

A spinal cord stimulator implantation, by itself, does not constitute an indirect injury to the back allowing claimant to make a wage loss claim.

Written June 14, 2013



Peter Dworjanyn, Shareholder
Direct Line: 803.255.0404
pdworjanyn@collinsandlacy.com

In *Colonna v Marlboro Park Hospital* (Op. No. 5117, April 17, 2013), the claimant slipped on a wet floor and injured her right ankle and foot. To treat the pain, her physician implanted a spinal cord stimulator in her back. Claimant alleged this entitled her to make a wage loss claim under § 42-9-10 on the ground the spinal cord stimulator affected another body part, her back. The South Carolina Court of Appeals rejected that argument and affirmed the Commission's denial of claimant's wage loss claim.

The Court of Appeals based its decision based on *Singleton v. Young Lumber Co.*, 236 S.C. 454-471, 114 S.E.2d 837, 845 (1960). In *Singleton*, the South Carolina Supreme Court held, "Where the injury is confined to the scheduled member, and there is no impairment of any other body part because of such injury, the employee is limited to the scheduled compensation [pursuant to Section 42-9-30] . . . To obtain compensation in addition to that scheduled for the injured member, claimant must show that some other part of his body is *affected*." (Emphasis added). The *Singleton* rule recognizes that when two or more injuries occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together. Accordingly, whether claimant was permanently and totally disabled depended on whether her initial injury (and the resulting implantation) had a disabling effect on her back.

The Court of Appeals concluded that a thorough reading of *Singleton* and its progeny required a claimant to prove not only that another body part was affected by the insertion of the treatment device, but that another body part was impaired or injured for section 42-9-10 to apply. The circuit court, affirming the Commission, held that the stimulator had not caused the claimant causally related symptoms, pain or ill effects in the spine, and therefore the body part was not "affected" under the Act.

The claimant also argued she was entitled to make a wage loss claim under 42-9-10 because her injury aggravated her pre-existing psychological problems. However, in a 2005 Order, a hearing commissioner concluded that although she had some aggravation of pre-existing psychological problems, she failed to prove her need for psychological treatment was the sole result of the accidental injury. In a 2007 Order, she stipulated that she did not sustain a compensable psychological injury "per prior Order of the Commission." Claimant did not appeal from the Order. Accordingly, Court of Appeals held compensability of the pre-existing psychological problems was not properly before it.

Finally, the claimant argued that the Circuit Court had erred in concluding claimant was at MMI as there was no evidence that she had been medically released for her alleged back injury stemming from the implantation of the spinal cord stimulator. The Court of Appeals disagreed, concluding that she did not sustain a compensable back injury and therefore a finding of MMI for the back was unnecessary.

About Pete Dworjanyn

Pete Dworjanyn is a shareholder and chair of Collins & Lacy's Insurance Coverage Practice Group and founding author of the South Carolina Insurance Law Blog. Following law school, Pete served as a law clerk for the Honorable Julius H. Baggett, Eleventh Judicial Circuit and as Assistant Solicitor in the Eleventh Circuit Solicitor's Office. Prior to joining Collins & Lacy in 1999, Pete was in private practice, focusing on civil litigation. Pete's reputation has earned him a BV rating by Martindale-Hubbell. He also is one of the Best Lawyers in America, the oldest and most respected peer-review publication in the legal profession.

About Collins & Lacy, P.C.

Collins & Lacy is a defense litigation firm in South Carolina that delivers valuable legal representation for our clients through solid preparation, thorough execution, and client-oriented service aimed at success. With offices in Charleston, Columbia, Greenville and Myrtle Beach, the firm represents local, regional and national clients in the areas of:

- construction
- employment law
- hospitality/retail & entertainment law
- insurance/bad faith
- products liability
- professional liability
- public policy
- commercial transportation
- workers' compensation

Collins & Lacy is committed to upholding the highest standards for integrity, civility and community service. For more information, visit www.collinsandlacy.com.