

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

Mar. 21, 2025

TERRANCE UNDERWOOD v. VELOCITY CONSTRUCTION OF VIRGINIA INC
NORTHSTONE INSURANCE COMPANY, Insurance Carrier
BRICKSTREET MUTUAL INSURANCE COMPANY, Claim Administrator
Jurisdiction Claim No. VA00001800907
Claim Administrator File No. 2020030235
Date of Injury: December 17, 2020

W. Joseph Owen, III, Esquire
For the Claimant.

Michael P. Del Bueno, Esquire
For the Defendants.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The claimant requests review of the Deputy Commissioner's August 8, 2024 Opinion denying his claims for a left leg injury, permanent partial disability benefits, and permanent total disability benefits. We AFFIRM.

I. Material Proceedings

The claimant sustained a compensable injury by accident on December 17, 2020. The Commission entered a May 4, 2021 Award Order granting medical benefits for a hip injury and temporary total disability beginning January 4, 2021.

A September 7, 2022 Commission Opinion terminated the claimant's compensation benefits effective April 5, 2021, based upon the claimant's return to work. The claimant's employment was terminated on June 11, 2021. The Commission found the claimant was partially

disabled as of June 12, 2021, yet failed to market his remaining work capacity. Therefore, we held the claimant was not entitled to a resumption of temporary total disability benefits. In a March 5, 2024 Opinion, the Court of Appeals of Virginia affirmed the Commission's Opinion.

In claims filed on January 13, 2022, March 16, 2022, and March 13, 2024, the claimant sought permanent partial disability and/or permanent total disability benefits beginning April 6, 2021 based on a 76% whole body impairment rating, a permanent total disability award beginning April 6, 2021, and medical benefits for injuries to his legs, lower back, spine, and pelvis.

The defendants disputed the claims on the grounds that: (1) there is no causal connection between the injury and medical treatment or disability; (2) the claimant is not disabled or impaired to the extent alleged; (3) the medical records do not support the period of disability alleged; and (4) the claimant failed to market his remaining work capacity.

Following an evidentiary hearing and the submission of post-hearing briefs, the Deputy Commissioner issued an August 8, 2024 Opinion. She found the claimant met his burden of proving compensable injuries to his pelvis and lumbar spine. Specifically, the claimant sustained a pelvic fracture and lumbar transverse process fracture in the accident. The Deputy Commissioner found the evidence failed to prove the claimant suffered an injury to his legs as a result of the accident.

Regarding the claim for permanent partial impairment, the Deputy Commissioner found no medical opinion upon which she could assign an impairment rating to a scheduled member. Lastly, the Deputy Commissioner found that without evidence of a quantifiable rating in two scheduled members, she was unable to reach the question of whether the claimant could use those members in gainful employment so as to award permanent total disability benefits.

The claimant requests review. He assigns error to the denial of his claims for a leg injury, permanent partial disability benefits, and permanent and total disability benefits.

II. Summary of the Evidence¹

The claimant was working as a superintendent for the employer on December 17, 2022. He was assisting in standing up a wall when braces broke and the wall fell on top of him, crushing him. The claimant suffered a pelvic fracture and lumbar transverse process fracture in the accident. He underwent lumbopelvic stabilization and fusion surgery. He was subsequently diagnosed with cauda equina syndrome.

At the request of Dr. Aaron Jones, the claimant underwent a functional capacity evaluation (FCE) by Nick Gallo, PT, DPT, on December 3, 2021. Regarding the claimant's physical tolerance, Gallo summarized that, "Mr. Underwood demonstrated the ability to perform Lifting, Carrying, and Pushing/Pulling in the Sedentary PDL and extending into the Light PDL on the Occasional basis." Gallo also provided a permanent impairment rating using the sixth edition of The American Medical Association's Guide to the Evaluation of Permanent Impairment. He assigned a "Class 1" and 10% Grade to "Station and Gait Disorders," noting the claimant "[r]ises to standing position; walks but has difficulty with elevations, grades, stairs, deep chairs, and/or long distances." Gallo assigned a "Class 4" and 50% Grade for Neurogenic Bowel, Class 4 and 30% Grade for Neurogenic Bladder, and a "Class 3" and 15% Grade for Neurogenic Sexual Dysfunction. He also assigned a Class 2 and 7% Grade for moderate dysesthetic pain. Combining these values, Gallo calculated 76% whole person impairment.

¹ We recite the medical history only to the extent necessary to explain our decision.

On December 16, 2021, the claimant was seen by Dr. Ricky Placide, MD, orthopedic surgeon, for a one-year follow-up after undergoing lumbopelvic stabilization and fusion surgery for a lumbopelvic dissociation traumatic injury. Dr. Placide opined the claimant had reached maximum medical improvement with respect to the spinal pelvic surgery. He opined the claimant had no restrictions from his standpoint.

On January 11, 2022, the claimant was seen by Dr. Jones, Physical Medicine and Rehabilitation specialist, for a follow-up visit regarding a primary diagnosis of spasticity. Other visit diagnoses listed included cauda equina spinal cord injury, insomnia, abnormality of gait, left foot drop, and neuropathic pain. Dr. Jones's impression and plan included the note: "Cauda equina syndrome, incomplete AIS D SO paraplegia MMI. FCE/impairment rating reviewed, agreed with and signed. Fitting well into manual wheelchair. Uses SPC with ambulation. Discussed that patient can don his left AFO as needed, particularly at the end of the day should he fatigue." He instructed the claimant to continue Lyrica for neuropathic pain, Robaxin for spasms, and Trazadone for insomnia. His impression also included, "Lumbar stenosis and pelvic fx s/p LS-pelvis PSF." He noted that Dr. Placide believed the claimant had reached maximum medical improvement in regards to his spinal pelvic surgery. The claimant was instructed to continue timed voids for neurogenic bladder, continue to follow up with Urology as scheduled for neurogenic bladder and erectile dysfunction, and continue the program for neurogenic bowel. Dr. Jones renewed the claimant's handicap tag for six months. He reviewed the FCE and noted, "whole person impairment 76%, FCE shows ability to perform light duty 20 lbs. NO lifting or carrying >201bs. Seated rest breaks as needed -every hour."

Dr. Jones completed an Attending Physician's Report on March 31, 2022. He indicated he had treated the claimant on November 17, 2021 and January 11, 2022, and that he diagnosed the claimant with cauda equina syndrome related to the work injury. He indicated the claimant suffered a pelvic fracture and "lumbar s tp" fracture from the accident. His findings included, "3-4/5 strength BLE. X-rays 7/5/21 stable posterior L5-S1 fusion." He opined the claimant was disabled from work beginning December 17, 2020 and capable of light duty as of January 11, 2022. He indicated the claimant had reached maximum medical improvement and had permanent defect or disfigurement.

The claimant returned to Dr. Jones on March 14, 2023. Dr. Jones recorded:

Cauda equina syndrome, incomplete AIS D SCI paraplegia (work-related injury 2020) At MM I. Fitting well into old manual wheelchair, no current interest in updating. Uses SPC with tripod for ambulation. Can walk 3/4 mile. No longer using left AFO. Received an electric scooter for long distance mobility. Still needs car lift. Rx provided. Recommend going through his attorney and using Mobility Works.

The claimant's prescriptions were continued and the claimant was instructed to continue the same plan for his neurogenic bowel and bladder.

The claimant testified he does not believe he could perform his pre-injury job anymore because he does not have good balance, uses a cane to walk, cannot walk upstairs very well, cannot walk long distances, cannot sit down for a long period of time, and cannot feel the bottom of his feet. He explained that in addition to a cane, he uses a wheelchair or scooter when he wants to go to a larger place where he is unable to walk. He acknowledged that he can drive, and can walk about three-quarters of a mile with his cane.

III. Findings of Fact and Rulings of Law

A. Injury by Accident to the Legs

To prove an injury by accident,² the claimant must present preponderating evidence that he experienced “(1) an identifiable incident; (2) that occurs at some reasonably definite time; (3) an obvious sudden mechanical or structural change in the body; and (4) a causal connection between the incident and the bodily change.” *Hoffman v. Carter*, 50 Va. App. 199, 212 (2007) (quoting *Chesterfield Cty. v. Dunn*, 9 Va. App. 475, 476 (1990)). Thus, “[a] condition causing disability or pain will not be considered an ‘injury’ for purposes of the [Workers’ Compensation] Act unless accompanied by a ‘sudden obvious mechanical or structural change’ in the body.” *Alexandria City Pub. Sch. v. Handel*, 299 Va. 191, 197 (2020) (quoting *Snead v. Harbaugh*, 241 Va. 525, 528 (1991)).

On review, the claimant argues:

Mr. Underwood, in addition to the pain, tingling, and numbness experienced in his legs and feet, was diagnosed with partial paraplegia, no dorsiflexion in left ankle, a left foot drop, spasticity, and an abnormality of gait. While mere pain alone may not qualify as a mechanical or structural change, a mechanical and/or structural change should be found when that pain is in combination with all of Mr. Underwood’s other symptoms and diagnoses.

(Cl.’s W.S. 6.)

While we do not doubt the diagnoses of the claimant’s physicians or the claimant’s testimony regarding the symptoms and functioning of his lower extremities, there is no evidence

² The claimant has alleged an injury by accident to his legs, and thus, this is the theory of compensability we address herein. We do not address compensability of the claimant’s leg symptoms under the doctrine of compensable consequences, which stands for the principle that “all the medical consequences and sequelae that flow from the primary injury are compensable.” *Berglund Chevrolet, Inc. v. Landrum*, 43 Va. App. 742, 750 (2004) (quoting 1 Arthur Larson & Lex K. Larson, *Larson’s Workers’ Compensation Law* § 10.01, at 10-3 (2003)).

that the claimant suffered a structural or mechanical change to his legs in the accident. Neither the claimant's testimony nor the medical records establish the claimant suffered a direct injury to his legs in the accident. Rather, the evidence establishes that his incomplete paraplegia, gait abnormalities, and other lower extremity symptoms are due to the cauda equina syndrome developed as a result of the pelvic fracture and lumbar transverse process fracture suffered in the accident. The various problems with the claimant's legs, resulting from his compensable injuries, do not in and of themselves qualify as an "injury by accident," as that term is defined by the case law interpreting the Virginia Workers' Compensation Act.³

B. Permanent Partial Disability

Section 65.2-503(B) of the Act provides for compensation for permanent loss of use of certain body parts cause by a compensable accident. The claimant in this matter suffered compensable injuries to the hip, pelvis, and lumbar spine. Although these are not scheduled members under this section of the Act, compensation under Code § 65.2-503 may be awarded when a work-related injury *manifests* itself in a scheduled member. *Washington Metro Area Transit Auth. v. Rogers*, 17 Va. App. 657, 659 (1994); *see also Loudoun Cty. v. Richardson*, 70 Va. App. 169, 177 (2019). The claimant argues that his hearing testimony and the medical records, including the whole person impairment rating, are sufficient evidence that his injury has manifested in a compensable loss of use of his feet and legs.

As discussed above, we do not doubt that the claimant's injuries have caused lower extremity symptoms. Indeed, the medical evidence establishes the claimant has suffered a

³ To the extent the claimant proved the compensable injuries affected his lower extremities, treatment therefore could be a compensable consequence.

functional loss of use of his legs from the accident—he has been diagnosed with incomplete paraplegia, and it is undisputed that he requires a cane to walk and a wheelchair for longer distance mobility. However, we are unable to award benefits under Code § 65.2-503(B) based on this evidence alone. “The commission, in determining permanent partial disability benefits, must rate [the] claimant’s percentage of incapacity based on the evidence presented to it.” *United Airlines, Inc. v. Sabol*, 47 Va. App. 495, 501 (2006) (citing *Hungerford Mech. Corp. v. Hobson*, 11 Va. App. 675 (1991)). “Thus, a medical rating of the employee’s disability is evidence which an employee offers in order to meet the burden of proof.” *Hobson*, 11 Va. App. at 677-78. “[A] numerical rating [of the permanent partial loss of use of the injured body part] is required so that benefits may be proportionally awarded according to the percentage loss and determined by the schedule in Code § 65.2-503(B).” *Va. Nat. Gas, Inc. v. Tennessee*, 50 Va. App. 270, 279 (2007) (quoting *Hill v. Woodford B. Davis Gen. Contractor*, 18 Va. App. 652, 654 (1994)); see also *Richardson*, 70 Va. App. at 176.

In this case, the claimant obtained an impairment rating, which was reviewed and agreed to by Dr. Jones. However, the impairment rating assigned was a whole person impairment rating. The Workers’ Compensation Act contains no provision for awarding benefits based upon whole person impairment. Gallo assigned a whole person impairment rating of 76% based upon gait and station disorders, neurogenic bowel, neurogenic bladder, neurogenic sexual dysfunction, and moderate dyesthetic pain. The portion of the rating attributable to station and gait disorders suggests loss of function of the claimant’s lower extremities. However, we are unable to attribute a specific rating to the claimant’s left or right leg based upon the 10% value assigned for “station

and gait disorders” generally. On the evidence before us, it would be speculative to award permanent partial disability benefits for a certain percentage loss of use of either leg or foot.

C. Permanent Total Disability

Our finding above precludes an award of permanent total disability benefits pursuant to Virginia Code 65.2-503(C)(1)⁴, which provides:

C. Compensation shall be awarded pursuant to § 65.2-500 for permanent and total incapacity when there is:

1. Loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in the same accident.

The claimant argues he is entitled to benefits under this section based upon permanent loss of use of his legs and feet caused by the accident. However, a specific incapacity rating to the scheduled members is required before permanent total disability benefits may be awarded. *Cafaro Constr. Co. v. Strother*, 15 Va. App. 656 (1993); *Norris v. Fairfax Cty. Sch. Bd.*, No. 3067-99-4 (Va. Ct. App. July 5, 2000). Based on the case law, absent evidence by which we could assign specific disability ratings for the loss of use of the claimant’s legs or feet, the claimant has not sustained his burden of proving entitlement to permanent and total disability benefits. *See Norris*, 3067-99-4.

IV. Conclusion

For these reasons, we affirm the Deputy Commissioner’s August 8, 2024 Opinion.

⁴ We recite the former version of Virginia Code § 65.2-503(C)(1), which was in effect on the date of the accident. The statute was subsequently amended effective July 1, 2022.

We enter an award of medical benefits based upon the Deputy Commissioner's finding that the claimant suffered compensable injuries to his pelvis and lumbar spine in the December 17, 2020 accident.⁵

AWARD

Pursuant to Virginia Code § 65.2-603, medical benefits are awarded for as long as necessary for reasonable, necessary, authorized, and causally related treatment for injuries the claimant sustained to the hip, pelvis, and lumbar spine in the December 17, 2020 accident.

This case is ORDERED removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerk's Offices of the Commission and the Court of Appeals of Virginia.

⁵ Neither party requested review of this finding and it is therefore final.