

How to Define Physical Brain Damage in Workers' Compensation Cases

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The definition of physical brain damage is often a debated topic that arises in workers' compensation claims. The question of whether a claimant who has suffered from a mild concussion means that he has suffered physical brain damage appears often before the South Carolina Workers' Compensation Commission and the answer has never been clear cut.

Pursuant to S.C. Code Ann. Section 42-9-10, when the incapacity for work, resulting from an injury, is total, the employer shall pay an injured worker benefits up to 500 weeks. Thus, if a claimant is unable to return to work due to his injury and is deemed permanently and totally disabled, he is entitled up to 500 weeks.

However, under subsection (C), the statute goes on to state that notwithstanding the 500-week limitation, any person deemed totally and permanently disabled who is a paraplegic, quadriplegic or who has suffered physical brain damage is not subject to the 500-week limitation and shall receive benefits for life. Thus determining whether a claimant has suffered physical brain damage becomes increasingly more important to determine the value of your claim.

A recent case, *Sparks v. Palmetto Hardwood, Inc.*, Opinion No. 27229, was issued from the South Carolina Supreme Court, which helps illustrate the court's definition of a physical brain damage. In this case, Sparks was injured on three separate occasions while working in the course and scope of his employment with Palmetto Hardwood, Inc. In particular, two of his claims involved an injury to his back and his last claim involved a blow to the head by a three to four inch cubic piece of metal.

The claimant filed for workers' compensation benefits and testified at a hearing before the Single Commissioner that he suffered from substantial head pain, loss of cognitive ability and other brain-function-related symptoms to include inability to read without severe headache, loss of mathematical abilities, inability to balance while standing or to walk without a can, hand tremors, anxiety and more.

In addition to the claimant's testimony, the parties submitted medical evidence by six doctors relative to whether the claimant suffered from physical brain damage. Interestingly, two opined he might have suffered from a mild brain injury but any difficulties resulting from the injury were intermingled with other problems, including pain and psychiatric disturbances. Three opined that the claimant suffered from a physical brain injury and one opined he had no physical brain injury.

The Single Commissioner ultimately found that he sustained a compensable injury to his head, including a mild concussion, but found his testimony was not credible regarding the extent of his brain injury. Further, the Single Commissioner found that the claim for physical brain damage bordered on being frivolous. The commissioner found he was limited to 500 weeks of compensation pursuant to S.C. Code Ann. Section 42-9-10.

The claimant filed an appeal to the Circuit Court, which ultimately remanded the decision back to the commission for more specific explanation regarding the finding that he did not suffer from a physical brain injury. The commission clarified that the claimant failed to meet his burden of proof to establish a physical brain damage as contemplated in S.C. Code Ann. Section 42-9-10 (C). This decision was affirmed by both the Circuit Court and the S.C. Court of Appeals. The Supreme Court then granted certiorari and affirmed.

The decision indicates that the South Carolina General Assembly meant for physical brain damage to have a more “restrictive meaning” as subsection (C) allows for lifetime benefits, thus limiting its definition. The court went on to state that the context of the statute implies that physical brain damage was meant to require severe, permanent impairment of normal brain function. It emphasizes that this definition also complies with the purpose behind the workers’ compensation statutes, which is to provide a no-fault system focusing on quick recovery, relatively ascertainable awards and limited litigation. In exchange for these benefits, the parties and society as a whole bear some costs; they are not designed to compensate the employee for his injury, but merely provide him with the bare minimum of income and medical care to keep him from being a burden to others. See *Wigfall v. Tideland Utilities, Inc.*, 345 S.C. 100, 115-16, 580 S.E.2d 100, 107-08 (2003).

The court also found that S.C. Code Ann. Section 42-9-10(C) requires that the injury is physical. It refers to the simple definition of physical found in the *American Heritage Dictionary* and find that the statute doesn’t indicate that physical should be interpreted any other way. The court specifically finds that physical should not be proved through objective diagnostic mediums, which arguably could fail to reveal all physical injuries. In conclusion, the court finds that physical brain damage as contemplated by S.C. Code Ann. Section 42-9-10 requires severe and permanent physical brain damage as a result of a compensable injury.

This case is crucial to the South Carolina Workers’ Compensation System and especially to employers and insurance companies when faced with a claimant who suffers an injury to his head. When a claimant suffers from a mild concussion, it will require much more than simple diagnostic testing to prove that he is entitled to lifetime benefits.

This argument is further illustrated by another recent opinion that was issued by the South Carolina Supreme Court, *Crisp v. SouthCo, Inc.*, 401 S.C. 627. The claimant in this case argues that the presence of physical brain injury or damage, regardless of degree, triggers the operation of S.C. Code Ann. Section 42-9-10 (C). The court disagreed and found that the claimant's interpretation is contrary to legislative intent. The court goes on to find that they interpret the inclusion of physical brain damage among the most serious injuries within the statutory exception to the 500-week cap on benefits. Thus it found that only in cases of physical brain damage that are both permanent and severe would a claimant be entitled to lifetime benefits.

Both of these cases shed new light on the definition of physical brain damage and provide employers and carriers support to defend against a claim for physical brain damage.

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