. 19);

9. In October 2018 (seven (7) months before the accident), Claimant had back pain after he "pulled muscle in back a few weeks ago" and/or had sciatica, and for which Claimant sought treatment (UEF's APA 1, p. 31; Tr. pp. 51 – 52);

10. Claimant attended high school and dropped out in the 12th grade (Claimant's Deposition, pp. 5 and 11, as contained in UEF's APA, Ex. H);

11. Claimant's employment history includes work (a) as a heavy equipment operator; (b) as a construction laborer; (c) bush hogging and taking care of cattle on a farm; (d) as a pallet builder; and (e) as a termite technician (Claimant's Deposition, pp. 11 – 21, as contained in UEF's APA, Ex. H);

12. Claimant was hired by Core Services, LLC (hereinafter "Core") to work as a tractor operator. This job required Claimant to mow grass on the sides or shoulders of roadways (Tr. pp. 34 and 51);

13. Core is a Kentucky company headquartered in Lexington, Kentucky (*e.g.*, Claimant's APA 12, pp. 758 and 762; Deposition of Renfro, pp. 4 – 5 and 13 – 14, as contained in UEF's APA, Ex. G);

14. Core is engaged in right-of-way mowing and tree services (Deposition of Renfro, pp. 4 – 5, as contained in UEF's APA, Ex. G);

15. Claimant was working full time on the date of the accident in issue. There is no evidence in the record that the Claimant was not working full duty on the date of accident (Claimant's APA 5, pp. 96 and 425; record in its entirety);

16. Claimant's supervisor at Core (a) had the right to fire Claimant, and (b) told Claimant what to do (Deposition of Renfro, pp. 13 – 17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 45 – 48, 71, as contained in UEF's APA, Ex. H);

17. Core furnished the equipment and told workers when to start work. Claimant did not supply any tools (Deposition of Renfro, pp. 13 –17, as contained in UEF's APA, Ex. G; Claimant's Deposition, pp. 44 – 45, as contained in UEF's APA, Ex. H);

18. Claimant was paid by the hour (*e.g.*, Tr. p. 34; Claimant's Deposition, p. 44, as contained in UEF's APA, Ex. H);

19. Claimant was told at what time he could take a lunch break (Claimant's Deposition, p. 47, as contained in UEF's APA, Ex. H);

20. Although Renfro testified that he only hired independent contractors, the evidence set forth in the preceding Findings of Facts leads the Undersigned to conclude that Claimant was an employee on the date of accident (Deposition of Renfro, pp. 6 – 7, 10, as contained in UEF's APA, Ex. G);

21. Based upon Claimant's testimony (Claimant's Deposition, p. 80, as contained in UEF's APA, Ex. H), Core employed at least five (5) individuals within South Carolina on the date of accident in issue. WE also find that even though Renfro testified that his workers ("20 something") were all independent contractors, Core signed a compliance/capitulation agreement stating that Core was subject to the Act on the date of the accident (Deposition of Renfro, pp. 7 – 8, 12, as contained in UEF's APA, Ex. G; UEF's APA, Ex. A., p. 95; Claimant's APA 11, p. 754);

22. No one on behalf of Core appeared at the Hearing;

23. biBERK is a subsidiary of Berkshire Hathaway (hereinafter "biBERK"). *See* Deposition of Yoh, pp. 4 – 5; biBERK AP A22, p. 865 – letterhead; biBERK APA 24, p. 871; Tr. p. 10);

24. The South Carolina Department of Transportation (hereinafter "DOT) awarded a procurement contract to Core as subcontractor to perform mowing services in Beaufort County (*e.g.*, Claimant's APA 11, p. 757; Claimant's APA 12, pp. 758 – 762, 778; Claimant's APA 13; Deposition of Schwalk, pp. 8 – 10, as contained in UEF's APA, Ex. F; Deposition of Renfro, pp. 5 – 7, as contained in UEF's APA, Ex. G);

25. As a condition of the contract, DOT required Core to have workers' compensation insurance (*e.g.*, Claimant's APA 13, p. 830);

26. Core obtained insurance with biBERK (Tr. p. 10; APA Submissions);

27. In its application for workers' compensation insurance, Core stated that it (a) had clerical office employees and lawn maintenance workers, and (b) did no tree removal of excavation (biBERK APA 17, p. 858; biBERK APA 18, p. 859; biBERK APA 24, pp. 872, 874; UEF's APA, Ex. C, pp. 145 and 155);

28. The policy of workers' compensation insurance with biBERK was effective March 6, 2019, through March 6, 2020 (*e.g.*, biBERK APA 18, p. 859; Ex. A to Deposition of Yoh; biBERK APA 24, pp. 871 – 872; UEF's APA, Ex. C, pp. 144 and 153; Deposition of Yoh, pp. 6 – 7);

29. The mailing address of Core as stated in the application for insurance and in the policy is 828 E. High St., PMB 272, Lexington, KY 40502 (biBERK APA 24, p. 872; UEF's APA, Ex. C, pp. 144, 152 – 153; Deposition of Yoh, pp. 7, 12 – 13; biBERK APA 17, p. 857);

30. Kentucky is listed as the 3A endorsed state in the policy (biBERK APA 18, p. 859);

31. Under 3C (other states insurance), the policy was effective in all other states except for North Dakota, Ohio, Washington, and Wyoming. Thus, the policy was also effective in South Carolina (biBERK APA 18, p. 859);

32. Core provided a certificate of workers' compensation insurance to DOT, showing (a) workers' compensation coverage, (b) Core as the insured, (c) Core's address as Lexington, KY, and (d) the insurer as biBERK (Claimant's APA 12, p. 768, UEF's APA Ex. B, p. 95; Deposition of Renfro, pp. 19 – 20, as contained in UEF's APA Ex. G);

33. On April 2, 2019, biBERK attempted to cancel Core's workers' compensation policy (stating the cancellation's effective date as April 21, 2019) because of Core's material misrepresentation in obtaining coverage: Core had identified its business as landscape maintenance (performing no tree removal or excavation work). Tree work is a "more hazardous class code that a traditional landscaper" (Deposition of Yoh, pp. 7, 16; Ex. A to Deposition of Yoh; UEF's APA Ex. C, pp. 153, 174; Claimant's APA 12, pp. 769 – 770; biBERK APA 22, p. 866; biBERK APA 19, p. 860; biBERK APA 21, p. 863; biBERK APA 23, pp. 868 – 869);

34. Core's PMB (private mail box number) was listed on the notice of cancellation, but it was not shown on the proof of mailing (biBERK APA 19, p. 860; biBERK APA 20, p. 862; biBERK AP A22, p. 866; biBERK APA 23, pp. 868 – 869; Deposition of Yoh, pp. 13 – 156; Ex. C to Deposition of Yoh; UEF's APA Ex. C);

35. Pursuant to Reg. 67-405(C)(1), a carrier who desires to cancel a policy of insurance must file a notice of termination pursuant to Reg. 67-416. The termination/cancellation is not effective until thirty (30) days after receipt by NCCI, the Commission's authorized agent. NCCI received notice of the cancellation on April 2, 2019, and, by virtue of that fact alone and absent

the circumstances described below, the policy would have been effectively cancelled as of May 2, 2019 – four (4) days prior to the date of accident in issue (biBERK APA 21, p. 863);

36. Another issue, however, renders the cancellation ineffective. Both S.C. Code Ann. § 38-75-730 and Core's policy require that the insured receive notice of the cancellation to the "addresses shown in the policy." In this case, biBERK's proof of mailing does not show the entire, complete, or proper address as set forth in the policy. WE do not find this deficiency to be a mere "scrivener's error" or "inconsequential", as stated in biBERK's legal memorandum. The legislature specifically allows Carriers to prove a cancellation by and through a proof of mailing: a proof of mailing showing the cancellation was sent somewhere other than required by law is most certainly not "inconsequential." Further, WE do not find persuasive biBERK's privity argument – that the SAF and UEF are not parties to the contract and therefore have no standing to challenge the effectiveness of the cancellation. While Core may be the direct employer, its unwillingness or inability to pay benefits could and would directly affect the UEF, SAF, and DOT. WE agree with the positions of the Defendants DOT, SAF, and UEF on this issue. The DOT, SAF, and UEF would be directly affected and could be harmed by this Commission finding that the BIBERK policy was properly cancelled. Simply because the UEF has the statutory right to file a lien in South Carolina on the Core's assets (Core being a Kentucky company) does not negate the harm that the UEF may see. The DOT and SAF, as potential statutory employer and Carrier, are entitled to indemnification from the direct employer under S.C. Code Ann. § 42-1-440, and may even "call in that subcontractor . . . as a defendant or codefendant." Thus, the Act expressly gives the DOT and SAF to argue that Core and biBERK are liable. It would strain credulity to think that (1) the DOT and SAF could argue that another party is liable but, yet, (2) cannot argue that the liable party's insurance policy, which was not cancelled in accordance with the governing law to

which all parties are subject, was effective at the time of accident. *See* UEF's APA Ex. C, pp. 153, 167, and 174 – 175; S.C. Code Ann. §§ 38-75-730, 42-1-440.

37. biBERK cites both Kentucky statutory law and case law in its Memorandum. However, South Carolina law governs insurance policies effective in South Carolina, and this matter arises in South Carolina. WE find that the workers' compensation policy was not properly cancelled in accordance with South Carolina law, and that any Kentucky law to the contrary is irrelevant. biBERK is subject to South Carolina law. *See, inter alia,* §§ 38-1-20, 38-5-10, and 38-75-730.

38. In the mechanics of the accident in issue, Claimant landed on both feet after jumping from a tractor that was tipping over (Tr. p. 33; Claimant's APA 1, pp. 3, 13; Claimant's APA 5, pp. 86, 113, and 515; UEF's APA 1, pp. 39, 44; UEF's APA 3, p. 70);

39. At Beaufort Memorial Hospital ER (hereinafter "BMH"), Claimant complained of leg and foot pain and weakness. X-rays showed bilateral tibial plateau fractures and aright fibular fracture. Claimant's left foot x-ray was "unremarkable" (Claimant's APA 1, *e.g.*, pp. 3, 6 – 8, 10, 13 – 14, 17, 19 – 20, 32 – 39, and 47; Claimant's APA 2, p. 65; Tr. p. 35);

40. Although not dispositive, BMH records are devoid of any complaint or problem regarding the back or spine. In fact, Claimant *denied*, to providers, any injuries to his neck, trunk, lower back, or hips (Claimant's APA 1, p. 13). Claimant's neck and back were specifically *examined* and documented as having "full range of motion" and "absent: tenderness" (Claimant's APA 1, p. 15). These records would explain why BMH providers did not order any spinal x-rays. WE base this Finding of the BMH records in their entirety. *See also* UEF's APA 3, pp. 70 and 72.

41. Claimant's testimony that he (a) injured his back in the accident, and (b) told BMH about his back pain is inconsistent with the medical records as set forth in the previous Finding of Fact (Claimant's Deposition pp. 66 – 67, 78, as contained in UEF's APA Ex. H; Tr. p. 38);

42. Because Claimant's left leg injury required a higher level of medical care that BMH was able to provide, Claimant was transferred by ambulance to MUSC where he was hospitalized/treated for eleven (11) days (*e.g.*, Claimant's APA 1, pp. 11 – 12, 16; Claimant's APA 4, pp. 69 – 72);

43. Consistent with the findings at BMH, MUSC providers also determined that Claimant had bilateral tibial fractures and a right leg fibular fracture (*e.g.*, Claimant's APA 5, pp. 92 – 93, 515, and 528 – 529; UEF's APA 1, pp. 34 – 37);

44. After Claimant's eleven (11) days of hospitalization at MUSC, the "final diagnosis" for Claimant's work injuries upon discharge was bilateral tibial fractures. During Claimant's stay, he denied any back pain and, instead, is documented as being "*[n]egative for back pain.*" During a physical examination, Claimant's cervical, thoracic, and lumbar levels of the spine are documented as "*normal*". Additionally, the nurses' notes as to location of pain are devoid of any back complaint or problem. On the date of discharge, there is no reference to or mention of the back. Unlike Claimant's legs, Claimant's spine was never x-rayed during his hospital stay (Claimant's APA 5, *e.g.*, pp. 75, 82 – 83, 86, 88, 113, 320, 327, 338, 345, 350, 359, 365, 377 – 383, and 515: "*denies any pain elsewhere*" [emphasis added]; Claimant's APA 5, 2nd page 279, 2nd page 286, 2nd page 302, 2nd page 308, and 2nd page 315; UEF's APA 1, pp. 40 – 41, 56; MUSC records in their entirety);

45. After being released from MUSC on May 17, 2019, Claimant followed up with MUSC on May 22, 2019. There is no complaint of – or reference to – the back in these records (Claimant's APA 6, pp. 703 – 705; UEF's APA 1, pp. 62 – 63);

46. The first time Claimant's back is mentioned in medical records (other than his back being "normal" or regarding his denial of back pain) is the report from Claimant's IME (Dr. McConnell, February 12, 2020) to whom the Claimant was sent by his attorney. Although Claimant's testimony at his deposition (two weeks later, on February 26, 2020) was that (a) his back was injured in the accident, and (b) he told BMH providers about his back pain on the date of accident ("they told me it was probably from the jarring where I landed"), BMH records refute this testimony. By contrast, Dr. McConnell states that the Claimant's back pain began because of abnormal gait mechanics – not the accident itself (Claimant's APA 8, pp. 716 – 717; Claimant's Deposition pp. 66 – 67, as contained in UEF's APA Ex. H; Tr. pp. 37 – 38, 45, and 57);

47. Although Claimant testified at the Hearing that his back is swollen all the time with a knot on the right side of his lower back, Claimant's expert's records are devoid of any reference to (a) spinal swelling, or (b) a spinal knot. Additionally, under Dr. McConnell's "Impression" regarding Claimant's injuries, *Dr. McConnell does not list/mention either Claimant's "back" or "spine" – Dr. McConnell only lists Claimant's legs* (Tr. p. 37; Claimant's APA 8 in its entirety);

48. Because of his left leg injury, Claimant underwent ORIF surgery at MUSC on May 9, 2019. Claimant's right leg was treated conservatively with a hinged knee brace (medical evidence int its entirety, *e.g.*, UEF's AP A1, pp. 54 – 55; Claimant's APA 5, pp. 118 – 119, 495, 500, 502, and 583);

49. WE find that Claimant is entitled to temporary total disability (TTD) benefits from the date of accident through February 17, 2020: (a) after his surgery and upon his discharge from

MUSC, Claimant was instructed (i) not to drive or operate machinery while using the narcotic pain medication he was prescribed, and (ii) to be non-weight bearing until months later (Claimant's APA 5, *e.g.*, pp. 166, 168, 170 – 172, 174 – 175, 181 – 183, 549, 658, 660, 664 – 665, and 670; UEF's APA 1, pp. 58 – 60); (b) Claimant was further instructed that *in six (6) weeks, he might be allowed to "being to put some of [his] weight down using crutches or a walker if things are healing well"* [emphasis added] (Claimant's APA 5, p. 175); (c) Claimant was further instructed that, in three (3) months, he could *begin* to bear weight [emphasis added] (Claimant's APA 5, pp. 175 and 668); and (d) Dr. McConnell – the only physician to weigh in on restrictions as Claimant has not been provided any authorized medical treatment – states that Claimant was unable to work as a landscape maintenance worker from the date of accident until "the present" – February 17, 2020 (Claimant's APA 8, p. 714);

50. Claimant reached maximum medical improvement (MMI) on February 17, 2020 (Claimant's APA 8, p. 714, Tr. p. 11);

51. Dr. McConnell assigned a five percent (5%) impairment rating to the left lower leg and a five percent (5%) impairment rating to the right lower extremity (Claimant's APA 8, p. 717);

52. Although Claimant testified at the *Hearing* that both legs give out such that he falls onto the floor, Dr. McConnell states (twice) that, upon clinical examination, there is no instability. Claimant inconsistently testified at his *deposition* that his right knee does not give out – only his left (Tr. pp. 41 – 42; Claimant's Deposition, pp. 66, 70, as contained in UEF's AP Ex. H);

53. As of the date of the Hearing, Claimant no longer uses a cane (Tr. p. 39);

54. Permanency award to the left leg pursuant to § 42-9-30(16): Ten Percent (10%). WE base this finding on the nature of the injury, the fact that Claimant has implanted hardware,

the fact that Dr. McConnell documented quadriceps atrophy, the impairment rating, and, to some extent, Claimant's testimony regarding his subjective complaints.

55. Permanency award to the right leg pursuant to § 42-9-30(16): Six Percent (6%).

56. Claimant to received causally related medicals, including but not limited to BMH, MUSC, mileage, medications, the ambulance ride from BMH to MUSC, and the wheelchair that was ordered upon Claimant's discharge from MUSC (Claimant's APA Submissions);

57. Claimant has an outstanding child support lien to be satisfied (UEF's APA Ex. D);

58. Claimant's APA Submissions are renumbered/repaginated after page 317 – instead of going to sequential page 318, they start over at 245 00 apparently using the hospital page numbers at the lower right-hand side. Therefore, there are two page 245's (containing different records, two page 246's, etc., through two page 317's (hence my reference to "2nd page" in these instructions). WE did not discover this issue until my post-Hearing review of the evidence; otherwise, WE would have had Claimant's counsel repaginate his APAs for the benefit of the other parties and the Commission;

59. Defendants Core Services, LLC and biBERK are responsible/liable for benefits;

60. biBERK shall receive credit for the One Thousand and no/100 Dollars ($1,000.00) Claimant earned mowing grass after the date of accident (Tr. pp. 43 – 44); and

61. Claimant's Average Weekly Wage is Six Hundred, Seventy-Five and no/100 ($675.00), yielding a Compensation Rate of Four Hundred Fifty and 02/100 Dollars ($450.02). WE base this finding on Claimant's testimony that he worked forty (40) to fifty (50) hours per week at $15.00 per hour (Tr. pp. 34, 49 – 50: Claimant's Deposition, pp. 44, 82, as contained in UEF's APA Ex. H).

CONCLUSIONS OF LAW
(APPELLATE PANEL)

1. That S.C. Code Ann. § 42-3-180 defines the authority of this Commission to determine all questions arising from the Workers' Compensation Act;

2. That S.C. Code Ann. § 42-1-160 is applicable in defining injury.

3. That S.C. Code Ann. § 42-1-160(D) is applicable in defining stress, mental injuries, and mental illness alleged to have been aggravated by a work-related physical injury.

4. That S.C. Code Ann. § 42-1-160(F) is applicable in defining accident.

5. That S.C. Code Ann. § 42-1-160(G) is applicable in governing medical evidence.

6. That S.C. Code Ann. § 42-1-40 is applicable in defining Average Weekly Wage.

7. That S.C. Code Ann. § 42-1-100 is applicable in defining compensation.

8. That S.C. Code Ann. § 42-1-130 is applicable in defining Employee.

9. That S.C. Code Ann. § 42-1-140 is applicable in defining Employer.

10. That S.C. Code Ann. § 42-1-150 is applicable in defining employment.

11. That S.C. Code Ann. § 42-1-172 is applicable in defining a repetitive trauma injury.

12. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

13. That S.C. Code Ann. §42-1-60 sets forth periods during which medical benefits and treatment should be provided;

14. That S.C. Code Ann. § 42-17-40 is applicable in governing the conduct of hearings and the rendering of awards.

15. Under S.C. Code Ann § 42-1-130, the Employee/Claimant was a covered employee under the Act and, under § 42-1-140, Core was subject to the Act at the time in question;

16. Section 42-1-40 establishes the appropriate means of determining an injured employees average weekly wage and compensation rate;

17. Under § 42-15-20, proper notice was provided to Employers;

18. Under § 42-15-60, the Claimant is entitled to all medical care, treatment, therapy, consultations, diagnostic studies, rehabilitation, injections, hospitalizations, surgeries and prescription medications related to his injuries which tend to effect a cure, provide relief and/or tends to lessen the extent of disability; and

19. Under § 42-15-60, the Claimant is entitled to reimbursement for all past casually-related medical expenses.

ORDER

By unanimous vote, the Order of the Single Commissioner from which this appeal has been taken is hereby Affirmed by the Appellate Panel. This order shall constitute the final Decision and Order of the South Carolina Workers' Compensation Commission.

IT IS, THEREFORE, ORDERED that the Order of the Single Commissioner dated June 9, 2021, is hereby **AFFIRMED.**

IT IS, THEREFORE, ORDERED that the Claimant, Steven M. Brant, sustained compensable injuries to his left leg and right leg in the course and scope of his employment with Employer, Core Services, LLC, on May 6, 2019; and it is further

ORDERED, ADJUDGED AND DECREED that Claimant's claims for benefits under the Workers' Compensation Act based on the alleged injury or injuries to his back or spine is denied; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, shall be reimbursed for all past causally-related medical treatment since the date of accident, including

reimbursement to the Claimant for treatment-related mileage and prescription medications, surgeries, physical therapy, injections, hospitalizations, medications, consultations, diagnostic procedures, rehabilitation and other attendant care. These benefits shall be provided by and payment shall be made by Berkshire Hathaway Direct Insurance Company; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is at maximum medical improvement for his causally related injuries; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to temporary, total disability benefit payments from May 6, 2019, through February 17, 2020, pursuant to § 42-9-20; and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to permanent partial disability benefit payments for permanent disability to his right leg in the amount of six percent (6%), pursuant to § 42-9-30(16); and it is further

ORDERED, ADJUDGED AND DECREED that the Claimant, Steven M. Brant, is entitled to permanent partial disability benefit payments for permanent disability to his left leg in the amount of ten percent (10%), pursuant to § 42-9-30(16); and it is further

ORDERED, ADJUDGED AND DECREED that Defendants shall receive a credit in the amount of One Thousand and no/100 Dollars ($1,000.00) for the money Claimant earned mowing grass after the date of accident; and it is further

ORDERED, ADJUDGED AND DECREED that Claimant's outstanding child support lien shall be satisfied from this Award; and it is further

ORDERED, ADJUDGED AND DECREED that, at all times relevant hereto, Core Services, LLC had valid workers' compensation insurance coverage in South Carolina by and through biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that all benefits payable to Claimant by and through this Order shall be made by biBERK; and it is further

ORDERED, ADJUDGED AND DECREED that the South Carolina Department of Transportation, the South Carolina State Accident Fund, and the South Carolina Workers' Compensation Uninsured Employers' Fund are hereby dismissed, with prejudice;

No hearing costs are assessed in this matter.

AND IT IS SO ORDERED!

R. Michael Campbell, II, Commissioner

T. Scott Beck, Commissioner

Avery B. Wilkerson, Jr., Commissioner

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 Valerie Deller on January 11, 2022

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