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S.C. Supreme Court Addresses Physical Brain Damage: Requires Damage That is Both Permanent and Severe

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Practice Areas:

- Workers' Compensation

In two cases handed down on March 6, 2013, the South Carolina Supreme Court addressed what is meant by "physical brain damage." Sparks v. Palmetto Hardwood, Inc., Opinion No. 27229 (S.C. Sup.Ct. filed March 6, 2013); Crisp v. SouthCo., Inc, Opinion 27230 (S.C. Sup. Ct. filed March 6, 2013).

Since 1984, the Act has provided for lifetime benefits for persons permanently and totally disabled "as a result of a compensable injury is a paraplegic, a quadriplegic, or who has suffered physical brain damage." SC Code Ann. §41-9-10(C). Until now, we had no guidance as to what "physical brain damage" meant or whether the physical brain injury must have contributed to the disability. Now we do.

In Sparks, Claimant was struck in the head by a three- to four- inch cubic piece of steel when he was removing metal from under a gang saw and the metal exploded. Claimant testified to substantial head pain, loss of cognitive ability, inability to read without severe headaches, loss of mathematical abilities, hand tremors, anxiety, and more. Medical providers' opinions were split as to whether he suffered physical brain damage, but they all agreed he had sustained a concussion. Medical records revealed Claimant failed to show he had been dazed and confused after the injury or suffered nausea, vomiting, cognitive impairment or post-concussive headaches. The Commission awarded 500 weeks for permanent and total disability but did not find Claimant suffered physical brain damage. Claimant appealed.

In a case of first impression, the Court affirmed and, for the first time, gave us guidance as to what the phrase "physical brain damage" means. Recognizing the phrase is in the same sentence as two other severe conditions, paraplegia and quadriplegia, the Court held physical brain damage must also be severe and permanent. This is more than the presence of mere physical injury. A concussion is a physical injury but may not be permanent.

The Court went on to caution that "physical" as used here did not impose a requirement that the injury be proved through an "objective diagnostic medium." Some physical injuries cannot be revealed by diagnostic instruments. So the burden is on the claimant to prove physical brain damage, but benefits should not be denied simply because brain damage can not be seen on MRI.

In Crisp, Claimant suffered multiple injuries, including a gash in the back of his head when he was struck by the bucket of a Bobcat. The Commission affirmed the hearing commissioner's order that Claimant did not suffer physical brain damage but also found he was not at MMI for his head injuries. Citing Sparks, the Supreme Court noted physical brain damage requires permanency and physicality, but "the severity of the injury is the lynchpin of the analysis." Thus, the inability to return to suitable gainful employment is inherent in the requirement the brain injury be severe.

Because the Commission had not found Claimant at MMI for his head injury, the case was remanded for a determination of MMI, permanency, and whether the injury constituted physical brain damage.

Justice Pleicones, who authored the opinion in Sparks, wrote separately saying that, while he agreed with the result in Crisp, he did not feel it necessary to reach the question of what constitutes severity and would have waited for another case.

About Stan Lacy

Stan Lacy co-founded Collins & Lacy in 1984, and he practices in the area of workers' compensation. Stan graduated from the University of Virginia with a degree in Aerospace Engineering in 1967. While at the University of Virginia, he served as President of the Engineering School, President of Sigma Pi Fraternity and was a member of the Trigon Society. He then served four years in the United States Air Force, becoming a captain, where he was awarded the Air Force Commendation Medal for the work he did on the Vietnamization of the war in Southeast Asia. He also received the Vietnam Service Medal and the National Defense Ribbon. He earned his law degree from the University of South Carolina School of Law in 1974 and was admitted to practice in South Carolina during the same year. He began teaching workers' compensation as an adjunct instructor at the University of South Carolina School of Law in 1981 and has continued to teach ever since. He also frequently conducts workshops on compensation laws.

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