

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1822255

David Casey,
Employee,
Claimant,

vs.

Aptim Federal Services,
Employer,

and

XL Specialty Insurance Company,
Carrier,
Defendants.

RECEIVED

FEB 28 2022

SC Court of Appeals

APPELLATE PANEL ORDER

DATE OF PANEL REVIEW:

Appellate Panel Review held in Columbia, South Carolina via WebEx on October 18, 2021.

APPEARANCES:

Claimant appeared and represented by Richard C. Alexander, of Shelly Leeke Law, of North Charleston, South Carolina.

Defendants appeared and represented by Daniel B. Eller, of Eller Tomnsen Bach, LLC, of Greenville, South Carolina.

FILED:

STATEMENT OF THE CASE

The sole issue presented in this appeal is whether Commissioner T. Scott Beck's Decision and Order finding Claimant is entitled to an Award of 20% loss of use to the back should be affirmed, or whether the evidence supports an increased award to Claimant's spine. Claimant suffered a compensable injury by accident to his back on December 10, 2018, when a car beside him started backing up and cut their wheel too quickly and hit his door and pinned him between the door and the door frame of his vehicle. Following his treatment, he was released by the authorized treating physician, Dr. Karl Lozanne. Thereafter on January 7, 2021, Defendants filed a Form 21, Request for Hearing, seeking to determine (1) whether Claimant has reached maximum medical improvement, (2) whether Defendants can terminate temporary total disability benefits, (3) the extent Claimant is entitled to an award of loss of use of the back, (4) whether Defendants are entitled to a credit for overpayment of TTD benefits, and (5) whether Claimant is entitled to future medical treatment.

Following a hearing on April 15, 2021, Commissioner Beck issued an Order dated July 27, 2021. Commissioner Beck held that (1) Claimant reached MMI for his back injury on January 7, 2021; (2) Defendants were entitled to terminate TTD as of January 7, 2021, (3) Claimant was entitled to an award for 20% loss of use to the back under S.C. Code Ann. § 42-9-30(21); (4) Defendants were entitled to a credit for all TTD paid beyond the date of MMI; and (5) Claimant was entitled to future medical treatment as indicated on the Form 14B.

Claimant appealed Commissioner Beck's order to the Appellate Panel of the South Carolina Workers' Compensation Commission (Appellate Panel), arguing that the Award of 20% loss of use to the back should be reversed and instead he should be awarded 80% loss of use to the back. (App. Br. pp. 2, 17-18). All testimony has been taken and delivered, with the documentary evidence, to each member of the Appellate Panel. Oral argument was held on October 18, 2021.

EVIDENCE OF THE CASE

I. Claimant's Hearing Testimony

Claimant testified he is a high school graduate and attended Remington College for medical assisting. (Hr. Tr. p. 9). He served in the military for five years and was honorably discharged with a rank of E5 (sergeant). *Id.* He stated that since leaving the military, he has performed unexploded ordnance (UXO) work. *Id.* at 9-10. He stated this work involves using magnetometers and shovels to excavate ordnance left behind in project sites and then exposing said ordnance using explosives. *Id.* Claimant testified he has worked for APTIM since 2017. *Id.* at 10. He testified his job is contract-based determined by the project. *Id.* He stated he often does not know how long he will work on a project until he arrives on site. *Id.*

Claimant testified his work accident on December 10, 2018 occurred when a truck with large tires backed up and pinned him against his car door. *Id.* at 12. Claimant testified that after the accident, he worked light duty in a "construction support position" for a period. *Id.* at 13. He stated that in this position he did not do any heavy lifting or digging. *Id.* at 15.

Claimant eventually treated with Dr. Lozanne. *Id.* at 16. Dr. Lozanne recommended an MRI and then surgery for his thoracic spine. *Id.* at 17. Claimant testified that Dr. Lozanne released him in January 2021. *Id.* at 17. Claimant confirmed that at the time of the hearing, he did not have any work restrictions. *Id.* Claimant testified he has been in contact with APTIM about returning to work since his release. *Id.* He claimed that the only work that was available from APTIM from January 2021 until the time of the hearing was a job in Adak, Alaska. *Id.* at 18. Claimant testified that he was leaving the day after the April 15, 2021 hearing for that job. *Id.* He stated the Adak job was the first assignment that was available since he was released by Dr. Lozanne. *Id.* However, Claimant testified he took a job with Seres Engineering and Services in Spartanburg,

South Carolina in February 2021. *Id.* at 18, 22. He explained that job was a "preparatory construction support job" that did not require heavy lifting or digging. *Id.* He stated he worked in that position for 9 days. *Id.* Claimant testified the job in Adak, Alaska was UXO work, which would be the first time that he had performed that job since his surgery. *Id.*

As for Claimant's current complaints, he described mild pain in his back that was a "3" on a scale of 0 to 10. *Id.* at 19-20. He also described decreased range of motion in his back claiming he cannot stand with his feet together and bend over to touch the floor as he could before the accident. *Id.* at 20. He also testified that it takes him longer to cut the grass and do similar activities. *Id.*

Claimant agreed he had reached maximum medical improvement (MMI). *Id.* at 21. He also agreed that on January 7, 2021, he was released to return to work full duty by Dr. Lozanne. *Id.* at 21-22. Claimant admitted that as of January 7, 2021, he was able to return to work without restrictions. *Id.* at 22. Despite his release to return to work without restrictions on January 7, 2021, Claimant admitted he had continued to receive TTD since that time. *Id.*

II. Medical Evidence

Following his initial treatment, Claimant eventually treated with Dr. Karl Lozanne beginning on April 10, 2020. (Def APA p. 28). Dr. Lozanne initially diagnosed him with disc herniation at T11-12. *Id.* at 30. He performed surgery (thoracic microdiscectomy) on August 3, 2020 for a thoracic herniated disc and radiculopathy. *Id.* at 34-35. Following post-operative treatment, Dr. Lozanne found Claimant reached MMI on January 7, 2021. *Id.* at 45-46. He opined Claimant could return to work without restrictions. *Id.* He assigned him a 16% whole person impairment rating to the thoracic spine, which was confirmed by a Form 14B dated January 19, 2021. *Id.* He further opined Claimant "intermittently may need to use over-the-counter nonsteroid anti-inflammatory medications or

acetaminophen. . . . [and] muscle relaxing medications if there is any stiffness or muscular spasms in the future" *Id.*

Dr. Lozanne was deposed twice in this case. On July 10, 2020, prior to Claimant's surgery, surgery, Dr. Lozanne testified that if Claimant proceeded with the recommended thoracic microdiscectomy, he expected he would have a good result, go back to work full duty, and have limited permanent impairment. (Dr. Lozanne, 07/10/2020, pp. 48-49).

On March 23, 2021, Dr. Lozanne was again deposed, this time regarding the impairment rating he assigned Claimant. (Dr. Lozanne 03/23/2021, p. 8). Dr. Lozanne agreed the *AMA Guides to the Evaluation of Permanent Impairment* were a guide a physician could use when assigning an impairment rating, and the physician could reach a different impairment rating than the *Guides* recommend. *Id.* at 8-9. He agreed the *Guides* provide two methods for assigning permanent impairment: (1) the diagnosis related estimate (DRE) and (2) the range of motion method (ROM). *Id.* at 10. Dr. Lozanne confirmed he did not use the ROM method in determining Claimant's impairment. *Id.* at 25. He further testified that he has never used the ROM method. *Id.* He claimed that he did not use this method because it was less reliable. *Id.*

Dr. Lozanne testified Claimant made a good recovery from his surgery. *Id.* at 20. He confirmed Claimant reached MMI on January 7, 2021 and he used the *AMA Guides* DRE thoracic category 3 to assign his impairment rating. *Id.* at 20-21. Dr. Lozanne specifically testified Claimant fell under DRE category 3 because he had "clinically significant radiculopathy, verified by an imaging study that demonstrates a herniated disc at the level and on the side that would be expected from objective clinical findings; history of radiculopathy, which has improved following surgical treatment." *Id.* at 21-22; *AMA Guides*, p. 389 (5th ed). According to Dr. Lozanne, if a patient with Claimant's condition of the thoracic spine undergoes surgery, they automatically fall under DRE category 3, which dictates an impairment rating between 15% and 18%. *Id.* at 23-24.

Dr. Lozanne testified he has never treated a patient that underwent Claimant's procedure that was not at least DRE category 3. *Id.* at 24. He also admitted he has never assigned anyone with Claimant's same diagnosis and treatment (thoracic herniated disc treated with surgery) less than 15% whole person impairment. *Id.* at 28-29.

Dr. Lozanne testified he assigned Claimant a 16% impairment rating because that is what the *Guides* recommend. *Id.* at 25. Dr. Lozanne did confirm that the rating was assigned for an injury to Claimant's back, "the thoracic portion of his back." *Id.* at 26-27. Dr. Lozanne further testified Claimant can return to work full duty. *Id.* at 29-30. He also testified Claimant can return to gainful employment and was not permanently and totally disabled. *Id.* at 30.

On cross-examination, Dr. Lozanne stated the *Guides* provide for a conversion method to convert the whole person impairment rating into a regional impairment of the spine. *Id.* at 33. Dr. Lozanne confirmed Claimant's 16% whole person impairment rating converted to an 80% regional impairment rating of the thoracic spine. *Id.* at 33-34. However, Dr. Lozanne was adamant he was not assigning Claimant an 80% permanent impairment rating to Claimant's back nor was he of the opinion that Claimant had suffered 80% loss of use of his spine. He testified about this issue at length on pages 34, 36, and 37 of his second deposition. Specifically, he testified,

[The 80% regional impairment rating] is simply a calculation that's detailed in Section 15.13 of the Guides to Evaluation of Permanent Impairment. It's really, really important because this comes up frequently. This in no way implies total and permanent disability as it is brought up by attorneys; this does not in any kind of way imply that [Claimant] is totally and permanently disabled from whatever statute you guys referenced; he can return to gainful employment; this is simply a calculation that's detailed in this Guide.

Id. at 34.

Dr. Lozanne further testified,

The 80 percent is not an impairment rating to the thoracic spine. It is literally -- and I'm going to be very specific. [Claimant] has a whole person impairment rating to the thoracic spine of 16 percent. The Guides ask, for whatever reason, that we use a formula to convert to a regional spine, whatever the heck they figure that means, and it uses a very specific formula so this is literally me plugging in numbers.

I do not want to imply in any kind of way by giving this 80 percent that is simply a formula as detail that this patient has only 20 percent function of his thoracic spine, no; that in some kind of way he is totally and permanently disabled, that is simply inaccurate; that's simply a number as detailed in this Guide. I do not have a great understanding as to why that paragraph is in this book.

Id. at 36 (emphasis added). Dr. Lozanne concluded his testimony by standing by his 16% whole person impairment rating to the thoracic spine. *Id.* at 37.

Claimant submitted a report of Dr. Carl David Geier dated March 8, 2021. (Claimant's APA pp. 148-152). Claimant was referred to Dr. Geier for an "independent medical evaluation and spine impairment rating"; however, the report was prepared based on a review of the medical records and without physically examining Claimant. *Id.* at 150. Dr. Geier opined that he "concur[red] with Dr. Lozanne that [Claimant]'s permanent impairment is 16 percent impairment of the whole person, and 80 percent impairment of the thoracic spine" per the *AMA Guides*. *Id.* at 151.

COMMISSIONER BECK'S ORDER

By Order dated July 27, 2021, Commissioner Beck issued the following findings of facts and conclusions of law:

FINDINGS OF FACT

The following Findings of Fact are based on the stipulations of the parties, written and evidentiary submissions, and testimony rendered at the hearing:

- 1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.*
- 2. Claimant's average weekly wage is \$2,372.54 yielding a corresponding maximum compensation rate of \$838.21.*
- 3. Claimant sustained a compensable injury to the back arising out of and in the course and scope of his employment when he was pinned between two vehicles.*
- 4. I note for the record that this matter is currently on appeal before the South Carolina Court of Appeals on the sole issue of back owed TTD. As the matter before me excludes that issue, I find, and the parties agree, that Defendants' Form 21 is properly before me.*
- 5. The parties agree this is a single scheduled-member injury pursuant to S.C. Code Ann. § 42-9-30. Specifically, Claimant is NOT asserting a P&T case under S.C. Code Ann. § 42-9-30 (21). As the parties stipulate this matter is limited to a recovery under § 42-9-30 and Claimant is not P&T, the Commission may take into account other factors in determining disability. For example, age, lack of training or other conditions peculiar to the individual. See Singleton v. Young Lumber Co.,*

236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960); *Sanders v. MeadWestvaco Corp.*, 371 S.C. 284, 291, 638 S.E.2d 66, 70 (Ct. App. 2006) ("We do not agree that a determination of impairment under [section 42-9-30] mandates that only medical evidence may be considered by the Commission in determining the degree of disability."); *id.* at 292, 638 S.E.2d at 70 (holding the Commission "may find a degree of disability different from that suggested by expert testimony"). I conclude that other factors could include impairment, restrictions, type of employment, etc.

6. *In this matter, Claimant,*

(a)-Performs arguable heavy-duty work (manually digs up unexploded ordnance),

(b)-Suffered an admitted injury to his thoracic spine,

(c)-Received appropriate medical care resulting in an excellent result,

(d)-Was assigned a 16% whole person impairment rating (converts to an 80% regional rating to the thoracic spine),

(e)-Released to full duty without any restrictions,

(f)-And is returning to his pre-injury job.

7. *Claimant's position that he is entitled to an award of disability consistent with an 80% regional rating is misplaced. First, in an award of disability under S.C. Code Ann. § 42-9-30, an impairment rating is a piece of evidence to be considered, both with the whole-person impairment rating and the regional rating, it is not a starting point. See Burnette v. City of Greenville, 401 S.C. 417, 429, 737 S.E.2d 200, 206-07 (Ct. App. 2012) ("[T]he determination of an injured employee's impairment rating is more art than science, involving the consideration of evidence the Commission may gather from the injured employee, medical and vocational*

experts, and lay witnesses[.]"). Second, Claimant's position is belied by the deposition testimony of Dr. Lozanne (Depo 3/23/21 @ page 36-37) and his 14B at Defendants' APA 46 wherein he assigns no restrictions, and finally, the fact that Claimant is returning to his pre-injury heavy-duty employment is counter intuitive to his position.

8. *Dr. Lozanne's deposition testimony is overwhelming that Claimant has not suffered an impairment of 80% to his back. Specifically, Dr. Lozanne testified ad nauseum that although the Fifth Edition of the AMA Guides provide for a method of converting Claimant's 16% whole person impairment rating into an 80% regional impairment rating to the thoracic spine, he was not of the opinion that Claimant had suffered an 80% loss of use of his back. (Dr. Lozanne 03/23/2021, pp. 34, 36-37). Rather, Dr. Lozanne testified repeatedly and upon examination from both Claimant's and Defendants' counsel that he was assigning Claimant a 16% whole person impairment rating to the thoracic spine. Id. Accordingly, I reject Claimant's argument that he is entitled to an award of disability consistent with an 80% regional rating.*
9. *Defendants are entitled to stop payment of TTD.*
10. *Claimant is awarded 20% PPD to the back.*
11. *Claimant is entitled to future medical care per Dr. Lozanne (see Form 14B at Defendants' APA 46).*
12. *Defendants are entitled to a credit for all TTD paid beyond the date of MMI (January 7, 2021).*

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Workers' Compensation Act, the undersigned Commissioner makes the following conclusions of law:

- 1. Under S.C. Code Ann. § 42-1-160, Claimant sustained a compensable injury to his back arising out of and in the course of his employment on December 10, 2018.*
- 2. Under S.C. Code Ann. § 42-1-40, Claimant's average weekly wage of \$2,372.54 yields a corresponding maximum compensation rate of \$838.21.*
- 3. Under S.C. Code Ann. § 42-15-60, Claimant reached MMI for his back injury on January 7, 2021.*
- 4. Under Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960), "[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity."*
- 5. Under S.C. Code Ann. § 42-9-30(21), Claimant is entitled to an award of PPD based on the degree of loss of use of the back.*
- 6. Under S.C. Code Ann. § 42-9-30(21), Claimant has suffered 20% loss of use to the back.*
- 7. Under S.C. Code Ann. § 42-9-260(F) and S.C. Code Ann. Regs. 67-506, Defendants are entitled to terminate TTD benefits as of January 7, 2021 based on the authorized treating physician's (Dr. Lozanne) opinion that Claimant reached MMI on January 7, 2021.*

8. *Under S.C. Code Ann. § 42-9-210, "Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made may, subject to the approval of the commission, be deducted from the amount to be paid as compensation[.]" TTD payments made to Claimant after January 7, 2021 "were not due and payable when made" as he had reached MMI. Thus, Defendants are entitled to a credit for all TTD paid from January 7, 2021 to present.*
9. *Under S.C. Code Ann. § 42-15-60, Claimant is entitled to future medical treatment as indicated on the January 19, 2021 Form 14B of Dr. Lozanne to include "intermittent[.] . . . over-the-counter nonsteroid anti-inflammatory medications or acetaminophen. . . . [and] muscle relaxing medications if there is any stiffness or muscular spasms in the future"*

ORDER

IT IS THEREFORE, HEREBY ORDERED that Claimant has reached maximum medical improvement for his back injury;

IT IS FURTHER ORDERED that Defendants are entitled to terminate payment of temporary total disability benefits;

IT IS FURTHER ORDERED that Claimant is awarded 20% permanent partial disability benefits to the back;

IT IS FURTHER ORDERED that Defendants are entitled to a credit for all TTD paid after the date of MMI (January 7, 2021) to present.

IT IS FURTHER ORDERED that Claimant is entitled to future medical care per the opinion of Dr. Lozanne as indicated on his Form 14B dated January 19, 2021 to include "intermittent[.] . .

. over-the-counter nonsteroid anti-inflammatory medications or acetaminophen. . . . [and] muscle relaxing medications if there is any stiffness or muscular spasms in the future"

AND IT IS SO ORDERED this 26th day of July, 2021.

STANDARD OF REVIEW

In Appellate Review, the Appellate Panel shall, pursuant to S.C. Code Ann. § 42-17-50, review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown thereof, make its own findings of fact and reach its own conclusions of law consistent with or inconsistent with those of the Single Commissioner. After careful consideration and review of all evidence in the instant case, the Appellate Panel, by unanimous vote, hereby affirms the Single Commissioner's Findings of Fact and Conclusions of Law. Accordingly, the Appellate Panel adopts the Single Commissioner's findings of fact and conclusions of law:

FINDINGS OF FACT

The following Findings of Fact are based on the stipulations of the parties, written and evidentiary submissions, and testimony rendered at the hearing:

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Claimant's average weekly wage is \$2,372.54 yielding a corresponding maximum compensation rate of \$838.21.
3. Claimant sustained a compensable injury to the back arising out of and in the course and scope of his employment when he was pinned between two vehicles.
4. We note for the record that this matter is currently on appeal before the South Carolina Court of Appeals on the sole issue of back owed TTD. As the matter

before us excludes that issue, we find, and the parties agree, that Defendants' Form 21 is properly before us.

5. The parties agree this is a single scheduled-member injury pursuant to S.C. Code Ann. § 42-9-30. Specifically, Claimant is NOT asserting a P&T case under S.C. Code Ann. § 42-9-30 (21). As the parties stipulate this matter is limited to a recovery under § 42-9-30 and Claimant is not P&T, the Commission may take into account other factors in determining disability. For example, age, lack of training or other conditions peculiar to the individual. *See Singleton v. Young Lumber Co.*, 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960); *Sanders v. MeadWestvaco Corp.*, 371 S.C. 284, 291, 638 S.E.2d 66, 70 (Ct. App. 2006) ("We do not agree that a determination of impairment under [section 42-9-30] mandates that only medical evidence may be considered by the Commission in determining the degree of disability."); *id.* at 292, 638 S.E.2d at 70 (holding the Commission "may find a degree of disability different from that suggested by expert testimony"). We conclude that other factors could include impairment, restrictions, type of employment, etc.
6. In this matter, Claimant,
 - (a)-Performs arguable heavy-duty work (manually digs up unexploded ordnance),
 - (b)-Suffered an admitted injury to his thoracic spine,
 - (c)-Received appropriate medical care resulting in an excellent result,
 - (d)-Was assigned a 16% whole person impairment rating (converts to an 80% regional rating to the thoracic spine),
 - (e)-Released to full duty without any restrictions,

(f)-And is returning to his pre-injury job.

7. Claimant's position that he is entitled to an award of disability consistent with an 80% regional rating is misplaced. First, in an award of disability under S.C. Code Ann. § 42-9-30, an impairment rating is a piece of evidence to be considered, both with the whole-person impairment rating and the regional rating, it is not a starting point. *See Burnette v. City of Greenville*, 401 S.C. 417, 429, 737 S.E.2d 200, 206-07 (Ct. App. 2012) ("[T]he determination of an injured employee's impairment rating is more art than science, involving the consideration of evidence the Commission may gather from the injured employee, medical and vocational experts, and lay witnesses[.]"). Second, Claimant's position is belied by the deposition testimony of Dr. Lozanne (Depo 3/23/21 @ page 36-37) and his 14B at Defendants' APA 46 wherein he assigns no restrictions, and finally, the fact that Claimant is returning to his pre-injury heavy-duty employment is counter intuitive to his position.
8. Dr. Lozanne's deposition testimony is overwhelming that Claimant has not suffered an impairment of 80% to his back. Specifically, Dr. Lozanne testified *ad nauseum* that although the *Fifth Edition of the AMA Guides* provide for a method of converting Claimant's 16% whole person impairment rating into an 80% regional impairment rating to the thoracic spine, he was not of the opinion that Claimant had suffered an 80% loss of use of his back. (Dr. Lozanne 03/23/2021, pp. 34, 36-37). Rather, Dr. Lozanne testified repeatedly and upon examination from both Claimant's and Defendants' counsel that he was assigning Claimant a 16% whole person impairment rating to the thoracic spine. *Id.* Accordingly, we reject

Claimant's argument that he is entitled to an award of disability consistent with an 80% regional rating.

9. Defendants are entitled to stop payment of TTD.
10. Claimant is awarded 20% PPD to the back.
11. Claimant is entitled to future medical care per Dr. Lozanne (see Form 14B at Defendants' APA 46).
12. Defendants are entitled to a credit for all TTD paid beyond the date of MMI (January 7, 2021).

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Workers' Compensation Act, the Appellate Panel makes the following conclusions of law:

1. Under S.C. Code Ann. § 42-1-160, Claimant sustained a compensable injury to his back arising out of and in the course and scope of his employment on December 10, 2018.
2. Under S.C. Code Ann. § 42-1-40, Claimant's average weekly wage of \$2,372.54 yields a corresponding maximum compensation rate of \$838.21.
3. Under S.C. Code Ann. § 42-15-60, Claimant reached MMI for his back injury on January 7, 2021.
4. Under *Singleton v. Young Lumber Co.*, 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960), "[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation, even though other considerations such as age, lack of training, or other conditions peculiar to the individual, effect a total or partial industrial incapacity."

5. Under S.C. Code Ann. § 42-9-30(21), Claimant is entitled to an award of PPD based on the degree of loss of use of the back.
6. Under S.C. Code Ann. § 42-9-30(21), Claimant has suffered 20% loss of use to the back.
7. Under S.C. Code Ann. § 42-9-260(F) and S.C. Code Ann. Regs. 67-506, Defendants are entitled to terminate TTD benefits as of January 7, 2021 based on the authorized treating physician's (Dr. Lozanne) opinion that Claimant reached MMI on January 7, 2021.
8. Under S.C. Code Ann. § 42-9-210, "Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made may, subject to the approval of the commission, be deducted from the amount to be paid as compensation[.]" TTD payments made to Claimant after January 7, 2021 "were not due and payable when made" as he had reached MMI. Thus, Defendants are entitled to a credit for all TTD paid from January 7, 2021 to present.
9. Under S.C. Code Ann. § 42-15-60, Claimant is entitled to future medical treatment as indicated on the January 19, 2021 Form 14B of Dr. Lozanne to include "intermittent[] . . . over-the-counter nonsteroid anti-inflammatory medications or acetaminophen. . . . [and] muscle relaxing medications if there is any stiffness or muscular spasms in the future"

ORDER

IT IS THEREFORE, HEREBY ORDERED that Claimant has reached maximum medical improvement for his back injury;

IT IS FURTHER ORDERED that Defendants are entitled to terminate payment of temporary total disability benefits;

IT IS FURTHER ORDERED that Claimant is awarded 20% permanent partial disability benefits to the back;

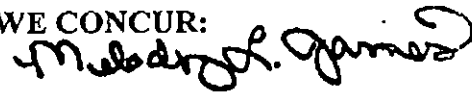
IT IS FURTHER ORDERED that Defendants are entitled to a credit for all TTD paid after the date of MMI (January 7, 2021) to present.

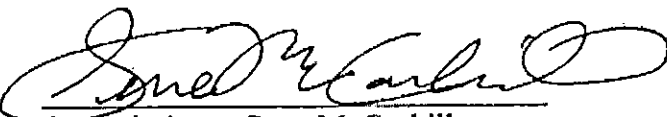
IT IS FURTHER ORDERED that Claimant is entitled to future medical care per the opinion of Dr. Lozanne as indicated on his Form 14B dated January 19, 2021 to include "intermittent[] . . . over-the-counter nonsteroid anti-inflammatory medications or acetaminophen. . . . [and] muscle relaxing medications if there is any stiffness or muscular spasms in the future"

AND IT IS SO ORDERED this _____ day of _____, 2021.


Commissioner R. Michael Campbell, II
For the Appellate Panel

WE CONCUR:


Commissioner Melody L. James


Commissioner Gene McCaskill

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 January 25, 2022