

APPELLATE PANEL
DECISION AND ORDER
OF THE
South Carolina Workers' Compensation Commission
WCC FILE NO. 1113278

Gary Jeter, Jr.

EMPLOYEE,

CLAIMANT/RESPONDENT

-v-

All My Sons Moving & Storage, Inc.

EMPLOYER,

AND

Hartford Insurance Co. of the Midwest

CARRIER,
DEFENDANTS/APPELLANT.

Appellate Panel Review held in Columbia,
South Carolina, on December 8, 2012, per notices
timely and properly served upon all parties of
interest.

Appellate Panel Decision and Order filed
3-12, 2013.

APPEARANCES:

Claimant/Respondent represented by Linda B.
McKenzie Esquire, Bowen, McKenzie & Bowen
P.O. Box 2547, Greenville, SC 29602.

Defendants/Appellant represented by Myada
El-Sawi, Esquire, Padgett Graham & Laney.
P.O. Box 1509 Greenville, SC 29601

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SC Court of Appeals

STATEMENT OF CASE

This case was originally tried before Commissioner Avery B. Wilkerson, Jr on February 24, 2012 in Greenville, SC. As a result of the evidence submitted at the hearing Commissioner Wilkerson issued an Order dated August 21, 2012 from which the employer has appealed.

The Hearing Commissioner Decision and Order set forth the following Findings of Fact:

FINDING OF FACT

1. Claimant was an employee of the Defendant-Employer on September 23, 2011, when he suffered a work-related injury when he was grabbed and lifted by the neck by his employer from a seated position, causing the immediate onset of symptoms involving Claimant's back, neck, and left arm.
2. At the time of Claimant's injuries, he was working in the course and scope of his employment for the Defendant-Employer, and his injuries arise out of his employment.
3. Claimant's injuries are "injuries by accident" within the meaning of §42-1-160, et seq.
4. Claimant's body parts injured by the work accident are, initially, the back, neck, and left arm.⁸
5. Claimant has an "Average Weekly Wage" of \$242.83 per week, with a resulting "Compensation Rate" applying of \$161.96. This Compensation Rate is, however, subject to change based on additional information being made available to the parties or the Commission at some future date.
6. Claimant received initial medical care from the Greenville Hospital System at Greenville Memorial Hospital Emergency Room. Thereafter, Claimant was referred by GHS physicians to Southeastern Neurosurgical & Spine Institute.

7. Claimant is in need of ongoing medical care for work-related injuries to the neck, left arm and back. Further, Claimant has not yet reached "Maximum Medical Improvement". Moreover, Claimant's additional medical treatment, most probably, will tend to "lessen the period of Claimant's disabilities" as that term is defined under the South Carolina Workers' Compensation Act.

8. Because this has been a denied case throughout, the Defendants did not provide medical care to the Claimant up to and including the present time. I find, therefore, that Southeastern Neurosurgical and Spine Institute is the proper medical provider to provide ongoing medical care to the Claimant. This is so because there is continuity of treatment between the Greenville Hospital Systems Emergency Room and its referral to Southeastern Neurosurgical & Spine Institute in its care. Southeastern Neurosurgical & Spine Institute is authorized to provide further treatment and care of the Claimant as they may deem necessary until further Order of this Commission.

9. The Defendants are responsible for payment of Claimant's medical care by Greenville Memorial Hospital, Southeastern Neurosurgical & Spine Institute, and all related diagnostic care ordered by these entities up to the present and continuing until such time as Claimant has reached "Maximum Medical Improvement". As stated in Paragraph 8 above, Claimant's care shall be at the direction of Southeastern Neurosurgical & Spine Institute.

10. Claimant is not presently able to work in any capacity. As such, Claimant is entitled to temporary total disability compensation from September 23, 2011 to the

⁸ Claimant testified of ongoing headaches from this accident. Because Claimant has not yet received a full compliment of medical treatment, it is yet to be determined whether this headache complex is separate and apart from Claimant's injuries to the back, neck, and/or left arm.

present and continuing until such time as he reaches "Maximum Medical Improvement" or until further Order of this Commission.

11. Claimant's injuries to his back, neck, and left arm are a direct and proximate result of his work injury of September 23, 2011.

12. The surveillance video of September 23, 2011 corroborates and is supportive of Claimant's testimony of his injuries. Similarly, Emergency Room records further corroborate and are supportive of Claimant's injuries, above-described.

13. At the time of the January 24, 2012 hearing in this matter, the Defendant's requested a Coverage and Compliance hearing on the issue of insurance coverage. That hearing has now been held, which resulted in a Finding that Hartford Insurance Co the Midwest is the proper insurance carrier for this work-related accident. Reference is made to the Commission's Order dated June 1, 2012, to that effect.

The Hearing Commission's Decision and Order also sets forth the following Conclusions of Law:

CONCLUSIONS OF LAW

1. All parties to this proceeding are subject to and bound by the South Carolina Workers' Compensation Act.
2. Section 42-1-160, Code of Laws of South Carolina (1976), as amended, defines "injury".
3. Claimant's "Average Weekly Wage" is determined to be \$242.82 per week, with a resulting "Compensation Rate" of \$161.96 applying.⁹

⁹ This calculation of "Average Weekly Wage" is subject to further proof on the issue as is described in the body of this Order.

4. Claimant sustained a compensable injury by accident arising out of and in the course and scope of his employment with the Defendant-Employer on September 23, 2011.
5. Claimant's injuries include injuries to the back, neck and left arm.
6. As a result of Claimant's injuries sustained in the subject work accident, Claimant has been temporarily totally disabled from September 23, 2011 to the present and continuing.
7. Claimant is not presently at "Maximum Medical Improvement" with respect to his injuries.
8. Claimant is entitled to past temporary total disability compensation for the period 9/23/11 through 8/1/12, in the amount of **\$7,172.51**, representing 44 2/7 weeks of compensation.
9. Claimant is entitled to ongoing temporary total disability compensation until he reaches "Maximum Medical Improvement" with respect to all of his work injuries.
10. Section 42-15-60 defines Claimant's entitlement to "medical care".
11. Claimant is entitled to payment of his past medical treatment provided by Greenville Hospital System (Greenville Memorial Hospital Emergency Room), Southeastern Neurosurgical & Spine Institute, and all diagnostic and therapy treatments referred by them to the present and continuing until further Order of this Commission.

Within the statutory, counsel for the Employer and Hartford Ins. Co. of the Midwest filed an application for review in the case setting forth the following assignments of error:

GROUND FOR APPEAL

1. The Hearing Commissioner erred in finding as a fact and concluding as a matter of law that Claimant's alleged injuries to his back, neck, and left arm are a direct and proximate result of an alleged work injury on or about September 23, 2011, the error being that the medical evidence suggest that Claimant's ailments are limited to his neck, and left thumb.

2. The Hearing Commissioner erred in finding as a fact and concluding as a matter of law that Claimant is entitled to ongoing medical care for injuries to the back, neck, and left arm, the error being that Claimant's ailments involve the neck and left thumb, and there is no proof or evidence that additional medical treatment is reasonable, necessary or would tend to lessen disability.

3. The Hearing Commissioner erred in finding as a fact and concluding as a matter of law that Defendants are responsible for payment for all medical care, previously incurred and ongoing, related to Claimant's alleged work accident, the error being that Claimant did not suffer injuries resulting from a compensable accident.

4. The Hearing Commissioner erred in finding as a fact and concluding as a matter of law that Claimant is entitled to temporary total disability benefits from September 23, 2011 and onward, the error being that there is no evidence proving that any medical provider ever restricted Claimant from work.

5. The Hearing Commissioner abused his discretion in failing to limit the period of Claimant's entitlement to temporary total disability benefits, the error being that claimant was able to work or work in a modified capacity while undergoing physical therapy.

6. The Hearing Commissioner erred in finding as a fact and concluding as a matter of law that Claimant is entitled to temporary total disability compensation for his alleged

injury to his back and left arm, the error being that Claimant's ailments involve only his neck and left thumb.

7. The Hearing Commission erred in find as a fact and concluding as a matter of law that Claimant sustained a compensable injury by accident, the error being Claimant's allegations of a compensable injury are not supported by required expert/medical opinion.

Briefs and oral argument with regard to the above issues were represented to the Appellate Panel pursuant to S.C. Code Ann. §42-17-50 (1985), the Appellate Panel reviewed the award and weighed the evidence in the record as presented at the initial hearing. The Panel also considered all issues raised in the briefs of the Appellate and Respondent. The Panel makes the following Findings of Fact and Conclusion of Law.

FINDING OF FACT

1. Claimant was an employee of the Defendant-Employer on September 23, 2011, when he suffered a work-related injury when he was grabbed and lifted by the neck by his employer from a seated position, causing the immediate onset of symptoms involving Claimant's back, neck, and left arm.
2. At the time of Claimant's injuries, he was working in the course and scope of his employment for the Defendant-Employer, and his injuries arise out of his employment.
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⁹ This calculation of "Average Weekly Wage" is subject to further proof on the issue as is described in the body of this Order.

After careful review in the present case, the Appellate Panel of the South Carolina Workers' Compensation Commission has determined the Order of the Hearing Commission 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 Single Commissioner from which this appeal has been taken is hereby affirmed in full.

IT IS AFFIRMED, that the Claimant's claim for benefits under the South Carolina Workers' Compensation Act is hereby found compensable.

IT IS ORDERED THAT, Defendants shall pay Claimant for past-due temporary total disability compensation at the rate of **\$161.96** per week for the period of 9/23/11 to 8/1/12, in the amount of **\$7,172.51**.

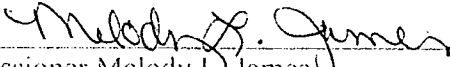
IT IS FURTHER ORDERED THAT, Claimant's temporary total disability compensation shall continue after 8/1/12 on a continuing weekly basis until such time as Claimant reaches "Maximum Medical Improvement" and/or further Order of this Commission.

IT IS FURTHER ORDERED THAT, the Defendants shall pay all medical care of Claimant previously incurred, and ongoing care, related to the work accident of September 23, 2011, as is outlined in the body of this Order.


IT IS FURTHER ORDERED THAT, Claimant shall be entitled to further medical care at the direction and hands of Southeastern Neurosurgical & Spine Institute, and to all other medical providers referred by them for Claimant's treatment.

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



Commissioner Melody D. James
Chairman of the Appellate Panel



Commissioner T. Scott Beck



Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

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

By Valerie Deller on March 12, 2013