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SC Court of Appeals

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1716288 & 1801098

Michael K. Crowley,

APPELLANT
CLAIMANT,

vs.

Darlington County,

EMPLOYER,

AND

South Carolina Association of Counties SIF,

CARRIER,
DEFENDANTS/RESPONDENTS

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

Appellate Panel Decision and Order filed
February 1 _____, 2022

APPEARANCES:

Appellant Michael K. Crowley, Claimant of Bennettsville,
South Carolina represented by Preston F. McDaniel, Esquire
and Gerald Malloy, Esquire.

Defendants/Respondents represented by John Gabriel
Coggiola, Esquire of Willson Jones Carter & Baxley, P.A. in
Columbia, South Carolina.



STATEMENT OF THE CASE

The parties were heard by Commissioner R. Michael Campbell, II, on March 4, 2021, in Florence, South Carolina. As a result of said hearing, Commissioner Campbell (hereinafter "Haring Commissioner") issued a Decision and Order on July 6, 2021, from which Claimant appealed.

The Hearing Commissioner's July 6, 2021, Decision and Order set forth the following Findings of Fact:

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Michael K. Crowley as Employee-Claimant and Darlington County as Employer and South Carolina Association of Counties SIF as Carrier, Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to May 5, 2017, and January 3, 2018, on which dates he did sustain an injury to the right knee and lumbar spine arising out of and in the course of his employment, and proper notice was given to Employer for both dates of injury. These were accepted claims, and Claimant received appropriate medical benefits.

3. Claimant did not miss any compensable time from work, and Darlington County at all times accommodated Claimant's work restrictions until the Claimant's voluntary resignation on January 4, 2021.

4. That the average weekly wage of Employee at the time of the above-described accident was \$864.35, making a compensation rate of \$576.26 applicable in this matter.

5. That Claimant received appropriate medical treatment for all compensable body parts through Dr. Watt, Dr. Cheatle, Dr. Sarb, Dr. Naso, Dr. Forrest, and Dr. Bethea.

6. That Dr. Watt, Dr. Cheatle, Dr. Sarb, and Dr. Naso were Claimant's authorized treating physicians.

7. On December 15, 2017—in connection with Claimant's first work accident occurring on May 5, 2017—on a Form 14B, authorized treating physician Dr. Watt of McLeod Pee Dee Orthopaedics opined to a reasonable degree of medical certainty that Claimant was at MMI as of October 5, 2017, assigned a 5% medical impairment to the right lower extremity, assigned no permanent physical limitations and recommended no additional treatment. After Claimant's second admitted work injury involving the same body part, Dr. Watt assigned no additional impairment.

(Defendants' APA p. 26).

8. On October 25, 2019, in a Functional Capacity Evaluation, physical therapist Christine Sbroglia of OneCall Physical Therapy opined Claimant demonstrated the ability to perform within the sedentary physical demand category. (Claimant's APA p. 2).

9. Throughout the administration and treatment for both compensable injuries by accident, and throughout the provision of all causally-related medical treatment, Claimant continued to work for Darlington County as a security officer for a judge, and Darlington County continued to ~~accommodate Claimant's work restrictions until his voluntary retirement effective January 4, 2021.~~

10. On December 1, 2019, on a Form 14B completed by an authorized treating physician, Dr. Naso of Florence Neurosurgery and Spined opined to a reasonable degree of medical certainty that Claimant was at MMI as of November 21, 2019, assigned 8% medical impairment to the whole person or 10.7% medical impairment to the lumbar spine, assigned permanent physical limitations per the FCE, and recommended additional medical treatment in the form of a TENS unit and physical therapy. (Defendants' APA p. 309).

11. On January 29, 2020, in an IME for Claimant, Dr. Leonard Forrest of Southeastern Spine Institute opined to a reasonable degree of medical certainty Claimant was at MMI, assigned a 13% whole person impairment rating, a 17% regional impairment rating, opined Claimant had lost more than 50% function of his back, and recommended Claimant continue pain management. Dr. Forrest causally related Claimant's symptomology to both work accidents and opined that surgery would be unlikely to offer relief. (Claimant's APA p. 29).

12. On February 13, 2020, in a letter to Defendants, Dr. Naso opined: "From a neurosurgical perspective, Mr. Michael Crowley [Claimant] can continue to work in his current capacity which includes being able to carry a weapon and a taster. He can also accompany a judge, providing the judge security within and outside a courtroom, including at lunch. Otherwise his restrictions as outlined in his functional capacity evaluation remain." (Defendants' APA p. 310).

13. On March 2, 2020, in a vocational evaluation Claimant sought on his own, vocational evaluation Harriet Fowley of Harriet Fowler Vocational Services opined that based on a transferable skills capacity analysis, there were no jobs identified that would be within Claimant's transferable abilities, that Claimant can only perform work in a sedentary category on a limited basis, and it is more likely than not that Claimant will be unable to obtain and maintain substantial gainful employment. Finally, Harriet Fowler suggested that, if it were not for the "extensive accommodation" provided by Darlington County, Claimant would be capable of earning pay at or

near minimum wage. (Claimant's APP pp. 47 – 48).

14. On April 10, 2020, in a vocational evaluation and labor market survey secured by Defendants, Rehabilitation Counselor James R. Myers of Corvel opined there were several positions Claimant would qualify for in the sedentary to light physical demand category. James Myers opined Claimant was a viable candidate for vocational rehabilitation, that Claimant had a demonstrated ability to learn, that Claimant could continue working in his current capacity, and even without his current job, he would be able to secure jobs within his restrictions making \$618.05 per week, lower than his pre-injury wages of \$769.91 per week. James Myers cited Claimant's high pain medication tolerance as a potential factor in his positive Waddell signs and strong pain focus as outlined in the FCE. Finally, James Myers' report identified numerous positions available within Claimant's abilities, including but not limited positions for a desk officer, collection manager, fraud investigator, management aid, dispatched, surveillance system monitor, customer services representative, collection clerk, code inspector, service advisor, information clerk, telephone solicitor, and file clerk. (Defendants' APA pp. 725 - 738).

15. On October 5, 2020, in a records review secured by Defendants, Dr. Richard Friedman of MUSC Department of Orthopaedics opined to a reasonable degree of medical certainty Claimant was at MMI for his right knee injuries for both his May 5, 2017, and January 3, 2018, accidents. He assigned a 0% impairment to the right lower extremity, returned Claimant to full, unrestricted activities without limitations, and recommended no additional medical treatment. He thereafter completed a Form 14B (Physician's Statement) memorializing said opinions. (Defendants' APA pp. 739 – 740).

16. On December 17, 2020, in a second opinion requested by Claimant, Dr. James Bethea of MUSC Health Orthopaedics – West opined Claimant was at MMI for his lumbar spine, assigned no restrictions, recommended no additional medical treatment, and assigned a 3% medical impairment to the whole person. (Defendants APA pp. 742 – 743).

17. On March 4, 2021, at the hearing before the undersigned Commissioner, Claimant testified regarding his work-related injuries, the medical treatment he received, his light duty, his retirement, his ability to work and the issues he continues to have.

18. Regarding Claimant's prior medical history, at the hearing before the undersigned Commissioner, I find Claimant either admitted or could not recall the extent or nature of his previous complaints regarding his cervical spine, lumbar spine, right groin, right shoulder, and lower extremity complaints.

19. Claimant had a prior diagnosis of chronic pain syndrome for which he was actively engaged in pain management prior to both work accidents.

20. Regarding Claimant's right knee, he received impairment ratings of 5% from Dr. Watt and 0% from Dr. Friedman.

21. Regarding Claimant's spine, he received impairment ratings of 8% (10.7% regional) from Dr. Naso; 13% (17% regional) from Dr. Forrest; and 3% from Dr. Bethea.

22. With regard to Claimant's objection to the admissibility of Claimant's prior medical records, based upon his reading of *Clark v. Phillips Electronics, Opinion No. 5809 (Ct. App. 2021)*, Claimant asserts that prior physicians' opinions are not credible because they allegedly fail to address causation. This argument misses the mark and is not the holding from *Clark*. That court addressed the issue of whether substantial evidence supported the Appellate Panel's decision to base its factual findings regarding the Claimant's injury, lost earning capacity, psychological overlay, and MMI date largely on Claimant's credibility without "explaining the basis of the credibility determination and how the determination rationally affects the disputed fact." (Id). In other words, if the Commissioner believes that a witness is credible, there needs to be an explanation as to why and how that conclusion is supported by the facts in the record. This case is not *Clark*. The issue in this case is what weight to assign to medical records that may or may not state "to a reasonable degree of medical certainty" that Claimant's pre-existing conditions are or are not related to his work injuries. This is a proper inquiry. Additionally, the records may be admitted for impeachment purposes, and it is necessarily so that a party will not know whether or not the records will be used for that purpose until a witness testifies at the hearing. Therefore, Claimant's objection to the admissibility of Claimant's prior medical records is hereby denied and the records are hereby introduced into the record.

23. Regarding Claimant's argument that his due process rights to cross-examine witnesses were violated because there was a fee involved in securing Dr. Bethea's deposition testimony, this argument is misplaced and, when followed to its logical conclusion, lends itself to skewed results with high potential for abuse. This issue was similarly and squarely addressed in the recent Court of Appeals decisions in *Barr v. Darlington Cnty Sch. Dist.*, when the same counsel made arguments that an employee's due process rights were violated because the single commissioner allowed into evidence the reports of Dr. Pritchard, Dr. Wagner, Dr. Waid, and Dr. Eagerton. In that case, the employee asserted that because the Commissioner did not issue subpoenas for these witnesses to testify at the hearing and did not exclude the evidence, a violation of Regulation 67-612(f) of the South Carolina Code (2012) had occurred. The South Carolina Court of Appeals

rejected this argument and relied on the holding of *Gadson v. Mikasa Corp.* (holding that a physician's report was admissible where it was timely filed and included in the APA submissions despite Claimant's decision not to depose the physician). The court of appeals held that the Commission did not err in including the records from the employee's four treating physicians in that case because, although Defendants' APAs were untimely, the hearing had been rescheduled allowing a seven month timeframe to depose or subpoena the physicians. The Barr court declined to hold that there is any requirement that the Commission subpoena any witnesses. Similarly, in this case, ~~Claimant had ample opportunity to take Dr. Bethea's deposition. Dr. Bethea's report is dated~~ December 17, 2020, and the hearing was not held until March 4, 2021. Moreover, Claimant scheduled Dr. Bethea's deposition for January 27, 2021, at 4:00 PM (See Claimant's APA pp. 145 – 147) but later canceled it after being informed he would have to pay for the costs associated with that deposition.

24. The Administrative Procedures Act only states that an administrative body may issue subpoenas. Nowhere in the Act is there a compulsory requirement to do so. In this case, Claimant is not arguing that the Commission incorrectly admitted into evidence APAs which were untimely (in fact, all of Defendants' APA submissions were timely), thereby depriving his client of notice and the opportunity to cross-examine witnesses. Instead, he argues the physician fee charged by Dr. Bethea for his appearance at the deposition frustrated his right to cross-examine witnesses as it related to the due process protections afforded by our state laws and the United States Constitution.

25. Under S.C. Reg. 67-1302, the South Carolina Workers' Compensation Commission establishes a maximum allowable payment for the provision of medical services based upon a relative value scale and a conversion factor set by the Commission. "The maximum allowable payments and any policies governing the billing and payment of services provided by medical practitioners shall be published in a medical services provider manual." S.C. Reg. 67-1302 (A) (1). This is commonly referred to as the "Fee Schedule."

26. Under the Medical Services Provider Manual, reimbursement for medical testimony by deposition or testimony by appearance for physicians is governed by Code SC004, which outlines that depositions are capped at \$400 for the first hour and \$100 to report each additional quarter hour. I find that Dr. Bethea properly issued an invoice for his deposition at \$400 per hour in accordance with the Fee Schedule.

27. I further find that Dr. Bethea, who is a private citizen, is not a state actor as contemplated by our laws. He may charge appropriate fees for his time in testifying at a deposition.

The party wishing to dispute this evidence, or question the doctor concerning certain medical opinions, must pay to do so. In this case, Claimant had months to depose Dr. Bethea (Hrg. Tr. p. 12), scheduled Dr. Bethea's deposition (Claimant's APA pp. 145 – 147), and later canceled it upon discovering that he must pay for that deposition.

28. Because there is no requirement that the Commission subpoena a witness, the Commission has not deprived Claimant of any right to cross-examination. It should also be noted that these proceedings are civil (not criminal) in nature. Therefore, given that Claimant was afforded ~~ample time and opportunity to cross-examine Dr. Bethea, and chose not to, I hereby find the~~ principles of Claimant's due process were satisfied and not denied.

29. I give little to no weight to the opinions of Dr. Friedman, as his opinions were based solely on a records review and not a physical evaluation of the Claimant.

30. I find Claimant was at maximum medical improvement on November 21, 2019.

31. Claimant is entitled to an award of permanent partial disability for his right leg and back.

32. I find Claimant has suffered 10% permanent partial disability to his right leg as a consequence of both work accidents occurring on May 5, 2017, and January 3, 2018.

33. I find Claimant has suffered 25% permanent partial disability to his back as a consequence of the January 3, 2018, date of injury.

34. Claimant is entitled to a lump sum award.

35. Claimant is entitled to additional medical treatment necessary to maintain his level of disability at MMI as recommended by the authorization treating physician for Claimant's spine, which outlined by Dr. Naso is physical therapy and a TENS unit.

The Hearing Commissioner's Decision and Order also set forth the Following Conclusions of Law:

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did sustain an injury to his right knee and lumbar spine by accident arising out of and in the course and scope of his employment on May 5, 2017, and January 3, 2018.

3. Under §§ 42-9-10 and 42-1-120, Claimant was not entitled to compensation for a

period of temporary total disability from either date of injury as Claimant continued to work for all relevant times with Darlington County within his restrictions.

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until November 21, 2019, the date on which Claimant reached maximum medical improvement. I further find Claimant is entitled to future medical treatment necessary to maintain his level of disability at MMI to include physical therapy and a TENS unit for his lumbar spine.

~~5. Under § 42-9-30, Claimant has sustained 10% permanent partial disability to the right leg and 25% permanent partial disability to his back. From such lump sum award, Defendants are not entitled to any credit.~~

6. Under S.C. Reg. 67-1302, and pursuant to the Medical Services Provider Manual, Dr. Bethea was entitled to charge a fee for his deposition in connection with this workers' compensation case.

7. Under *Barr v. Darlington Cnty Sch. Dist.* and *Gadson v. Mikasa Corp.*, and other controlling law, Claimant's due process rights were not violated, and the Commission was not required to issue a subpoena compelling a witness's attendance at the hearing.

8. Under the Award of the Commission which totals \$54,456.57, Deputy Michael Crowley was born on June 19, 1969, and at the time of the Hearing held on March 4, 2021 was 51 years old. Under the South Carolina Life Expectancy Tables SC Code §19-1-150, Deputy Crowley has a life expectancy of 28.28 hundredths years or 14 74.52 hundredths weeks. The Lump Sum Award which is ordered under this Award is to be paid by the Defendants in lieu of having to pay weekly payments to the Claimant throughout the course of his lifetime in the amount of \$36.95.

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Commissioner ordered as follows: (A) that as a result of Claimant's accidental injuries occurring on May 5, 2017, and January 3, 2018, Claimant sustained 10% permanent partial disability to his right leg, for which he is entitled to 19.5 weeks of compensation, and which at the Claimant's compensation rate of \$576.26 equates to \$11,237.07 to be paid in lump sum fashion; (B) that that as a result of Claimant's accidental injury occurring on January 3, 2018, Claimant has sustained 25% permanent partial disability to his back, for which he is entitled to 75 weeks of compensation, equating to \$43,219.50

to be paid in lump sum fashion; (C) that from the aforesaid awards, Defendants are not entitled to a credit or offset for the overpayment of temporary total compensation; (D) that Claimant reached maximum medical improvement on November 21, 2019, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date other than physical therapy and a TENS unit for Claimant's lumbar spine; (E) that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same; and (F) that no hearing costs are assessed in this instance.

Within the statutory period, Claimant filed a Form 30 Request for Commission Review in the case, setting forth the following assignments of error (as stated verbatim in Claimant's Form 30):

1. That pursuant to S.C. Code of Laws §42-17-50, the Claimant requests a review of all of the Findings of Fact, the Conclusions of Law, the Other and Award and all rulings and decisions made by the Commissioner at the hearing, as contained in the Record or as made at any unrecorded pre-hearing conference, and in any communications concerning the claim, Order, Award and Decision rendered by the Hearing Commissioner in this matter.
2. The Commission should review the Award and find that while Deputy (former now Police disabled retired) Crowley's burden of proof is to establish by a preponderance of the evidence that he is entitled to benefits sought, there is absolutely no evidence on the essential issue for decision by the Commissioner as to loss of use of the back to do work requiring the use of the back, other than that (former) Deputy Crowley has lost 50% or more of the functional use of his back to do work requiring the use of his back and is entitled to an Award of 500 weeks of compensation for that scheduled member loss of use under S.C. Code § 42-9-30(21). Under that Code Section, the scheduled member Award to be made is for "loss of use" and is based on the character of the injury, not wage loss. The Commissioner erred in failing to make an Award based on the reliable, probative, and substantial evidence in all of the Findings of Fact and Conclusions of Law and that part of the Order with addressing that issue. The Commissioner specifically erred in making Findings of Fact 29, 30, & 31, and Conclusions of Law 3 and specifically Conclusions of Law 5 and in the Order and Award made based on those and all Findings and Conclusions in reference to the back and leg.
3. The Hearing Commissioner erred as a Matter of Law by failing to make Findings of fact and Conclusions of Law on the essential issue of, "loss of use" of the back to do work requiring the use of the back under S.C. Code § 42-9-30(21) in contradiction to our Appellate Court and specifically the Supreme Court's decision in Clemmons v. Lowes Home Improvement of Irmo.

4. The Hearing Commissioner erred as a Matter of Law by making Findings of fact 22, 23, 24, 25, & 26, which are not Findings of Fact but are legal opinions and legal positions. They contain arguments and legal positions, legal opinions and citations to case references not presented to the Commissioner, either before or after the hearing, by either party, which constitutes the Commissioner going outside of the Record and arguments made to him by the parties and based on a legal analysis not presented.
 5. The Hearing Commissioner erred as a Matter of Law in specifically making Finding of fact number 22, which is actually not a Finding of Fact, but is a legal opinion or legal interpretation or legal position based on a review of law and which also is contrary to the actual argument and objection made by the Claimant. The finding of Fact specifically states in pertinent part:
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“...Claimant asserts that prior physicians’ opinions are not credible because they allegedly fail to address causation...”

The issue in this case is what weight o assign to medical records that may or may not state ‘to a reasonable degree of medical certainty’ that Claimant’s pre-existing conditions are or are not related to his work injuries...

Additionally, the records may be admitted for impeachment purposes, and it is necessarily so that a party will not know whether or not the Records will be used for that purpose until a witness testifies at a hearing.”

However, the actual objection that was made, as set out in the Record at the Hearing, and as capsulized in a letter from the Claimant’s Counsel submitting additional authority in support of the Claimant’s objections, was as follows:

“You will recall that we objected to medical records for past treatment being submitted into evidence without any supporting medical opinion establishing a causal relationship between any of that medical care to any of Deputy Crowley’s current medical problems stemming from the accident and for which benefits are sought. Without such expert opinion evidence, the submission calls for speculation by the Commission on a causal relationship. As part of the Defendants’ response to our objection, the Defendants position was, in part that the Records were being submitted concerning the Claimant’s credibility.”

In Findings of fact, in Finding #18 in reference to the prior medical history the Commissioner actually found the Claimant credible; he: “either admitted or could not recall the extent or nature of his previous complaints regarding his cervical spine, lumbar spine, right groin, right shoulder, and lower extremity complaints.”

There is no finding that the Claimant’s testimony was not credible in any regard. From the additional authority cited to the Commissioner, Clark v. Phillips Electronics:

“Phillips contends the panel rightfully treated all the medical evidence as suspect because Clark did not disclose his 2006 injury. But Dr. Storick deflated this theory when he testified that learning of the 2006 injury did not

change his opinion that the 2011 injury caused Clark's injuries. Phillips could have offered contrary evidence; without any, the Panel had no basis to discount the objective medical evidence and Crane tells us a vague nod to credibility cannot close the gap.

The Panel's Absolutist treatment of Clark's credibility in effect adopts the Latin maximum, well known to lawyers... 'false in one, false in all'... Wigmore denounced the maximum as 'primitive psychology' that 'is in itself worthless'...

... "Dubious and Archaic as the saying may be, we are not aware of any instance where it has been used to disregard not just a party's testimony but their entire array of proof."
(Emp. Added)

The Commissioner erred by admitting these medical records without any medical opinion evidence stating that they were in any way relevant concerning the Claimant's current injuries to his low back (note neck) and leg.

6. The Hearing Commissioner erred as a Matter of law and Fact in his Award for future medical care. The undisputed medical evidence establishes that former Deputy Crowley will need all types of medical care, not included [in] the Commissioner's Award and specifically including chronic pain management for the severe problems that he is having with his low back:

Dr. Nigel Watt January 31, 2019, stated January 31, 2019 stated that Deputy Crowley will not need follow-up appointment because he, "is established with a pain management physician..."

Dr. Leonard Forest "I recommend that Deputy Crowley continue his pain management under the direction of Integrated Pain Management and also Dr. Barbara Sarb that is needed in order to maintain his current level of function."

At the time of his release, 11/21/19 Dr. Naso and Dr. Sarb noted his current and continuing medications as

"CURRENT MEDICATIONS – Taking: Lortab 10-325 MG Tablet orally four times a day, Capacet orally, Zomig 2.5 MG tablet orally, Simvastatin 40 MD tablet orally, Gabapentin 300 MG capsule orally three times a day, Hydrocodone-Acetaminophen 10-325 MG tablet oral, Tizanidine HCl 4 MG tablet oral, Diclofenac Sodium 75 MG tablet delayed release oral, Butalbital-APAP-Caffeine 50-325-40 MG capsule oral, Keflex 500 MG capsule 1 capsule orally every 12 hours.

Medication List reviewed and reconciled with the patient."
Integrated Pain Management Ms. Sharon Coggin, PA-C:

“Mr. Crowley will need the chronic pain treatment which we are providing him due to the condition of his lower back without regard to his cervical spine problems, and he will need this treatment for the foreseeable future as reflected in our records and treatment notes. This is my opinion to a reasonable degree of medical certainty.”

There is simply no contrary medial opinion evidence that former Deputy Crowley will not need this medical care.

7. The Hearing Commissioner erred by admitting and not excluding the medical opinion and evaluation report of Dr. James Bethea where the Defendants violated and failed to comply with the provisions of S.C. Code § 42-15-95. That Code Section provides that an employer, carrier, or its representative may communicate or discuss the workers' compensation claim without consent with any Provider that either provides examination or treatment, provided that the employee must be given notice and this notification:

“must occur prior to the actual discussion or communication”...(2) advised by the employer, carrier or its representative...of the nature of discussion or communication prior to discussion or communication...(3) provided with a copy of the written questions at the same time a the questions are submitted to the health care provider...

(C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.”

The evidence established that there were multiple communications and specifically including a detailed letter attaching hundreds of pages of medical records sent to Dr. Bethea on October 27, 2020; all of which conversations and communications which occurred between October 2020 and January 2021 were not copied to nor was the Claimant made aware of; and the Claimant only became aware of such communications with Dr. Bethea following his subpoena issued on January 6, 2021 to Dr. James Bethea, MUSC Primary Care as set out in the record.

The Commissioner erred in violation of the State as a matter of law requiring a reversal or a new hearing since that evidence was obtained in violation of § 42-15-95. It was fruit of the poisonous tree.

8. That the Commissioner erred by accepting the medical records and report of Dr. James Bethea, in violation of the agreement of the Defendants to provide an evaluation for treatment by a specialist at the Medical University of South Carolina, wherein it is clearly established in the record that Dr. James F. Bethea is not part of nor a specialist with the Medical University of South Carolina, Department of Orthopedics and Physical Medicine, nor any other specialty department at the Medical University of South Carolina and is only a treating physician within MUSC's "Primary Care" at the Epic Center in Mount Pleasant, South Carolina.

9. That the Hearing Commissioner erred as a Matter of Law in making Findings of Fact 23, 24, 25, and 26 which are not actually Findings of Fact, but are legal opinions, positions, and statements, which contain rulings that are not Findings of Fact in reference to Claimant's objections to the admission of Dr. Bethea's medical report and objections which were put into evidence over those objections; and further by making decisions in Findings of Fact on legal issues including:

A) After a request for a Commission subpoena by failing to issue a Subpoena for Dr. James F. Bethea to appear at the Hearing to testify so that the Claimant may exercise his right of cross-examination, wherein the Defendants had placed Dr. Bethea's report into evidence over objection. The right of cross-examination is specifically preserved and particularly as to any written communication put into evidence under S.C. Code § 1-23-330(1) and (3).

B) By interpreting the Workers' Compensation Act so as to not require the Commission

Upon request to issue a Subpoena requiring the attendance of a witness upon whose written documentary evidence with the Commissioner relied in making his decision and wherein a specific request was made for Dr. Bethea to be subpoenaed by the Commissioner to the Hearing, so that the Claimant may exercise his right of cross-examination. The Commissioner interpreted the Statute which allows for it to subpoena witnesses, to hold that the Commissioner didn't have to subpoena the witness, but at the same time admitting the documentary evidence into evidence and relying on that evidence in limiting benefits.

C) Requiring the Claimant to pay to exercise his right of cross-examination wherein the Defendants paid Dr. Bethea a fee of \$5,000.00 to conduct, instead of a treatment evaluation, an Independent Medical Evaluation, and to answer questions far beyond a treatment evaluation which was introduced by Defendants as their evidence to support a limitation on the Award. Thus violating the very fundamental principles of the Act, including that it was designed to be a no cost/no fault system interpreted in favor of the injured worker to provide for swift and sure benefits.

D) By concluding as a Finding of Fact, which is not a Finding of Fact, that, "Dr. Bethea, who is a private citizen, is not a State actor as contemplated by our Laws. He may charge appropriate fees for his time in testifying at a deposition." There is no Law, Regulation or Court holding referencing a physician as a private citizen versus a State actor as contemplated by any Law, Regulation, or Court decision, and what that has to do with anything in reference to whether or not a Claimant has to pay to cross-examine a Defense Expert is arbitrary and capricious.

E) As a Matter, by confusing or failing to recognize the difference between a discovery deposition, which a party takes to know what a witness is going to say at trial versus a De Bene Esse deposition, that a party takes in order to be allowed to submit evidence into the record in support of their claim or defense

in lieu of live testimony. The Commissioner failed to recognize the difference between a deposition and evidence which constitutes an error of law.

10. That the Hearing Commissioner erred as a Matter of Law and Fact based on a reliable, probative and substantial evidence in the Record on loss of use, which is undisputed, as follows:

Dr. Leonard Forest expressed the medical opinion stated to a reasonable degree of medical certainty that Mr. Crowley had lost 50% or more of the functional use of his back to do work requiring the use of his back

Deputy Crowley testified that in his opinion he had lost 80% of the use of his back as a result of the injuries to do work requiring the use of his back.

The Functional Capacity evaluation and Dr. Naso and all treating physicians released Deputy Crowley to only sedentary work. In fact, the Functional Capacity Evaluation limited him to only "limited" sedentary work, thus excluding him under the Dictionary of Occupational Titles from 4 out of 5 physical demand categories due to the injury to his back and this excluding him from over 80% of the job classifications available throughout the entire economy. Per the vocational expert actually 89%.

Both the vocational expert, who personally evaluated Deputy Crowley and the records review expert for the Defendants opined that Deputy Crowley was only capable of doing sedentary work. There is no other evidence in the Record concerning loss of use.

11. That the Hearing Commissioner erred in making Findings of Fact #3 and #9 and by not recognizing and finding that both prior to and subsequent to the first injury, Deputy Crowley was a full-regular duty Deputy Sheriff working in the Fox Trot Unit of the Sheriff's Department who was performing the full range of physical demands and activities of a Deputy Sheriff. Subsequent to the second accident, he was placed on sedentary work only restrictions on which he remained from that date until the day that he left employment, During this time, he was reassigned to the Court House and to only be a, "security office for the Judge."
12. The Hearing Commissioner erred as a Matter of Law in making Findings of Fact 2,3,5 and 6 inferring and finding that (former) Deputy Crowley was provided "all appropriate medical care," whereas subsequent to the 2018 injury after the authorized treating physician, Dr. Nigel Watt recommended an MRI in February, no treatment was provided for the back and the back was totally denied until after the Claimant was sent for an evaluation by Dr. Cheatle, not in Florence, but in Myrtle Beach, SC, after which the MRI was provided over 9 months later. The Record establishes that there was no treatment between February and September for the Claimant's severe back injury, thus the finding that Claimant's injury to the back was "accepted" and that he was provided "all appropriate care" is not supported by and is contrary to the Record.
13. That the Hearing Commissioner erred in his review of the vocational expert testimony by not addressing in his Findings of Fact concerning the vocational expert testimony that Ms. Harriet Fowler did a detailed analysis under the Dictionary of Occupational Titles

Physical Demand Classification System concerning the number of job classifications that are available in each of the physical demand categories which concluded that since it was agreed by all physicians that the Claimant was excluded from all but, "sedentary" work, that assuming he could do the full range of sedentary work, he was still excluded from, "89% of job titles in the U.S. economy based on his physical capacities, and can only work from 2.67 to 5.28 hours total in an 8 hour day even in the sedentary physical demand category." This issue is not addressed in the report of the vocational analysis conducted by the vocational evaluator for the Defendants. This misunderstanding of the uncontradicted evidence requires reversal of the Hearing Commissioner's decision.

14. That the Hearing Commissioner erred as a Matter of Fact of Law by failing to address the essential issue for decision in any of his Findings of Fact or even to mention Deputy Crowley's opinion concerning the amount of loss of use of the back that he has. The Commissioner is required to make Findings of Fact and Conclusions of Law on every essential issue presented to the Commissioner for decision.
15. That the Commissioner erred as a Matter of Law and fact in reference to all Findings of Fact and all Conclusions of Law referencing the leg particularly including Findings of Fact 5, 6, 7, 15, 18, 20, 29, 30 and Conclusions of Law 2, 5 and in the Order part of the Award referencing the leg wherein there is no reference to the fact that Deputy Crowley has a documented radiculopathy based on the EMG/CNS studies and which is documented in his treatment notes with Integrated Pain Solutions. There is no evidence in the Order that the Commissioner took this into radiculopathy into consideration in reference to the Claimant's loss of use of the back or loss of use of the leg stemming from the injuries.
16. That while the Hearing Commissioner in part address the Claimant's need for further medical care to maintain his current condition and functioning level and Awarded the Claimant a Tens Unit and physical therapy, there is no reference to follow-up medical care or the authorized physician to prescribe a Tens Unit and/or order physical therapy. As it is set out in the records of Drs. Naso/Sarb and even the vocational expert used by the Defendants' report, the Claimant is on continuing medications and chronic pain management which is not addressed in the Commissioner's order.
17. That the Hearing Commissioner erred as a Matter of Law in his application under Conclusion of Law #4 as to the provisions of medical care under S.C. Code § 42-15-60 or that the future medical care needs of the Claimant under the undisputed evidence as a Matter of Law under Law was even considered by the Commissioner. Under the Claimant's burden of proof and the reliable, probative, and substantial evidence in the Record and uncontradicted medical opinion evidence as to the future medical care needs of the Claimant. If the Commission is not going to award any future medical care thought to be necessary by the treating physicians or under the evidence, the Commission must find substantial evidence in the Record for such denial and cite that evidence in support of any Findings of Fact or Conclusions of Law denying or limiting care.
18. That the Hearing Commissioner erred as a Matter of Law in making Finding of Fact #5, which is not part of the Law as established by the S.C. Supreme Court in reference to the loss of use of the back or for loss of use of the right leg, The Supreme Court has

specifically held, and the Statutes require that the Commission address the essential issue of fact and Law under S.C. Code § 42-9-30, the Scheduled Member Statute, which is loss of use, not impairment or disability. Disability is defined under S.C. law under S.C. Code § 42-1-120 and under Supreme Court decisions and the Statutes of our State, loss of earning capacity is not a requirement or a consideration in reference to loss of use under § 42-9-30. Loss of use under our Supreme Court decisions and particularly as to the back to be compensated based on the evidence in the Record based on the character of the injury and specifically loss of use to do work requiring the use of the back; and wage loss is not a consideration.

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19. That the Commissioner erred as a Matter of Law in making Conclusion of Law #6, wherein that was not an issue presented to the Commissioner for decision, nor was it cited, nor was it part of the Record in any way, shape or form nor was it in fact an issue before the Commissioner for decision. The Conclusion of Law is arbitrary, (based on random choice of personal whim rather than any reason or system) and capricious (a judicial decision which is subject of whim not based on and which does not follow law, logic, or proper procedures).
20. That the Hearing Commissioner erred as a Matter of Law in making Conclusion of Law #7 and in citing the case of Barr v. Darlington County School District which decision was not rendered at the time this matter was heard; it is not part of the Record, it was not submitted by any party; and is not a proper consideration for the Commissioner unless and except as raised by a party in argument or in support of their position.

It violates the neutrality of a Hearing Officer and the responsibility of a Commissioner under the Act for the Commissioner to look up and consider legal authority outside of that presented by the parties with the intent and purpose of denying the Claimant benefits.

Further, that part of Conclusion of Law #7 that refers to the Claimant's due process rights not being violated and the Commissioner not required to issue a Subpoena, does not reference the requirements of the United States Supreme Court that where a Claimant or any litigant asserts that their right to cross-examination of a document placed into evidence and specifically asks that the administrative body subpoena the witness so that they may exercise their right to cross examination the submission violates due process and is contrary to the Law and the Commissioner's oath of office.

That part addressing that the Commissioner is not required to issue a subpoena and referencing the Commissioner's responsibility and authority under the Act is contrary to Law. The Commissioner's responsibility under Statute and specifically 42-3-140 and 42-3-150 in reference to a request for a Subpoena which is made by a party and particularly the injured worker, is to determine and make a decision and set forth Findings of fact and Conclusions of Law supporting that review and decision as to whether or not the presence and attendance of a witness is necessary as it relates to "the questions in dispute;" and whether or not the testimony is deemed "necessary in connection with any proceeding" under this Title. S.C. Code § 1-23-330 specifically provides that the right to cross-examination shall be preserved in all administrative hearings, and that has been determined to require the attendance of witness for that purpose concerning any documentation that is placed into evidence or sought to be placed into evidence.

21. That the Hearing Commissioner erred as a Matter of Law under Conclusion of law #8 by not referencing the Statutes under which it is ordered, but more importantly as it relates to the Award set forth under Conclusion of Law #8 as to the Award that was made to Deputy Crowley for his back and leg wherein Deputy Crowley is entitled to an Award for loss of use of the back, for the full 500 weeks of compensation due under the Act, due to the character of his injury.
22. That the Hearing Commissioner erred in his Order part in his Award to the back and his Award to the leg as being contrary to Fact and Law and as to his provision of medical care which is contrary to Fact and Law under the undisputed medical and testimonial evidence in the record.

23. That the Hearing Commissioner erred as a Matter of Fact and Law by not making and Findings of Fact or Conclusions of Law in reference to whether or not the Claimant has sustained serious disfigurement. This factors into the Commissioner's consideration of the back. It is well documented and undisputed throughout the entire Record that Deputy Crowley has a documented, unchallenged radiculopathy in his right leg and that he suffers gait derangement. Gait derangement is an awardable disfigurement, but more importantly it is a factor that should have been considered and is not reflected in the Commissioner's Findings of Fact or Conclusions of Law. Without making Findings of fact or Conclusions of Law on the issue of serious disfigurement, the Commissioner erred within his Order by concluding that the Claimant did not sustain any serious or permanent disfigurement as a result of the accident.

The above referenced Exceptions are subject to amendment upon receipt of the Transcript.

Copies of the above assignments of error were furnished to all interested parties prior to the oral arguments presented before the Appellate Panel on December 20, 2021.

Pursuant to S.C. Code Ann. § 42-17-50, the Appellate Panel reviewed the Decision and Order and weighed the evidence as presented at the initial hearing. The Appellate Panel also considered all issues raised in the briefs of Appellant and Respondents. Based on their review of the evidence and consideration of issues raised on appeal, the Appellate Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That Employee, Employer, and Carrier are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, with Michael K.

Crowley as Employee-Claimant and Darlington County as Employer and South Carolina Association of Counties SIF as Carrier, Defendants.

2. That Claimant was an employee of the above-named Employer on and prior to May 5, 2017, and January 3, 2018, on which dates he did sustain an injury to the right knee and lumbar spine arising out of and in the course of his employment, and proper notice was given to Employer for both dates of injury. These were accepted claims, and Claimant received appropriate medical benefits.

3. Claimant did not miss any compensable time from work, and Darlington County at all times accommodated Claimant's work restrictions until the Claimant's voluntary resignation on January 4, 2021.

4. That the average weekly wage of Employee at the time of the above-described accident was \$864.35, making a compensation rate of \$576.26 applicable in this matter.

5. That Claimant received appropriate medical treatment for all compensable body parts through Dr. Watt, Dr. Cheatle, Dr. Sarb, Dr. Naso, Dr. Forrest, and Dr. Bethea.

6. That Dr. Watt, Dr. Cheatle, Dr. Sarb, and Dr. Naso were Claimant's authorized treating physicians.

7. On December 15, 2017—in connection with Claimant's first work accident occurring on May 5, 2017—on a Form 14B, authorized treating physician Dr. Watt of McLeod Pee Dee Orthopaedics opined to a reasonable degree of medical certainty that Claimant was at MMI as of October 5, 2017, assigned a 5% medical impairment to the right lower extremity, assigned no permanent physical limitations and recommended no additional treatment. After Claimant's second admitted work injury involving the same body part, Dr. Watt assigned no additional impairment. (Defendants' APA p. 26).

8. On October 25, 2019, in a Functional Capacity Evaluation, physical therapist

Christine Sbroglia of OneCall Physical Therapy opined Claimant demonstrated the ability to perform within the sedentary physical demand category. (Claimant's APA p. 2).

9. Throughout the administration and treatment for both compensable injuries by accident, and throughout the provision of all causally-related medical treatment, Claimant continued to work for Darlington County as a security officer for a judge, and Darlington County continued to accommodate Claimant's work restrictions until his voluntary retirement effective January 4, 2021.

10. On December 1, 2019, on a Form 14B completed by an authorized treating physician, Dr. Naso of Florence Neurosurgery and Spined opined to a reasonable degree of medical certainty that Claimant was at MMI as of November 21, 2019, assigned 8% medical impairment to the whole person or 10.7% medical impairment to the lumbar spine, assigned permanent physical limitations per the FCE, and recommended additional medical treatment in the form of a TENS unit and physical therapy. (Defendants' APA p. 309).

11. On January 29, 2020, in an IME for Claimant, Dr. Leonard Forrest of Southeastern Spine Institute opined to a reasonable degree of medical certainty Claimant was at MMI, assigned a 13% whole person impairment rating, a 17% regional impairment rating, opined Claimant had lost more than 50% function of his back, and recommended Claimant continue pain management. Dr. Forrest causally related Claimant's symptomology to both work accidents and opined that surgery would be unlikely to offer relief. (Claimant's APA p. 29).

12. On February 13, 2020, in a letter to Defendants, Dr. Naso opined: "From a neurosurgical perspective, Mr. Michael Crowley [Claimant] can continue to work in his current capacity which includes being able to carry a weapon and a taster. He can also accompany a judge, providing the judge security within and outside a courtroom, including at lunch. Otherwise, his restrictions as outlined in his functional capacity evaluation remain." (Defendants' APA p. 310).

13. On March 2, 2020, in a vocational evaluation Claimant sought on his own, vocational

evaluation Harriet Fowley of Harriet Fowler Vocational Services opined that based on a transferable skills capacity analysis, there were no jobs identified that would be within Claimant's transferable abilities, that Claimant can only perform work in a sedentary category on a limited basis, and it is more likely than not that Claimant will be unable to obtain and maintain substantial gainful employment. Finally, Harriet Fowler suggested that, if it were not for the "extensive accommodation" provided by Darlington County, Claimant would be capable of earning pay at or near minimum wage. (Claimant's APP pp. 47 – 48).

14. On April 10, 2020, in a vocational evaluation and labor market survey secured by Defendants, Rehabilitation Counselor James R. Myers of Corvel opined there were several positions Claimant would qualify for in the sedentary to light physical demand category. James Myers opined Claimant was a viable candidate for vocational rehabilitation, that Claimant had a demonstrated ability to learn, that Claimant could continue working in his current capacity, and even without his current job, he would be able to secure jobs within his restrictions making \$618.05 per week, lower than his pre-injury wages of \$769.91 per week. James Myers cited Claimant's high pain medication tolerance as a potential factor in his positive Waddell signs and strong pain focus as outlined in the FCE. Finally, James Myers' report identified numerous positions available within Claimant's abilities, including but not limited positions for a desk officer, collection manager, fraud investigator, management aid, dispatched, surveillance system monitor, customer services representative, collection clerk, code inspector, service advisor, information clerk, telephone solicitor, and file clerk. (Defendants' APA pp. 725 - 738).

15. On October 5, 2020, in a records review secured by Defendants, Dr. Richard Friedman of MUSC Department of Orthopaedics opined to a reasonable degree of medical certainty Claimant was at MMI for his right knee injuries for both his May 5, 2017, and January 3, 2018, accidents. He assigned a 0% impairment to the right lower extremity, returned Claimant to full,

unrestricted activities without limitations, and recommended no additional medical treatment. He thereafter completed a Form 14B (Physician's Statement) memorializing said opinions. (Defendants' APA pp. 739 – 740).

16. On December 17, 2020, in a second opinion requested by Claimant, Dr. James Bethea of MUSC Health Orthopaedics – West opined Claimant was at MMI for his lumbar spine, assigned no restrictions, recommended no additional medical treatment, and assigned a 3% medical impairment to the whole person. (Defendants APA pp. 742 – 743).

17. On March 4, 2021, at the hearing before the undersigned Commissioner, Claimant testified regarding his work-related injuries, the medical treatment he received, his light duty, his retirement, his ability to work and the issues he continues to have.

18. Regarding Claimant's prior medical history, at the hearing before the undersigned Commissioner, I find Claimant either admitted or could not recall the extent or nature of his previous complaints regarding his cervical spine, lumbar spine, right groin, right shoulder, and lower extremity complaints.

19. Claimant had a prior diagnosis of chronic pain syndrome for which he was actively engaged in pain management prior to both work accidents.

20. Regarding Claimant's right knee, he received impairment ratings of 5% from Dr. Watt and 0% from Dr. Friedman.

21. Regarding Claimant's spine, he received impairment ratings of 8% (10.7% regional) from Dr. Naso; 13% (17% regional) from Dr. Forrest; and 3% from Dr. Bethea.

22. With regard to Claimant's objection to the admissibility of Claimant's prior medical records, based upon his reading of *Clark v. Phillips Electronics, Opinion No. 5809 (Ct. App. 2021)*, Claimant asserts that prior physicians' opinions are not credible because they allegedly fail to address causation. This argument misses the mark and is not the holding from *Clark*. That court addressed

the issue of whether substantial evidence supported the Appellate Panel's decision to base its factual findings regarding the Claimant's injury, lost earning capacity, psychological overlay, and MMI date largely on Claimant's credibility without "explaining the basis of the credibility determination and how the determination rationally affects the disputed fact." (Id). In other words, if the Commissioner believes that a witness is credible, there needs to be an explanation as to why and how that conclusion is supported by the facts in the record. This case is not *Clark*. The issue in this case is what weight

to assign to medical records that may or may not state "to a reasonable degree of medical certainty" that Claimant's pre-existing conditions are or are not related to his work injuries. This is a proper inquiry. Additionally, the records may be admitted for impeachment purposes, and it is necessarily so that a party will not know whether or not the records will be used for that purpose until a witness testifies at the hearing. Therefore, Claimant's objection to the admissibility of Claimant's prior medical records is hereby denied and the records are hereby introduced into the record.

23. Regarding Claimant's argument that his due process rights to cross-examine witnesses were violated because there was a fee involved in securing Dr. Bethea's deposition testimony, this argument is misplaced and, when followed to its logical conclusion, lends itself to skewed results with high potential for abuse. This issue was similarly and squarely addressed in the recent Court of Appeals decisions in *Barr v. Darlington Cnty Sch. Dist.*, when the same counsel made arguments that an employee's due process rights were violated because the single commissioner allowed into evidence the reports of Dr. Pritchard, Dr. Wagner, Dr. Waid, and Dr. Eagerton. In that case, the employee asserted that because the Commissioner did not issue subpoenas for these witnesses to testify at the hearing and did not exclude the evidence, a violation of Regulation 67-612(f) of the South Carolina Code (2012) had occurred. The South Carolina Court of Appeals rejected this argument and relied on the holding of *Gadson v. Mikasa Corp.* (holding that a physician's report was admissible where it was timely filed and included in the APA submissions

despite Claimant's decision not to depose the physician). The court of appeals held that the Commission did not err in including the records from the employee's four treating physicians in that case because, although Defendants' APAs were untimely, the hearing had be rescheduled allowing a seven month timeframe to depose or subpoena the physicians. The Barr court declined to hold that there is any requirement that the Commission subpoena any witnesses. Similarly, in this case, Claimant had ample opportunity to take Dr. Bethea's deposition. Dr. Bethea's report is dated

December 17, 2020, and the hearing was not held until March 4, 2021. Moreover, Claimant scheduled Dr. Bethea's deposition for January 27, 2021 at 4:00 PM (See Claimant's APA pp. 145 – 147) but later canceled it after being informed he would have to pay for the costs associated with that deposition.

24. The Administrative Procedures Act only states that an administrative body may issue subpoenas. Nowhere in the Act is there a compulsory requirement to do so. In this case, Claimant is not arguing that the Commission incorrectly admitted into evidence APAs which were untimely (in fact, all of Defendants' APA submissions were timely), thereby depriving his client of notice and the opportunity to cross-examine witnesses. Instead, he argues the physician fee charged by Dr. Bethea for his appearance at the deposition frustrated his right to cross-examine witnesses as it related to the due process protections afforded by our state laws and the United States Constitution.

25. Under S.C. Reg. 67-1302, the South Carolina Workers' Compensation Commission establishes a maximum allowable payment for the provision of medical services based upon a relative value scale and a conversion factor set by the Commission. "The maximum allowable payments and any policies governing the billing and payment of services provided by medical practitioners shall be published in a medical services provider manual." S.C. Reg. 67-1302 (A) (1). This is commonly referred to as the "Fee Schedule."

26. Under the Medical Services Provider Manual, reimbursement for medical testimony

by deposition or testimony by appearance for physicians is governed by Code SC004, which outlines that depositions are capped at \$400 for the first hour and \$100 to report each additional quarter hour. I find that Dr. Bethea properly issued an invoice for his deposition at \$400 per hour in accordance with the Fee Schedule.

27. I further find that Dr. Bethea, who is a private citizen, is not a state actor as contemplated by our laws. He may charge appropriate fees for his time in testifying at a deposition.

The party wishing to dispute this evidence, or question the doctor concerning certain medical opinions, must pay to do so. In this case, Claimant had months to depose Dr. Bethea (Hrg. Tr. p. 12), scheduled Dr. Bethea's deposition (Claimant's APA pp. 145 – 147), and later canceled it upon discovering that he must pay for that deposition.

28. Because there is no requirement that the Commission subpoena a witness, the Commission has not deprived Claimant of any right to cross-examination. It should also be noted that these proceedings are civil (not criminal) in nature. Therefore, given that Claimant was afforded ample time and opportunity to cross-examine Dr. Bethea, and chose not to, I hereby find the principles of Claimant's due process were satisfied and not denied.

29. I give little to no weight to the opinions of Dr. Friedman, as his opinions were based solely on a records review and not a physical evaluation of the Claimant.

30. I find Claimant was at maximum medical improvement on November 21, 2019.

31. Claimant is entitled to an award of permanent partial disability for his right leg and back.

32. I find Claimant has suffered 10% permanent partial disability to his right leg as a consequence of both work accidents occurring on May 5, 2017, and January 3, 2018.

33. I find Claimant has suffered 25% permanent partial disability to his back as a consequence of the January 3, 2018 date of injury.

34. Claimant is entitled to a lump sum award.

35. Claimant is entitled to additional medical treatment necessary to maintain his level of disability at MMI as recommended by the authorization treating physician for Claimant's spine, which outlined by Dr. Naso is physical therapy and a TENS unit.

CONCLUSIONS OF LAW

1. Under § 42-1-130, Claimant was a covered employee at the time in question; and under § 42-1-140, Defendant/Employer was a covered employer under the Act.

2. Under § 42-1-160, Claimant did sustain an injury to his right knee and lumbar spine by accident arising out of and in the course and scope of his employment on May 5, 2017, and January 3, 2018.

3. Under §§ 42-9-10 and 42-1-120, Claimant was not entitled to compensation for a period of temporary total disability from either date of injury as Claimant continued to work for all relevant times with Darlington County within his restrictions.

4. Under § 42-15-60, Claimant was entitled to medical, surgical, hospital and other authorized treatment until November 21, 2019 the date on which Claimant reached maximum medical improvement. I further find Claimant is entitled to future medical treatment necessary to maintain his level of disability at MMI to include physical therapy and a TENS unit for his lumbar spine.

5. Under § 42-9-30, Claimant has sustained 10% permanent partial disability to the right leg and 25% permanent partial disability to his back. From such lump sum award, Defendants are not entitled to any credit.

6. Under S.C. Reg. 67-1302, and pursuant to the Medical Services Provider Manual, Dr. Bethea was entitled to charge a fee for his deposition in connection with this workers' compensation case.

7. Under *Barr v. Darlington Cnty Sch. Dist.* and *Gadson v. Mikasa Corp.*, and other controlling law, Claimant's due process rights were not violated, and the Commission was not required to issue a subpoena compelling a witness's attendance at the hearing.

8. Under the Award of the Commission which totals \$54,456.57, Deputy Michael Crowley was born on June 19, 1969 and at the time of the Hearing held on March 4, 2021 was 51 years old. Under the South Carolina Life Expectancy Tables SC Code §19-1-150, Deputy Crowley has a life expectancy of 28.28 hundredths years or 14 74.52 hundredths weeks. The Lump Sum Award which is ordered under this Award is to be paid by the Defendants in lieu of having to pay weekly payments to the Claimant throughout the course of his lifetime in the amount of \$36.95.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined that the Decision and Order of the Hearing Commissioner is hereby **AFFIRMED IN FULL**. The Findings of Fact and Conclusions of Law found in the Hearing Commissioner's Decision and Order, and as specified above, are hereby **AFFIRMED IN FULL**.

ORDER

IT IS HEREBY ORDERED that the Order of the Hearing Commissioner from which this appeal has been taken is hereby **AFFIRMED IN FULL**.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injuries occurring on May 5, 2017 and January 3, 2018, he has sustained 10% permanent partial disability to his right leg, for which he is entitled to 19.5 weeks of compensation, and which at the Claimant's compensation rate of \$576.26 equates to \$11,237.07 to be paid in lump sum fashion.

IT IS FURTHER ORDERED that as a result of Claimant's accidental injury occurring on January 3, 2018, Claimant has sustained 25% permanent partial disability to his back, for which he

is entitled to 75 weeks of compensation, equating to \$43,219.50 to be paid in lump sum fashion.

IT IS FURTHER ORDERED that, from the aforesaid awards, Defendants are not entitled to a credit or offset for the overpayment of temporary total compensation.

IT IS FURTHER ORDERED Claimant reached maximum medical improvement on **November 21, 2019**, and as such Defendants are not liable for any additional medical, surgical, hospital or other medical treatment to Claimant after said date other than physical therapy and a TENS unit for Claimant's lumbar spine.

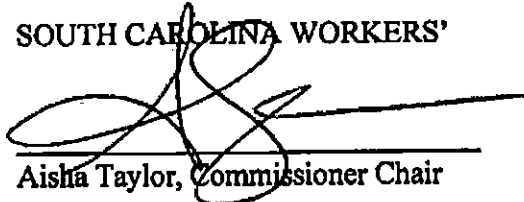
IT IS FURTHER ORDERED that Claimant has not sustained any serious and permanent disfigurement as a result of this accident, and as such Defendants are not liable for same.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED.

AFFIRMED:

SOUTH CAROLINA WORKERS'

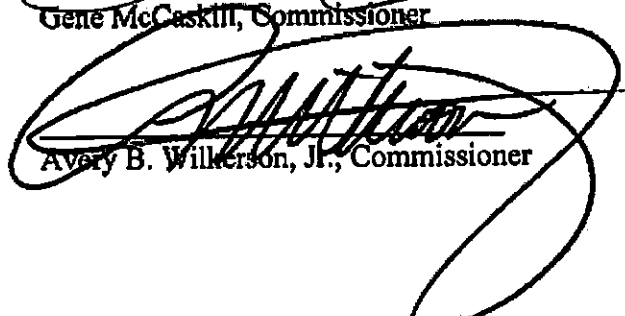


Aisha Taylor, Commissioner Chair

CONCUR:



Gene McCaskill, 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 Eugenia Hollmon on February 1, 2022