



Reply To

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July 5, 2022

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Jul 05 2022

SC Court of Appeals

Via S.C. Courts E-filing

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: William Downes v. Bon Secours Mercy Health and Bon Secours Health
System, Inc. c/o Cannon Cochran Management Services, Inc.
Date of Accident: April 17, 2018
WCC File No.: 1809996
Our File No.: 2024.22054
Claim No.: 18J28K142496
Appeal No.: 2022-000864

Dear Ms. Kitchings:

Enclosed please find the original of Appellants' Memorandum on Appealability, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email only. Pursuant to the Supreme Court's Order, 2021-08-25-03, Reduced Number of Copies Required in Appellate Matters, and Rule 267(f), SCACR, only one copy of Appellants' Memorandum is being submitted.

Please let us know if you have any questions. Thanking you in advance for your assistance, I am

Yours truly,

Helen F. Hiser

Enclosures

cc: Donald E. Kamb, Jr., Esq.
Joe Mooneyham, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

2022-000864

RECEIVED

Jul 05 2022

SC Court of Appeals

William D. Downes, Employee Respondent,

v.

Bon Secours Mercy Health, Inc., Employer,
Safety National Casualty Corporation, Carrier, ... Appellants.

**APPELLANTS' MEMORANDUM
ON APPEALABILITY**

In response to this Court's request for a Memorandum of Appealability, Appellants Bon Secours Mercy Health, Inc. and Safety National Casualty Corporation respond as follows:

The Commission Decision and Order, filed June 8, 2022 ("Commission Decision"), appealed in the above-captioned case is immediately appealable under the last sentence of Section 1-23-380 and, therefore, this appeal is properly before this Court. Whereas the first paragraph of Section 1-23-380 of the Administrative Procedure Act, ("APA") provides that appeals from administrative agencies may be taken only from a "final decision," the last sentence of that paragraph provides for immediate review where "the final agency decision would not provide an adequate remedy." S.C. Code Ann. § 1-23-380.

BACKGROUND

A brief summary of the facts involved in this case is necessary to understand the posture of this appeal and why it is immediately appealable. Claimant William Downes sustained an admitted injury to his low back on April 17, 2018 arising out of and in the course of his employment as a respiratory therapist with Bon Secours Mercy Health. (Exh. A, Tr. p. 5, lines 15-19). He was assisting a large patient into a CT scanning area when the patient began to fall and, in the process of trying to catch her, Claimant felt a pop in his low back. (Exh. A, Tr. p. 16, lines 6-20). During the course of the medical treatment of his low back injury, Claimant also sustained an injury to his left Achilles tendon, for which Defendants provided medical treatment. The only issue on appeal to this Court—indeed the only issue before the Commission—is whether Claimant is entitled to additional treatment, specifically in the form of surgery by Dr. Phillip Esce, to his low back. (Exh. A, Tr. p. 5, lines 14-22). All of the doctors who have treated Claimant’s low back, with the single exception of Claimant’s hand-picked physician, Dr. Esce, have opined specifically that surgery to the L5-S1 disc is not recommended or appropriate for Claimant’s back injury and that he has reached MMI.

Claimant initially treated with Dr. Scott Grubbs with Workwell from April 19, 2018 to July 25, 2018. Dr. Grubbs arranged for Claimant to receive chiropractic treatment which Claimant indicated was helping. (Exh. B, Cl. APA pp. 2, 5, 12, 15-16, 18). Dr. Grubbs ordered an MRI of Claimant’s lumbar spine, which was performed on July 2 2018. The Radiologist’s impressions were, “[m]ild L3-4 through L5-S1 disc bulges. Midline L5-S1 disc protrusion. Mild left foraminal disc protrusion. Mild Left L3

foramen narrowing.” (Exh. C, Def APA pp. 11-12). Dr. Grubbs stated that it was difficult to know whether the disc bulges were actually causing Claimant’s issue because most of his symptoms were on the right and not the left. (Exh. B, CL APA pp. 15-16). On July 25, 2018, Dr. Grubbs felt it was appropriate for Claimant to see a back specialist, and recommended a “neurosurgical consultation or physiatry.” (Exh. B, Cl. APA p. 18).

Claimant saw Dr. Michael Bucci of Piedmont Spine and Neurosurgical Group on August 21, 2018. After examining Claimant and reviewing the MRI, Dr. Bucci noted that the MRI “shows degenerative disc disease at L5-S1 with some minor bulging without malalignment or spinal stenosis.” Dr. Bucci assessed Claimant with “[a]cute bilateral low back pain without sciatica,” and degenerative disc disease. He determined Claimant’s condition was “Nonsurgical” and referred him to pain management, indicating it was appropriate for Claimant to continue seeing a chiropractor. (Exh. D, Cl. APA pp. 21-25).

Claimant began seeing Dr. Sung Han of Piedmont Comprehensive Pain Management Group for pain management. Dr. Han recommended a lumbar epidural steroid injection, which was administered on October 24, 2018. Claimant saw Dr. Han from October 17, 2018 until he was released at maximum medical improvement (“MMI”), during which time he received lumbar interlaminar steroid injections on October 24, 2018, December 15, 2018, and August 14, 2019, after each of which he reported improvement. Dr. Han also prescribed physical therapy and work conditioning, which Claimant indicated increased his pain. On April 1, 2020 Dr. Han released Claimant at MMI, also noting that Claimant was not a surgical candidate. (Exh. E, Cl. APA pp. 30-46).

Meanwhile, shortly after beginning pain management with Dr. Han, Claimant sought out Dr. Timothy Monroe at Carolina Orthopaedic & Neurosurgical Associates on his own, in order to obtain a second neurosurgical opinion. Dr. Monroe did not recommend surgery but, instead, assessed Claimant with “Lumbar DDD/Spondylosis L5-S1 disc bulge,” and simply indicated he should follow up as needed. (Exh. F, Cl APA pp. 47-49).

Claimant saw Dr. Ping Gao of AnMed Health Occupational Medicine on September 23, 2020 for an impairment rating for his lower back. After examination, Dr. Gao noted that Claimant “is not a surgical candidate per Dr. Bucci.” Dr. Gao indicated that Claimant had reached MMI, and assigned an impairment rating of 1% to the whole person due to chronic low back pain. (Exh. G, Def. APA pp. 14-19).

Claimant sought his own Independent Medical Examination (“IME”) with Dr. William DeVault on January 9, 2021. Dr. DeVault also did not recommend surgery but, instead, concluded that Claimant had reached MMI, and assigned him a 17% impairment rating for the lumbar spine. Dr. DeVault indicated Claimant would need additional conservative treatment and concluded he “is suitable only for sedentary desk type work at this time.” (Exh. H, Def. APA pp. 3-10).

Meanwhile, the day before his IME with Dr. DeVault, Claimant again sought out treatment on his own. He saw Nurse Practitioner Julie Justice with Carolina Orthopaedic and Neurosurgical Associates on January 8, 2021. NP Justice, who clearly is not a neurosurgeon, simply ordered an updated MRI, (Exh. I, Cl. APA pp. 55-57), which was performed on January 20, 2021. (Exh. J, Cl. APA pp. 68-69).

The MRI, performed at Piedmont Imaging on January 20, 2021, was noted to have been compared to the “MRI lumbar spine without contrast dated 07/02/2018.” Dr. Raul Ceballos, the reviewing radiologist, noted repeatedly, that, “[a]gain,” the later MRI showed “minimal canal, minimal right and mild left neural foramina stenosis at the L3-L4 level,” “[a]gain, there is minimal canal and mild bilateral neural foramina stenosis at the L4-L5 level,” and “[a]gain, there is minimal indentation of the ventral thecal sac and minimal bilateral neural foramina encroachment at the L5-S1 level due to combined decreased disc height, disc bulge and shallow posterior central disc protrusion.” Dr. Ceballos concluded there was “[n]o interval change,” only “[m]inor multilevel acquired spinal encroachment without spinal cord or nerve root compression apparent,” and “[m]ultilevel degenerative disc disease, worse at the L5-S1 level.” (Exh. J, Cl. APA pp. 68-69).

Claimant returned to Carolina Orthopaedic on February 12, 2021 to see Dr. Esce. Although the term “moderate” does not appear on the January 20, 2021 MRI Report, (Exh. J), Dr. Esce indicated that the “MRI done at Piedmont Imaging shows L5-S1 moderate disk herniation central extending to the left side with decreased disk height.” Dr. Esce recommended “a left L5-S1 microdiscectomy.” (Exh. I, Cl. APA pp. 60-62).

Claimant saw Dr. Charles Kanos of Southeastern Neurosurgical and Spine Institute on May 17, 2021 for an IME. Dr. Kanos noted Dr. Esce’s recommendation for a microdiscectomy. Dr. Kanos evaluated Claimant’s two MRIs, concluding, as had Dr. Ceballos, that the two MRIs were “similar.” Dr. Kanos opined that he would not recommend the L5-S1 discectomy because “the odds of getting significant improvement in the back pain are low as his pain is strongly non mechanical.” Dr. Kanos concluded

Claimant was at MMI, assigned a 5% impairment rating to the lumbar spine and recommended sedentary activity, pain management, “medication, therapy or possible facet blocks or other injections.” (Exh, K, Def. APA pp. 23-25).

Following the IME with Dr. Kanos, Claimant returned to Dr. Esce on June 30, 2021. At that point, Dr. Esce noted that Claimant “has really done everything possible for this but no relief,” and again recommended “a microdiscectomy at L5-S1.” (Exh. I, Cl. APA pp. 63-65).

Subsequently, on February 26, 2021, Claimant filed a Form 50 seeking a determination of whether he was entitled to the additional surgery recommended by Dr. Esce. Defendants responded with a Form 51, indicating Claimant had reached MMI and denying that he was entitled to additional medical treatment in the form of surgery. (Exh. L).

The parties were heard by Single Commissioner R. Michael Campbell, II, on August 12, 2021, after which he issued an Order on October 22, 2021. As pertains to this appeal, the Single Commissioner gave more weight to Dr. Esce’s opinion than to Dr. Kanos’ opinion simply because Dr. Esce’s office had seen Claimant more times than had Dr. Kanos. Consequently, he found as a matter of fact and concluded as a matter of law that Claimant was not at MMI for his back but, instead, that “claimant is entitled to the back surgery recommended and requested, and all causally-related medical treatment, by a physician of the defendants’ choosing with a specialty to the back.” (Exh M, Order pp. 15-16).

Both parties appealed to the Full Commission. Among other things, Defendants sought correction of the Single Commissioner’s erroneous findings of fact and

conclusions of law that Claimant was not at MMI and was entitled to the surgery recommended by Dr. Esce. (Exh. N, Def's Form 30). Claimant sought to have Dr. Esce named as his treating physician. (Exh. O, Cl. Form 30).

The Full Commission upheld the Single Commissioner Order in part and reversed in part. As pertains to this appeal, the Full Commission also assigned more weight to Dr. Esce due to his office having seen Claimant more than once. The Full Commission found as a matter of fact and concluded as a matter of law that Claimant had not reached MMI for his low back and ordered that the surgery recommended by Dr. Esce be provided, designating Dr. Esce as Claimant's authorized treating physician. (Exh. P, Commission Decision pp. 18-20).

Defendants timely appealed to this Court, which has requested legal memoranda on the issue of whether this appeal is interlocutory.

SOUTH CAROLINA LAW REGARDING APPEALABILITY OF COMMISSION DECISIONS

The appealability of decisions of the South Carolina Workers' Compensation Commission is determined by Section 1-23-380 of the APA. *Ex parte S.C. Prop. & Cas. Ins. Guar. Ass'n*, 411 S.C. 501, 504, 768 S.E.2d 670, 672 (Ct. App. 2015). That section provides, in pertinent part, that, "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1." S.C. Code Ann. § 1-23-380. Our courts have interpreted this sentence as precluding appeals of appeals of Commission decisions that do not resolve[] the entire action." *S.C. Prop. & Cas. Ins. Guar. Ass'n*, 411 S.C. at 504, 768 S.E.2d at 672.

However, the last sentence of the first paragraph of Section 1-23-380 also provides that “[a] preliminary, procedural, or intermediate agency action or ruling *is immediately reviewable if review of the final agency decision would not provide an adequate remedy.*” S.C. Code Ann. § 1-23-380 (emphasis added); *see also Rose v. JJS Trucking, LLC*, 411 S.C. 366, 369, 768 S.E.2d 412, 413 (Ct. App. 2015). In other words, the last sentence of the introductory paragraph of Section 1-23-380 provides a limited exception to the final judgment requirement for an appeal prior to determination of all the rights in a workers’ compensation case.

In *Rose*, this Court held that the above-stated exception did not apply because the defendants had an adequate remedy in that they could seek payment from the Uninsured Employers’ Fund after a final determination of benefits due the claimant. Indeed, the Uninsured Employers’ Fund acknowledged that “it would be required to reimburse Appellants if the commission later orders a transfer.” 411 S.C. at 369, 768 S.E.2d at 413-414.

Here, in contrast, once the unnecessary surgery is performed, there is no “remedy” available to Defendants who will be responsible not only for the cost of the surgery and recovery, but for any complications that arise as a result of the surgery. *See, e.g., Mullinax v. Winn-Dixie Stores*, 318 S.C. 431, 436, 458 S.E.2d 76, 79 (Ct. App. 1995) (noting “the great weight of authority holds the aggravation of the primary injury by medical or surgical treatment is compensable”). As noted above, in this case, Claimant’s Achilles tendon injury arose from medical treatment for his low back and, accordingly, Defendants have provided medical treatment for that injury.

Surgery always carries a certain amount of risk, with back surgery certainly no exception, particularly where it is not medically necessary. Performing any surgery that has little likelihood of relieving a patient's symptoms is not only foolhardy but incredibly risky. Under the Commission Decision on appeal here, Defendants will be on the hook for the negative consequences that may arise from the unnecessary back surgery performed by Dr. Esce, with no adequate remedy after a final determination of benefits. Once the back surgery is performed, there is no "undoing" it. As a result, the Commission Decision is immediately appealable under the last sentence of S.C. Code Ann. § 1-23-380, providing that "[a] preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."

Finally, this Court should deny Claimant's request that, should the Court find that the Commission Decision is immediately appealable, Defendants be required immediately to provide the surgery he has requested. That is the precise basis for this appeal and the reason review of the Commission's final decision in this case will not provide an adequate remedy.

CONCLUSION

For the reasons stated herein, this Court should hold that the appeal of the Commission Decision in this case is immediately reviewable because review of the final Commission decision will not provide an adequate remedy and that, therefore, this appeal is properly before the Court.

[SIGNATURE ON FOLLOWING PAGE]

July 5, 2022

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, LLC

s/Helen F. Hiser

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System, Inc. and Safety National Casualty
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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1809996

William Downes,)
)
 Claimant,)
)
 v.)
)
 Bon Secours Mercy Health,)
)
 Employer,)
)
 and)
)
 Bon Secours Mercy Health,)
)
 Inc, Carrier/Defendants.)
 -----)

COMMISSION HEARING

Thursday, August 12, 2021
10:24 a.m. - 10:55 a.m.

COPY

The Commission Hearing was heard before Commissioner R. Michael Campbell, II, at the Ninety Six Police Department, Court Room, 100 North Church Street, Ninety Six, South Carolina on the 12th day of August, 2021, before Amber Scarborough, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

EXHIBIT

A

APPEARANCES

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Attorney for the Carrier

Also present:
William Downes

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EXHIBITS

(There were no exhibits marked during the hearing.)



1 will please put your position on the record and
2 let us know what you're seeking here today,
3 sir.

4 **CLAIMANT'S POSITION:**

5 **MR. KAMB:** Yes, sir. And I would note, like I said
6 earlier, in the Defendant's submission they
7 submitted Dr. DeVault's records and he has a
8 typo on his -- on the date of his report.

9 **COMMISSIONER CAMPBELL:** Okay.

10 **MR. KAMB:** And they had listed it at as per his
11 incorrect date. It says January 9th, 2011 but
12 it was actually January 9th, 2021.

13 **COMMISSIONER CAMPBELL:** 2021. Okay. Thank you.

14 **MR. KAMB:** Just so there's no confusion on that.
15 But, yes, sir, we're here today on what is an
16 admitted accident and an admitted back injury
17 and an Achilles injury, but the only real
18 dispute today is the need for continued
19 treatment for the back. Mr. Downes receives
20 temporary total disability. There is no issue
21 there. We're just here on that one medical
22 issue. And the -- hold on one second. I'm
23 sorry.

24 **COMMISSIONER CAMPBELL:** No, take your time.

25 **MR. KAMB:** The -- this is, like I said, it was



1 A: Just the chiropractor and that was it.

2 Q: Okay. If you would tell us what happened just
3 -- and it's not denied, but to give the
4 Commissioner an idea of what happened tell us
5 about the accident on April 17, 2018?

6 A: I was tasked with taking a 482 comatose patient
7 to the CT scanner.

8 Q: 482 pounds?

9 A: Yes.

10 Q: Sorry. Go ahead.

11 A: And basically she would not fit on the table.
12 And so it was just me and just a couple of CT
13 girls that worked in there and we couldn't get
14 her to the scanner and we had to try to get her
15 back off the table and when I was trying to
16 help them get her off the table she almost fell
17 off and I had to catch her and I felt something
18 popped in my back and it was excruciating. So
19 that's basically the long and the short of what
20 happened.

21 Q: Did you -- when that happened did you feel
22 symptoms any place other than your back?

23 A: Down my legs.

24 Q: And you're saying legs, so both of them?

25 A: Both legs, yes, sir.



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(803) 252-3445 / (800) 822-0896

SS#:5011 DOI:04/17/18 DOS:04/19/18 MD:SG
DATE: 04/19/18
PATIENT: DOWNES, William "Danny"
COMPANY: St. Francis Health System
SS#: 5011

DOI:
04/17/18

SUBJECTIVE:

Initial visit for lower back pain/strain with some radiation of pain down the legs. Mr. Downs is a respiratory therapist. He has been her about 26 years at St. Francis. He was helping an extremely heavy patient on and off the CT scanner gantry. As he took her off and put her on the stretcher, he developed sharp pain in the lower lumbar region and SI region, right a bit more than left. He notes the discomfort will radiate down the back of the thigh to the knee and maybe a bit below that. It is a bit worse if he sits or stands too long. He can typically find a comfortable position sitting if he can shift around. He takes ibuprofen two every four hours without much benefit. He took one-half of a Soma last night, which he had from previous neck problems. He does not tolerate Flexeril, which gives him a bad hangover. He has distant history of low back pain that apparently was not too bad. He does have a history of bulging disc in the neck, for which he has been seen by Dr. Bucci and by Dr. Grier at Pain Management. He has had two epidural steroid injections for those, and it is for his neck that he is receiving the Soma. He says he only takes it rarely. I advised him that it can be habit forming, but the way he is using it should be okay.

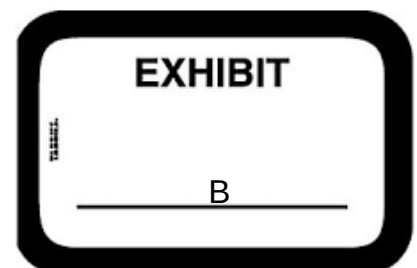
I went over his initial medical questionnaire, including review of systems, occupational, social, and personal medical history. Those are on file in the chart. He does take Cymbalta, Concerta and nortriptyline. He uses CPAP for obstructive sleep apnea.

OBJECTIVE:

Pleasant alert, tall, generally fit-appearing male in no acute distress. Temperature 97.3. Blood pressure 150/89. Pulse 78. Height 6 feet 9 inches. Weight 264 pounds. He is tender over the lower lumbar region particularly over the right SI more than left. Not much into the buttocks. He will flex forward about 30 degrees, complaining of pain, and did not want to go beyond that. He extends about 10-15 degrees with pain. Tilting back to the left and right is moderately uncomfortable. He is able to heel-and-toe walk. More difficulty doing toe walk, but he did not complain of weakness, just more discomfort in the back. DTRs at the knees are 2+, ankles trace right and 1+ left. Straight leg raise is uncomfortable on the left with symptoms going down the back of the leg to the thigh. On the right he had similar symptoms about 30 degrees. With foot dorsiflexion he did have symptoms going down to the foot. FABER and FADIR were moderately uncomfortable, but not sharply so on either side. Heart has a regular rate and rhythm without murmur or gallop. Abdomen is soft and benign. No skin rash.

ASSESSMENT:

Low back pain/strain with symptoms that could be discogenic versus more musculoskeletal.



SS#:5011 DOI:04/17/18 DOS:04/27/18 MD:SG
DATE: 04/27/18
PATIENT: DOWNES, William "Danny"
COMPANY: St. Francis Health System
SS#: 5011

DOI:
04/17/18

SUBJECTIVE:

Low back strain. Please see previous notes. Mr. Downes says he is a bit better. He still has an achy pain in the lower back and still cannot bend over well. Even standing, walking or sitting bothers him if he does it for a prolonged period. He feels like the naproxen has helped. However, it got worse sometime between his last visit and this one, and he went to see his chiropractor, Dr. Quinton Thomas, and apparently did achieve some relief from the worst of it with that. He has only had one session with him. Dr. Thomas also recommended some stretches, similar to what I had recommended for him. He is following his restrictions and tolerating those okay. He continues on his home medications listed last time.

OBJECTIVE:

Pleasant, alert, tall male in no acute distress. Temperature 97.2. Blood pressure 130/78. Pulse 67. He stands pretty fluidly. He extends about 10-15 degrees with pain, forward flexes only about 30-40 degrees, again with pain at end-range. Tilting and rotating are done with less discomfort. He is tender to palpation over the lower lumbar SI region. DTRs are normal. Negative straight leg raise, other than hamstring tightness. FABER is only mildly uncomfortable.

ASSESSMENT:

Low back strain, a little bit better, in part due to chiropractic manipulation.

PLAN:

I am going to recommend he be able to go to the chiropractor up to six more visits. He has had experience with physical therapy and has found, in his experience, that chiropractic care is more effective. We will keep him on the same duty restrictions and have him continue to do the exercises and stretches. We will see him back in another 10 days.

D. Scott Grubbs, MD
DSG/nkd/bts
<EOT>

SS#:5011 DOI:04/17/18 DOS:06/18/18 MD:SG

DATE: 06/18/18

PATIENT: DOWNES, William

COMPANY: St. Francis Health System

SS#: 5011

DOI:

04/17/18

SUBJECTIVE:

Low back pain. Please see previous notes. Mr. Downes says he is still having low back pain. He feels like it has gotten better with the 5 or 6 chiropractic visits he has had, but he still has aching, burning type pain going into his calves by the end of the day, which he describes as nerve pain. It does seem to be worse on the right than the left. He states they are keeping him very busy at work, despite the duty restrictions. He is having a hard time keeping the assignments because he is moving a bit more slowly. He continues on his home meds of Cymbalta, nortriptyline (for depression and some for nerve stuff), as well as Concerta and a multivitamin. He has been taking naproxen 1-2 a day. He denies any GI symptoms with that. He does not tolerate muscle relaxers and does not want stronger pain medication.

OBJECTIVE:

Pleasant, alert male in no acute distress. Temperature 98.7. Blood pressure 128/70. Pulse 76. He moves slowly getting up. Flexes about 30 degrees before he gets tightness in the low back and down the hamstrings. Extension also is uncomfortable to about 15 degrees. He is tender over the right SI more than anywhere else, somewhat in the right gluteal area. DTRs at knees are 2+ and symmetric, 1+ at the ankle. The left Achilles is very tender. Seated straight leg raise on the left is only to 45 degrees, on the right to nearly 90. Supine, he can go further on the right to about 75 degrees. It is a bit more tight on the left. FABER hurts more on the right than on the left.

ASSESSMENT:

Persistent low back pain. He is not really having to do significantly heavy work at this point, so I do not think his work is an issue.

PLAN:

However, I think we will keep him on the same duty restrictions to keep him from doing heavy lifting. I am going to recommend MRI of the lumbar spine to rule out radicular cause of this pain and leg symptoms. I am going to request six more chiropractic treatments twice a week for three weeks and I wrote for more naproxen 500 mg as before. We will plan to see him back once the MRI is done. If surgical or other intervention is necessary, we will refer for that, depending on the MRI findings and his symptoms.

D. Scott Grubbs, MD

DSG/nkd/bts

<EOT>

SS#:5011 DOI:04/17/18 DOS:07/11/18 MD:SG

DATE: 07/11/18

PATIENT: DOWNES, William

COMPANY: St. Francis Health System

SS#: 5011

DOI:

04/17/18

SUBJECTIVE:

Low back pain with possible radicular symptoms. Please see previous notes. He still notes his leg aches in a "nerve-type pattern" at the end of a long day, but it does not hurt all the time like that. He has been going to see his chiropractor, typically twice a week, and that does seem to be helping, so he feels like it is a little bit better.

He still continues to have left Achilles tendon pain, which he says he first noted when I did an ankle reflex on May 30, and has continued to bother him and be swollen. He feels like something needs to be done about that. I told him I cannot treat him under his current claim, since we are basically just authorized to treat his back. It would be reasonable, I suppose, for him to report it. I am not certain whether it makes sense to report it as an injury from having his Achilles tendon reflex checked, because I do not think that caused it given the way I do a reflex. If he does not do that, he may need to see his primary care physician to be treated, because he certainly could have injured it and just was not aware of it until I tapped on it.

Current medications are Cymbalta, Concerta, multivitamin and naproxen. He is at modified duty and is tolerating that reasonably well, though some days are pretty rough when they are particularly busy, such as in the emergency room.

OBJECTIVE:

Pleasant, alert, cooperative, tall male. Temperature 97.2. Blood pressure 133/83. Pulse 70. He is able to flex to about 75 degrees with mild discomfort. Extends about 15 degrees with moderate discomfort. He points across his lower lumbar region. He can tilt and twist with moderate discomfort. Patella reflexes are normal. I did not do Achilles reflexes because his left one is still quite sore. He has good plantarflexion strength, though. Straight leg raise is approximately 75 degrees bilaterally. He questions whether or not there is a little bit of tingling with it on the left at that level. I did not do FABER, if I recall correctly.

His left Achilles tendon is swollen. It is about 3 cm in diameter, compared to 2 cm in diameter on the right. There is visible swelling there that is more prominent than on the right. It starts to swell just above the calcaneus, peaks about 3 cm above it, and is back to normal looking at about 6 cm above the top of the calcaneus. It is tender, it is not red.

MRI of the lumbar spine at Innervision on July 2 shows mild disc degeneration at L3-4 with mild annular bulge, small left foraminal disc protrusion with annular tear, mild facet arthrosis. L4-5 is described as showing mild degeneration of the disc and disc bulge with a small left foraminal annular

SS#:5011 DOI:04/17/18 DOS:07/11/18 MD:SG
DATE: 07/11/18
PATIENT: DOWNES, William
COMPANY: St. Francis Health System
SS#: 5011

Page 2

tear. There are small osteophytes and mild facet arthrosis. L5-S1 shows narrowed and degenerated disc, small midline disc protrusion, mild posterior and lateral disc bulge with small end-plate osteophytes, mild edema of the right-sided end plates at this disc level. The ages are chronic and age indeterminate. No pars defects, no vertebral body and recess. (I am not certain what that last phrase meant.)

ASSESSMENT:

Low back pain with disc bulging of L3-4 through L5-S1 with some midline disc protrusions at L3-4 and L5-S1. It is difficult to know whether or not these are actually causing issues, because most of his symptoms are on the right side, not on the left side, and focal changes seem to be more on the left side.

PLAN:

He feels like he is making progress with his chiropractor, so I am going to allow him to continue doing that. He wants to try doing some core strengthening, and I advised him if he does so, not to do any twisting or significant flexion exercises with it, or anything else that aggravates it. I am going to keep him on the same duty restrictions. I wrote for more naproxen 500, #40, one p.o. b.i.d., since he is having no GI symptoms from it and is tolerating it, and it does seem to help. I will plan to see him back in two weeks, at which point he should be finished with his chiropractic treatment, as I understand it, and hopefully have a better idea as to what kind of progress we are making. If he is continuing to make progress but still having symptoms, I have no objection to his continuing chiropractic care. If he is not, then I think it would probably be wise to have him seen by a neurosurgeon or physiatrist.

D. Scott Grubbs, MD
DSG/nkd/bts
<EOT>

SS#:5011 DOI:04/17/18 DOS:07/25/18 MD:SG
DATE: 07/25/18
PATIENT: DOWNES, William
COMPANY: St. Francis Health System
SS#: 5011

DOI:
04/17/18

SUBJECTIVE:

Followup of continued low back pain. He continues to have pain across the lower lumbar region, typically aggravated by being on his feet a lot or doing a lot of walking, which seems to aggravate it. He is not having leg numbness with it, though. He complains on days when he has a lot more patients to take care of than other days, it does bother him more. For his back, he takes naproxen 500 mg. His home medications are Soma, Cymbalta, Concerta and Celexa. He lists the pain between 6-9/10.

OBJECTIVE:

Pleasant, alert, tall male in no acute distress. Temperature 97.4. Blood pressure 119/87. Pulse 81. Height 6 feet 5 inches. Weight 265 pounds. He is tender to palpation across the lower back. He is able to flex about 30 degrees. Extension hurts more. Tilting to the right hurts on the right side. Knee and ankle are normal. Left ankle Achilles tendon was too tender to do a reflex on that. I did not have him try to do toe walking, either.

ASSESSMENT:

1. Low back pain/strain, which is persisting a long time.
2. Probably contributing to it is that he has either Achilles tendinitis or an Achilles tendon tear. It first came to light when I tapped on his Achilles tendon.

PLAN:

As he feels like chiropractic helps, I have no objection to his continuing it for a bit longer. However, I think it is appropriate to have him seen by a back specialist, and I am going to add that to my plan. In the meantime, he can continue chiropractic care as long as it seems to be helping. Regarding his Achilles tendon pain, I suggested he see his primary care doctor to have that addressed. I cannot in good conscience make a clear relationship between his back strain or, for that matter, tapping on the Achilles tendon for reflex, as a cause of Achilles tendinitis. I will plan to see him back in about a month, but I am also going to request neurosurgical consultation or physiatry.

D. Scott Grubbs, MD
DSG/nkd/bts
<EOT>



SOUTH CAROLINA DIAGNOSTIC IMAGING

Innervision Medical Imaging Eastside
One Marcus Drive Greenville, SC 29615
p: (864) 242-2020 f: (864) 240-5776

PATIENT NAME: Downes, William
DOB: 07/17/1965
MRN: 08-1330877
PHONE: 864-630-5665
PHYSICIAN: Scott Grubbs, MD
EXAM DATE: 07/02/2018

EXAM: MR-Lumbar Spine without contrast

REASON FOR EXAM: M54.16,M54.5,

COMPARISON: None available

TECHNIQUE: Multi-sequence, multi-planar imaging was obtained through the lumbar spine unenhanced.

FINDINGS: Chronic and age indeterminate findings. No pars defects. No vertebral body and recess.

L1-2: Normal disc.

L2-3: Normal disc.

L3-4: Mild disc degeneration. Mild annular bulge. Small left foraminal disc protrusion with annular tear. Mild facet arthrosis.

L4-5: Mild degeneration of the disc and disc bulge with small left foraminal annular tear. Small of a osteophytes. Mild facet arthrosis.

L5-S1: Narrowed and degenerated disc. Small midline disc protrusion. Mild posterior and lateral disc bulge and with small endplate osteophytes. Mild edema of the right-sided endplates at this disc level.

EXHIBIT

C

Radiology

PAGE 1 of 2

PATIENT NAME: Downes, William
DOB: 07/17/1965
EXAM: MR-Lumbar Spine without contrast
EXAM DATE: 07/02/2018

IMPRESSION: Mild L3-L4 through L5-L1 disc bulges. Midline L5-S1 disc protrusion. Mild left foraminal L3-L4 disc protrusion. Mild left L3 foramen narrowing.

Jeffrey Shramek, MD

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***

7/2/2018 2:43 PM: Jeffrey Shramek, MD

JS/js

DD: 07/02/2018 02:38 pm

DT: 07/02/2018 02:43 pm

Accession #: 08-2874845

Radiology

PAGE 2 of 2

SSA PIEDMONT SPINE AND Downes, William Daniel
NEUROSURGICAL GROUP MRN: 815035719, DOB: 7/17/1965, Sex: M
3 SAINT FRANCIS DR STE 490 Visit date: 8/21/2018
GREENVILLE SC 29601-3973

08/21/2018 - Office Visit in PIEDMONT SPINE AND NEUROSURGICAL GROUP
Amb Encounter Report

Encounter Information

	Provider	Department	Encounter #	Center
8/21/2018 1:00 PM	Michael N Buccl, MD	Ssa Piedmont Spine And Neurosurgical Group	700132878179	PNG

Level of Service

Level of Service
PR OFFICE OUTPATIENT NEW 45 MINUTES [99204]
Additional E/M Codes
PR TEAM CONFERENCE NON-FACE-TO-FACE PHYSICIAN [99367]

Previous Visit

Date & Time	Provider	Department	Encounter #
8/20/2018 9:22 AM	Buccl, Michael N, MD	PIEDMONT SPINE AND NEUROSURGICAL GROUP	700133203341

Allergies as of 8/21/2018

Review status set to Review Complete on 8/21/2018

No Known Allergies

Immunizations

Name	Date
Influenza High Dose Vaccine PF	11/05/16
Tdap	01/28/19
Tdap	01/01/08

Reason for Visit

New Patient
LOW BACK PAIN

Current Vitals

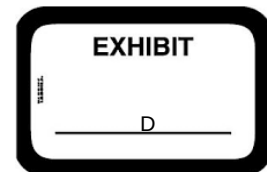
Most recent update: 8/21/2018 1:04 PM

BP	Temp	Ht	Wt
130/100	97.8 °F (36.6 °C)	6' 5" (1.956 m)	258 lb (117 kg)

Current Weights for Downes, William Daniel

Recorded	Adjusted	Ideal	Dosing
258 lb (117 kg) 1 year ago	221 lb 0.9 oz (100.3 kg)	196 lb 6.9 oz (89.1 kg)	None

First Recorded BMI



Problem List as of 8/21/2018

Reviewed: 4/20/2017 10:14 AM by Sadowski, Brian M

	Class	Noted - Resolved	Last Modified
Active Problems			
• Dyslipidemia		11/18/2013 - Present	11/18/2013 by Mathias, Reed Anderson, MD Entered by Mathias, Reed Anderson, MD
• Diverticulitis of colon (without mention of hemorrhage)(562.11)		11/18/2013 - Present	11/18/2013 by Mathias, Reed Anderson, MD

SSA PIEDMONT SPINE AND Downes, William Daniel
 NEUROSURGICAL GROUP MRN: 815035719, DOB: 7/17/1965, Sex: M
 3 SAINT FRANCIS DR STE 490 Visit date: 8/21/2018
 GREENVILLE SC 29601-3973

Problem List (continued) as of 8/21/2018

Reviewed: 4/20/2017 10:14 AM by Sadowski, Brian M

	Class	Noted - Resolved	Last Modified
		Entered by Mathias, Reed Anderson, MD	
• Gluten-sensitive enteropathy		11/18/2013 - Present	11/18/2013 by Mathias, Reed Anderson, MD
		Entered by Mathias, Reed Anderson, MD	
• Moderate obstructive sleep apnea		12/16/2016 - Present	12/16/2016 by Speech, Lisa B, NP
		Entered by Speech, Lisa B, NP	
• Insomnia		12/16/2016 - Present	12/16/2016 by Speech, Lisa B, NP
		Entered by Speech, Lisa B, NP	
• Depression		2/14/2017 - Present	2/14/2017 by Young, Jessica I
		Entered by Young, Jessica I	
• Acute bilateral low back pain without sciatica		8/21/2018 - Present	8/21/2018 by Buccì, Michael N, MD
		Entered by Buccì, Michael N, MD	
• DDD (degenerative disc disease), lumbar		8/21/2018 - Present	8/21/2018 by Buccì, Michael N, MD
		Entered by Buccì, Michael N, MD	

All Notes

Progress Notes by Buccì, Michael N, MD at 08/21/18 1300

Author: Buccì, Michael N, MD
 Filed: 08/23/18 1533
 Editor: Buccì, Michael N, MD (Physician)

Service: —
 Encounter Date: 8/21/2018

Author Type: Physician
 Status: Signed

History of Present Illness

Patient Words: 53 y.o.

This patient is a 53 y.o. male who presents today for low back pain which began after an injury at work in April of this year. He works as a respiratory therapist was trying to keep a patient from moving on the CT scan table. He felt a pop in his back and since that time has had intermittent trouble with low back pain. No pain management up to this point. He was treated medically. Subsequently he has developed injury to his left Achilles tendon and currently is wearing a boot. MRI scanning of the lumbar spine shows degenerative disc disease at L5-S1 with some minor bulging without malalignment or spinal stenosis. Films reviewed today.

Past Medical History:

Diagnosis

	Date
• Acute cervical radiculopathy	
• ADHD (attention deficit hyperactivity disorder)	
• Chronic pain	
• Depression	2/14/2017
• Displacement of cervical intervertebral disc without myelopathy	
• Diverticulitis of colon (without mention of hemorrhage)(562.11)	
• Dyslipidemia	
• Gluten-sensitive enteropathy	
• Mild degeneration of cervical intervertebral disc	
• Moderate obstructive sleep apnea	12/16/2016
uses CPAP	

SSA PIEDMONT SPINE AND Downes, William Daniel
NEUROSURGICAL GROUP MRN: 815035719, DOB: 7/17/1965, Sex: M
3 SAINT FRANCIS DR STE 490 Visit date: 8/21/2018
GREENVILLE SC 29601-3973

All Notes (continued)

Progress Notes by Bucci, Michael N, MD at 08/21/18 1300 (continued)

No Known Allergies

Family History

Problem	Relation	Age of Onset
• Cancer	Mother	
• Cancer	Father	
<i>lung-smoker</i>		
• Other	Sister	
<i>Fibromyalgia</i>		
• Cancer	Maternal Grandmother	
<i>Lymphoma</i>		
• Heart Attack	Maternal Grandfather	
• Heart Disease	Other	
• Lung Disease	Other	

Social History

Social History

• Marital status:	SINGLE
Spouse name:	N/A
• Number of children:	N/A
• Years of education:	N/A

Occupational History

• Not on file.

Social History Main Topics

• Smoking status:	Never Smoker
• Smokeless tobacco:	Never Used
• Alcohol use	No
• Drug use.	No
• Sexual activity:	Not on file

Other Topics

• Not on file

Concern

Social History Narrative

Current Outpatient Prescriptions

Medication	Sig	Dispense	Refill
• citalopram (CELEXA) 40 mg tablet	Take 40 mg by mouth daily.		
• carisoprodol 200mg-aspirin 325mg (SOMA COMPOUND) 200-325 mg per tablet	Take 1 Tab by mouth four (4) times daily.		
• naproxen (NAPROSYN) 500 mg tablet	Take 500 mg by mouth two (2) times daily (with meals).		
• methylphenidate ER 54 mg 24 hr tab	Take 54 mg by mouth every morning.		
• MULTIVITAMINS (MULTIPLE	Take by mouth.		

SSA PIEDMONT SPINE AND Downes, William Daniel
NEUROSURGICAL GROUP MRN: 815035719, DOB: 7/17/1965, Sex: M
3 SAINT FRANCIS DR STE 490 Visit date: 8/21/2018
GREENVILLE SC 29601-3973

All Notes (continued)

Progress Notes by Bucci, Michael N, MD at 08/21/18 1300 (continued)

VITAMINS PO)

- duloxetine (CYMBALTA) 60 mg capsule Take 60 mg by mouth every morning.
- pravastatin (PRAVACHOL) 10 mg tablet TAKE 1 TABLET BY MOUTH NIGHTLY 90 Tab 3

Patient Active Problem List

Diagnosis	Code
• Dyslipidemia	E78.5
• Diverticulitis of colon (without mention of hemorrhage)(562.11)	K57.32
• Gluten-sensitive enteropathy	K90.41
• Moderate obstructive sleep apnea	G47.33
• Insomnia	G47.00
• Depression	F32.9
• Acute bilateral low back pain without sciatica	M54.5
• DDD (degenerative disc disease), lumbar	M51.36

Review of Systems: A complete ROS was done and as stated in the HPI or otherwise negative.

Vitals:

08/21/18 1257
BP: (I) 130/100
Temp: 97.8 °F (36.6 °C)
Weight: 258 lb (117 kg)
Height: 6' 5" (1.956 m)
PainSc: 6

Physical Exam

The physical exam findings are as follows:

Cranial Nerves: Intact visual fields. Fundi are benign. PERLA, EOM's full, no nystagmus, no ptosis. Facial sensation is normal. Corneal reflexes are intact. Facial movement is symmetric. Hearing is normal bilaterally. Palate is midline with normal sternocleidomastoid and trapezius muscles are normal. Tongue is midline.

Motor: 5/5 strength in upper and lower proximal and distal muscles. Normal bulk and tone. No fasciculations.

Reflexes: Deep tendon reflexes 2+/4 and symmetrical.

Sensory: Normal to touch, pinprick and vibration.

Gait: Normal gait.

Tremor: No tremor noted.

Cerebellar: No cerebellar signs present.

Left lower extremity boot limits examination of

SSA PIEDMONT SPINE AND Downes, William Daniel
NEUROSURGICAL GROUP MRN: 815035719, DOB: 7/17/1965, Sex: M
3 SAINT FRANCIS DR STE 490 Visit date: 8/21/2018
GREENVILLE SC 29601-3973

All Notes (continued)

Progress Notes by Bucci, Michael N, MD at 08/21/18 1300 (continued)

the left ankle and foot.

She is

Assessment & Plan

- | | ICD-10-CM | ICD-9-CM |
|---|-----------|------------------|
| 1. Acute bilateral low back pain without sciatica | M54.5 | 724.2 |
| 2. DDD (degenerative disc disease), lumbar | M51.36 | 338.19
722.52 |

Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue on with this for the time being. No follow-up indicated here currently.

I met separately with the nurse case manager explained the treatment findings and recommendations with her.

Michael N Bucci, MD

Electronically signed by Bucci, Michael N, MD at 08/23/18 1533

Diagnoses

- | | |
|---|---|
| 1. Acute bilateral low back pain without sciatica [2281789] - Primary | 2. DDD (degenerative disc disease), lumbar [303335] |
|---|---|

All Orders

citalopram (CELEXA) 40 mg tablet [481807105] Patient-reported historical medication

Ordering date: 08/21/18 1256
Ordering mode: Standard
Frequency: QHS - 01/28/19

Authorized by: Provider, Historical

Discontinued by: Mathias, Reed Anderson, MD 01/28/19 0855
[Therapy Completed]

carisoprodol 200mg-aspirin 325mg (SOMA COMPOUND) 200-325 mg per tablet [481807676] Patient-reported historical medication

Ordering date: 08/21/18 1257
Ordering mode: Standard
Frequency: PRN - Until Discontinued

Authorized by: Provider, Historical

naproxen (NAPROSYN) 500 mg tablet [481807677] Patient-reported historical medication

Ordering date: 08/21/18 1257
Ordering mode: Standard
Frequency: BID WITH MEALS - Until Discontinued

Authorized by: Provider, Historical

CLINICAL LAB RESULTS

Lab Results

None

Patient Reported Taking

Printed on 7/10/20 10:20 AM

Page 8

25

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
NEW PATIENT EVALUATION

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung Han, M.D.
SSN: 251-31-5011

DOS: 10/17/18
DOD: 10/17/18
DOT: 10/18/18

Referring Physician: Workers' Comp.

Chief Complaint: Low back pain.

History of Present Illness: This is a 53-year-old male who presents complaining of low back pain following a work-related injury on April 17, 2018. The patient injured himself transferring a 450-pound patient. He has a history of mild chronic low back pain, but it was controlled up until this work-related injury. He now has a constant aching, throbbing pain in the back that increases with prolonged sitting or standing. He is constantly changing position to get comfortable. The pain intermittently radiates down the posterior legs bilaterally to his ankles, right greater than the left. The radiating pain is sharp, throbbing, aching, and almost daily. He has noticed weakness in bilateral lower extremities/easy fatigability. No bowel or bladder changes reported. He has not had any physical therapy, but he has had chiropractic therapy with overall benefit. He uses naproxen p.r.n. His condition has gotten a little bit better since onset, but it is still problematic. He sleeps well. He has a left Achilles tendon rupture. This too is work-related. He has surgery pending with Dr. Tollison. He has been out of work since August.

Past Medical History: ADD, depression.

Past Surgical History: Pilonidal cyst resection.

Social History: Respiratory therapist. No alcohol. No tobacco.

Allergies: None.

Current Medications: Cymbalta, Concerta, naproxen.

Review of Systems: As above.

Physical Exam: He has a large boot on the left lower extremity, but otherwise an independent ambulator. Back exam shows diffuse tenderness to palpation and painful range of motion in all planes. Strength is grossly normal throughout. No pathological reflexes. Positive straight leg raise test bilaterally. Sensory exam is normal. Pain with bilateral lumbosacral facet loading. MRI of the lumbar spine shows mild L3-L4 through L5-S1 disk bulges and midline disk protrusion at L5-S1.

Assessment:

1. Mild multilevel lumbar disk bulges with radiculitis.
2. Has seen Dr. Buccl, a neurosurgeon, not a surgical candidate.
3. Left Achilles tendon rupture, surgery pending with Dr. Tollison.
4. Work-related injury, has been out of work since August of 2018.

EXHIBIT

E

30

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung Han, M.D.
SSN: 251-31-5011

DOS: 10/17/18
DOD: 10/17/18
DOT: 10/18/18

Page 2

5. Work injury on April 17, 2018.

Plan:

1. Schedule the patient for a lumbar epidural steroid injection.
2. Follow up as scheduled with Dr. Tollison concerning left Achilles tendon repair.
3. For now, out of work. Again the patient has a left Achilles tendon rupture and he has surgery pending with Dr. Tollison.

Note: At the end, the case was discussed with the case manager.



Sung Han, M.D.
SH/DTI user7mt D149707
Dictated - Not Read

Piedmont Comprehensive Pain Mgmt
Group
3 St Francis Dr., Suite 480
Greenville, SC 29601

Name:

Date:

Downes, William D.
HAN (251-31-5011)
DOB: 7/17/1965
4024 Hwy 414
Landrum, SC 29356
Home: (864) 630-5665

10-24-08

Procedure: Lumbar interlaminar epidural steroid injection

Level Done: L5-S1

Indication:

53 y/o male with spinal stenosis
& radiculitis presents for LESI #1

Description of Procedure:

The procedure and potential complications were explained to the patient and voluntary informed signed consent was obtained. Oxygen, blood pressure and heart rate was monitored throughout the procedure. The patient was placed prone on the table and the lower back was prepped and draped in a sterile fashion using betadine X 3. Subcutaneous lidocaine 1% was instilled into the superficial soft tissues of the patient's lower back for local anesthesia. With the use of fluoroscopic guidance, an 18 gauge Touhey needle was inserted at the L5/S1 interlaminar space and advanced toward the epidural space using the loss of resistance technique with normal saline. Once the epidural space was reached, after negative aspiration and confirmation with lateral radiographic view and omnipaque, 80 mg of kenalog and 5 cc of preservative free normal saline was injected into the epidural space. The needle was removed. The skin was cleansed. No complications were observed during or following the procedure.

Note:

Plan:

Att 2 mms

10-24-08

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 12/12/18
DOD: 12/12/18
DOT: 12/13/18

History of Present Illness: This is a 53-year-old male with lumbar spinal stenosis and radiculitis presenting for followup. He had an epidural steroid injection about 6 weeks ago with overall benefit. It helped tremendously for about 3 weeks. Since his last visit, he has had surgery on his left Achilles tendon. He is still non-weight bearing. He is having a lot of pain in the back with the added stress of the boot on the left lower extremity.

Physical Exam: He presents with a large boot on the left lower extremity. Back exam shows some diffuse tenderness to palpation and painful range of motion in all planes. No pathological reflexes.

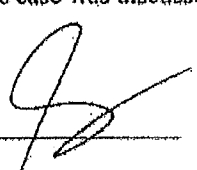
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, problematic, has had epidural injections with overall benefit.
2. Has seen Dr. Bucci, a neurosurgeon, not a surgical candidate.
3. Left Achilles tendon rupture, status post surgery by Dr. Tollison, still non-weight bearing.
4. Work-related injury, has been out of work since August of 2018.
5. Work injury on April 17, 2018.

Plan:

1. Repeat lumbar epidural steroid injection.
2. Follow up as scheduled with Dr. Tollison.
3. Work restrictions per Dr. Tollison for right now.

Note: At the end, the case was discussed with the case manager.



Sung J. Han, M.D.
SJH/DTI user7mt D156417
Dictated - Not Read

Piedmont Comprehensive Pain Mgmt
Group
3 St Francis Dr., Suite 480
Greenville, SC 29601

Name:

Date:

Downes, William D.
HAN (251-31-5011)
DOB: 7/17/1965
4024 Hwy 414
Landrum, SC 29356
Home: (864) 630-5665

12-19-8

Procedure: Lumbar interlaminar epidural steroid injection

Level Done: L5-S1

Indication: 53 y old male with spinal stenosis
& radiculitis presents for L5/S1

Description of Procedure:

The procedure and potential complications were explained to the patient and voluntary informed consent was obtained. Oxygen, blood pressure and heart rate was monitored throughout the procedure. The patient was placed prone on the table and the lower back was prepped and draped in a sterile fashion using betadine X 3. Subcutaneous lidocaine 1% was instilled into the superficial soft tissues of the patient's lower back for local anesthesia. With the use of fluoroscopic guidance, an 18 gauge Touhey needle was inserted at the L5-S1 interlaminar space and advanced toward the epidural space using the loss of resistance technique with normal saline. Once the epidural space was reached, after negative aspiration and confirmation with lateral radiographic view and omnipaque, 80 mg of kenalog and 5 cc of preservative free normal saline was injected into the epidural space. The needle was removed. The skin was cleansed. No complications were observed during or following the procedure.

Note:

Plan:

Full 4 min of 12-19-8

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 01/25/19
DOD: 01/25/19
DOT: 01/27/19

History of Present Illness: This is a 53-year-old male with lumbar spinal stenosis and radiculitis presenting for followup. He had a repeat lumbar epidural steroid injection recently. It has been of great benefit. His back pain has improved. He is still having pain in the left ankle. He is status post Achilles tendon repair. He is still not weight bearing. He follows closely with physical therapy.

Physical Exam: He presents with a large boot on the left lower extremity. Back exam shows some diffuse tenderness to palpation and some pain with extension. No pathological reflexes.

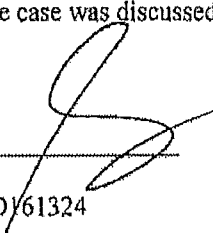
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post two epidural injections, improved.
2. Has seen Dr. Bucci, not a surgical candidate for lumbar spine.
3. Left Achilles tendon rupture, status post surgery by Dr. Tollison, still non-weight bearing.
4. Work-related injury, has been out of work since August of 2018.
5. Work injury on April 17, 2018.
6. In physical therapy with great benefit.

Plan:

1. Continue physical therapy.
2. Follow up here in 4 to 6 weeks. If his back pain worsens, possibly repeat epidural steroid injection. I am hoping with physical therapy and soon removal of the large boot on the left lower extremity his gait will improve as well as his back pain.

Note: At the end, the case was discussed with the case manager.



Sung J. Han, M.D.
SJH/DTI user7mt D\61324
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 03/08/19
DOD: 03/08/19
DOT: 03/09/19

History of Present Illness: This is a 53-year-old male with lumbar spinal stenosis and radiculitis presenting for follow-up. The patient has had epidural injections with some benefit. He continues to have back pain. He is still having issues with left ankle pain. He is status post surgery. He still is wearing a boot. He follows closely with physical therapy as well as his orthopedic surgeon. He states that his current therapy facility is not really doing any modalities, they are just doing an exercise regimen.

Physical Exam: He presents with a large boot on the left lower extremity. Back exam shows diffuse tenderness on palpation and painful range of motion in all planes. No pathological reflexes.

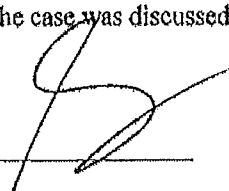
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post epidural injections with some benefit.
2. Has seen Dr. Bucci, not a surgical candidate for the lumbar spine.
3. Left Achilles tendon rupture, status post surgery by Dr. Tollison, doing well, still on restrictions.
4. Work related injury, has been out of work since August 2018.
5. Work injury, April 17, 2018.
6. Current physical therapy not using modalities.

Plan:

1. Continue his physical therapy but I wrote a prescription for them to use modalities. If they do not do any of this, I would recommend another physical therapy facility.
2. Work restrictions of no sitting or standing longer than tolerated for the lumbar spine.
3. Follow up in six weeks.

Note: At the end, the case was discussed with the case manager.



Sung J. Han, M.D.
SJH/DTI oper25 D166370
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 05/01/19
DOD: 05/01/19
DOT: 05/02/19

History of Present Illness: This is a 53-year-old male with lumbar spinal stenosis, radiculitis, and left ankle pain presenting for followup. He has had surgery on his left Achilles tendon. He is out of the boot now. Still some pain and atrophy and weakness in the left distal lower extremity, but it is improving daily with PT. He is also in PT for low back pain, which is helping.

Physical Exam: Mildly antalgic gait with a cane. Back exam shows diffuse tenderness to palpation. No pathological reflexes.

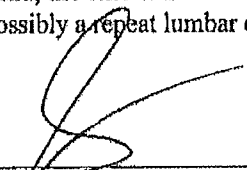
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post epidural injections with benefit.
2. Has seen Dr. Buccia, not a surgical candidate for lumbar spine.
3. Left Achilles tendon repair, doing well, on work restrictions.
4. Work-related injury, has been out of work since August of 2018.
5. Work injury on April 17, 2018.

Plan:

1. Continue physical therapy for the low back as well as the left ankle.
2. Work restrictions of alternating sitting and standing every 30 minutes concerning the lumbar spine.
3. Follow up in 6 weeks.

Note: At the end, the case was discussed with the case manager. Also if his back pain does not continue to improve, possibly a repeat lumbar epidural steroid injection.



Sung J. Han, M.D.
SJH/DTI user/mt D172507
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 06/21/19
DOD: 06/21/19
DOT: 06/23/19

History of Present Illness: This is a 53-year-old male with lumbar spinal stenosis and radiculitis and left ankle pain presenting for followup. He is in physical therapy for his ankle as well as his low back. They are not using any modalities for his low back pain. Back pain has gotten better since his last visit, but it is still very problematic. Left ankle pain is improving daily.

Physical Exam: Independent ambulator today with an antalgic gait. Back exam shows some diffuse tenderness to palpation. No pathological reflexes.

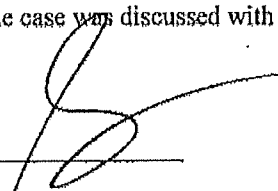
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post epidural injections with benefit.
2. Myofascial low back pain.
3. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
4. Left Achilles tendon repair, doing well, on work restrictions.
5. Work injury on April 17, 2018.

Plan:

1. Physical therapy for dry needling more specifically.
2. Continue work restrictions of alternating sitting and standing every 30 minutes concerning lumbar spine.
3. Continue work restrictions per ankle foot surgeon concerning left ankle.
4. Follow up in 4 weeks.
5. Possibly repeat lumbar epidural steroid injection if no great improvement in low back pain on follow-up.

Note: At the end, the case was discussed with the case manager.



Sung J. Han, M.D.
SJH/DTI user7mt DT77994
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 07/24/19
DOD: 07/24/19
DOT: 07/24/19

History of Present Illness: This is a 54-year-old male with lumbar spinal stenosis and radiculitis and left ankle pain presenting for followup. His ankle pain is improving daily. He is still having some back pain. He is in PT with some benefit, but pain is still an issue. It hurts to stand or sit for long periods.

Physical Exam: Independent ambulator with a minimally antalgic gait. Back exam shows painful range of motion in all planes. No pathological reflexes.

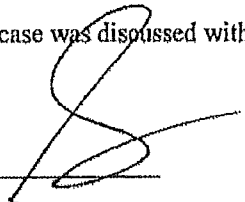
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, problematic, has had epidural injections in the past with benefit.
2. Myofascial pain, in PT, dry needling, E-stim, modalities helpful.
3. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
4. Left Achilles tendon repair, doing well, on restrictions.
5. Work injury on April 17, 2018.

Plan:

1. Repeat lumbar epidural steroid injection.
2. Continue physical therapy with dry needling and modalities.
3. Continue work restrictions of alternating sitting and standing every 30 minutes concerning lumbar spine.
4. Continue work restrictions per ankle foot surgeon concerning left ankle.

Note: At the end, the case was discussed with the case manager.


Sung J. Han, M.D.
SJH/DTI user7mt D180947
Dictated - Not Read

Piedmont Comprehensive Pain Mgmt
Group
3 St Francis Dr., Suite 480
Greenville, SC 29601

Name:

Date:

Downes, William D.
HAN (251-31-5011)
DOB: 7/17/1965
4024 Hwy 414
Landrum, SC 29356
Home: (864) 630-3665

8-14-09

Procedure: Lumbar interlaminar epidural steroid injection

Level Done:

L5-S1

Indication:

54 y/o male with spinal
stenosis & radiculitis presents
for LESI

Description of Procedure:

The procedure and potential complications were explained to the patient and voluntary informed signed consent was obtained. Oxygen, blood pressure and heart rate was monitored throughout the procedure. The patient was placed prone on the table and the lower back was prepped and draped in a sterile fashion using betadine X 3. Subcutaneous lidocaine 1% was instilled into the superficial soft tissues of the patient's lower back for local anesthesia. With the use of fluoroscopic guidance, an 18 gauge Touhey needle was inserted at the L5-S1 interlaminar space and advanced toward the epidural space using the loss of resistance technique with normal saline. Once the epidural space was reached, after negative aspiration and confirmation with lateral radiographic view and omnipaque, 80 mg of kenalog and 5 cc of preservative free normal saline was injected into the epidural space. The needle was removed. The skin was cleansed. No complications were observed during or following the procedure.

Note:

Plan:

Reu 2-4 mm J 8-14-09

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 09/11/19
DOD: 09/11/19
DOT: 09/12/19

History of Present Illness: This is a 54-year-old male with lumbar spinal stenosis and radiculitis presenting for followup. The patient recently had a repeat lumbar epidural steroid injection. The back and leg pain is improved, but he still has issues with it. He is in physical therapy, but they are not using many modalities except dry needling. He is still under the care of Dr. Tollison concerning a left Achilles tendon repair.

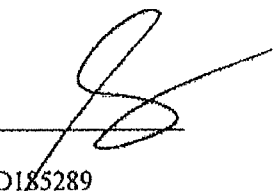
Physical Exam: Independent ambulator with a minimally antalgic gait. Back exam shows some pain with extension. No pathological reflexes.

Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post repeat epidural injection, improved.
2. Myofascial pain, currently not happy with physical therapist.
3. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
4. Left Achilles tendon repair, doing well, on restrictions.
5. Work injury on April 17, 2018.

Plan:

1. Another physical therapy facility for modalities for low back pain.
2. Continue work restrictions of alternating sitting and standing every 30 minutes concerning lumbar spine.
3. Continue work restrictions per ankle and foot surgeon concerning left ankle.
4. Follow up here in 4 weeks.


Sung J. Han, M.D.
SJH/DTI user7mt D185289
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 10/09/19
DOD: 10/09/19
DOT: 10/10/19

History of Present Illness: This is a 54-year-old male with lumbar spinal stenosis and radiculitis presenting for followup. He is doing well overall. Still some minor back pain. Leg pain is manageable. Physical therapy/modalities have been helpful. He has work conditioning pending per Dr. Tollison.

Physical Exam: Independent ambulator with a mildly antalgic gait. Back exam shows some mild discomfort with extension. No pathological reflexes.

Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post epidural injection, leg pain improved.
2. Myofascial pain, physical therapy/modalities helpful.
3. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
4. Left Achilles tendon repair, doing well, work conditioning pending.
5. Work injury on April 17, 2018.

Plan:

1. Two more weeks of physical therapy/modalities of pain reduction.
2. Work conditioning in 2 to 3 weeks.
3. Continue work restrictions of alternating sitting and standing every 30 minutes concerning lumbar spine.
4. Follow up in 6 to 8 weeks. Hopefully, by then he will have finished work conditioning. I anticipate MMI for the lumbar spine in the next 6 to 8 weeks.
5. As far as the left ankle and foot, I defer that MMI to Dr. Tollison, the surgeon.

Note: At the end, the case was discussed with the case manager.

Sung J. Han, M.D.
SJH/DTI_user7mt D187763
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 12/04/19
DOD: 12/04/19
DOT: 12/05/19

History of Present Illness: This is a 54-year-old male with mild lumbar spinal stenosis with radiculitis presenting for followup. He has been going to work conditioning. It has been a little bit tough for him. It has made his back and bilateral leg pain a little worse. No new weakness or bowel or bladder changes reported. Of note, he is also in work conditioning for left ankle pain per Dr. Tollison.

Physical Exam: Independent ambulator with a mildly antalgic gait. Back exam shows painful range of motion in all planes. No pathological reflexes.

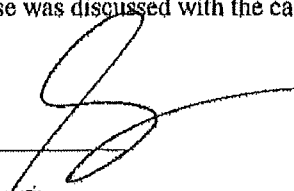
Assessment:

1. Multilevel lumbar disk bulges with radiculitis, problematic, has had epidural injections in the past with benefit.
2. Work conditioning aggravated his back pain.
3. Myofascial pain.
4. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
5. Left Achilles tendon repair, in work conditioning per Dr. Tollison.
6. Work injury on April 17, 2018.

Plan:

1. Repeat lumbar epidural steroid injection.
2. Hold work conditioning for 2 to 3 weeks.
3. Continue work restrictions of alternating sitting and standing every 30 minutes.
4. Follow up 2 weeks after the lumbar epidural steroid injection. I am hoping after the lumbar epidural steroid injection and after completing work conditioning, he will be at MMI. He will likely need an FCE followed by an impairment rating.

Note: At the end, the case was discussed with the case manager.


Sung J. Han, M.D.
SJH/DTI user7mt D192707
Dictated - Not Read

Piedmont Comprehensive Pain Mgmt
Group
3 St Francis Dr., Suite 480
Greenville, SC 29601

Name:

Date:

Downes, William D.
HAN (251-31-5011)
DOB: 7/17/1965
4024 Hwy 414
Landrum, SC 29356
Home: (864) 630-5665

12-11-9

Procedure: Lumbar interlaminar epidural steroid injection

Level Done:

L5-S1

Indication:

54 yr old male with spinal
stenosis & radiculitis present
for L5/S1

Description of Procedure:

The procedure and potential complications were explained to the patient and voluntary informed signed consent was obtained. Oxygen, blood pressure and heart rate was monitored throughout the procedure. The patient was placed prone on the table and the lower back was prepped and draped in a sterile fashion using betadine X 3. Subcutaneous lidocaine 1% was instilled into the superficial soft tissues of the patient's lower back for local anesthesia. With the use of fluoroscopic guidance, an 18 gauge Touhey needle was inserted at the L5-S1 interlaminar space and advanced toward the epidural space using the loss of resistance technique with normal saline. Once the epidural space was reached, after negative aspiration and confirmation with lateral radiographic view and omnipaque, 80 mg of kenalog and 5 cc of preservative free normal saline was injected into the epidural space. The needle was removed. The skin was cleansed. No complications were observed during or following the procedure.

Note:

Plan:

Full 4 mm S 12-11-9

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 01/03/20
DOD: 01/03/20
DOT: 01/05/20

History of Present Illness: This is a 54-year-old male with mild lumbar spinal stenosis, radiculitis, and myofascial back pain presenting for followup. He had a repeat lumbar epidural steroid injection recently. It has been of mild benefit, but he still has back pain. It increases with any movement. He has physical therapy pending for his low back as well as his left ankle following surgery.

Physical Exam: Independent ambulator with a mildly antalgic gait. Back exam shows diffuse tenderness to palpation and painful range of motion in all planes. No pathological reflexes.

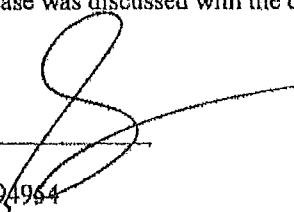
Assessment:

1. Musculoskeletal back pain.
2. Multilevel lumbar disk bulges with radiculitis, status post epidural injections with some benefit.
3. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
4. Left Achilles tendon repair, in work conditioning per Dr. Tollison.
5. Work injury in April of 2018.

Plan:

1. Continue physical therapy/work conditioning.
2. Follow up in 3 months. I anticipate MMI around that time. He will need an FCE followed by an impairment rating.

Note: At the end, the case was discussed with the case manager.



Sung J. Han, M.D.
SJH/DTI user7mt D194954
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT: DOWNES, WILLIAM
PHYSICIAN: Sung J. Han, M.D.
SSN: 251-31-5011

DOS: 04/01/20
DOD: 04/01/20
DOT: 04/02/20

Follow-up/Telemedicine follow-up given COVID-19 pandemic and the patient's comorbidities.

History of Present Illness: This is a 54-year-old male lumbar spinal stenosis, radiculitis, and myofascial back pain presenting for followup. He is still having back pain. He is in work hardening and physical therapy. It is helping. Work hardening and physical therapy is both for his back and his left ankle. He is still under the care of Dr. Tollison.

Physical Exam: Back exam shows painful range of motion in all planes. He can heel and toe stand.

Assessment:

1. Musculoskeletal low back pain.
2. Multilevel lumbar disk bulges with radiculitis, status post epidural injections with some benefit.
3. Not a surgical candidate for lumbar spine, has seen Dr. Bucci.
4. Left Achilles tendon repair, in work conditioning, still following Dr. Tollison.
5. Work injury in April of 2018.
6. At MMI for lumbar spine.

Plan:

1. The patient will continue work hardening and physical therapy per Dr. Tollison concerning the left ankle. They can continue working on his back as well.
2. FCE followed by impairment rating concerning the lumbar spine when the patient is released by Dr. Tollison for left ankle. As far as any kind of impairment rating for left ankle, I will defer that to Dr. Tollison.
3. Follow up as needed.

Sung J. Han, M.D.
SJH/DTI user7mt D202317
Dictated - Not Read

Carolina Orthopaedic & Neurosurgical Associates

1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

January 4, 2021

Page 1

Office Visit

William Downes

Male DOB: 07/17/1965

232994

Home: (864) 630-5665

Ins: Aetna RHP (USE) payer 60054

10/24/2018 - Office Visit: NP: Lumbar

Provider: Timothy Monroe MD

Location of Care: Carolina Orthopaedic & Neurosurgical Associates

History of Present Illness

Mr. William Downes is a 53 Years Old White / Caucasian male, who is here for a new problem.

Chief Complaint: scribe.cc

History From: Patient

Race: White / Caucasian

Family Physician: Dr. Reed Natalias

The onset of the pain has been gradual and has been occurring in constant pattern since April. He reports no symptoms prior to his work injury in April. The course has been gradually worsening. The pain is described as moderate. The pain is described as being located in the lower back. The problem is aggravated by daily activities, movement, standing and walking. The symptoms are relieved by : rest and medication. There has been associated paresthesias, numbness and weakness. Previous diagnostic tests have included MRI (at GHS). Treatment included analgesics, muscle relaxant, home exercise program and chiropractic adjustments. There is no previous spine surgery. The pain interferes with work, daily activities, leisure activities and sleep.

Injury / Condition

Was this the result of an injury? no

Are you claiming as Workers Compensation? no

Type of Problem

pain 5/10

Previous Treatment

Have you had any of the following for this problem? MRI Left Ankle @ Inversion 08/17/18, MRI Lumbar @ Inner 7/2/18 (Imported)

History of OA Fractures or Procedures:**Past Medical History**

No significant medical history

Active Medications Prior to This Update (reviewed today):

NAPROXEN SODIUM TABLET (NAPROXEN SODIUM TABS)

SOMA TABLET (CARISOPRODOL TABS)

CELEXA 40 MG ORAL TABLET (CITALOPRAM HYDROBROMIDE)

CYMBALTA 60 MG ORAL CAPSULE DELAYED RELEASE PARTICLES (DULOXETINE HCL)

Current Medications (reviewed today):

NAPROXEN SODIUM TABLET (NAPROXEN SODIUM TABS)

SOMA TABLET (CARISOPRODOL TABS)

CELEXA 40 MG ORAL TABLET (CITALOPRAM HYDROBROMIDE) ; Route: ORAL

CYMBALTA 60 MG ORAL CAPSULE DELAYED RELEASE PARTICLES (DULOXETINE HCL) ; Route: ORAL

EXHIBIT

F

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Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

January 4, 2021
Page 2
Office Visit

William Downes

Male DOB: 07/17/1965

232994

Home: (864) 630-5665
Ins: Aetna RHP (USE) payer 60054

Current Allergies (reviewed today):

No known allergies

Review of Systems

Psychiatric: Positive for anxiety, depression.

Social History

Patient is single, Never smoker, Has no children. Occupation: Respiratory Therapist.

Family History

Lung Disease (Father)

Cancer (Father, Mother)

Directives Added:

Added new directive of DISCUSSED - NO DECISION MADE - Signed

VITAL SIGNS

Body Mass Index in-lb

Height (in): 77

Weight (lb): 255

BMI (in-lb) 30.24

P: 69 R: 15 BP: 107/73

GENERAL EXAM

Appearance: Healthy

Mental Status: Alert & Oriented x 3, No Acute Distress

Hand Dominance: Right

Gait: Normal

Durable Goods: No

Lumbar Xray reveals Lumbar DDD/Spondylosis

General

Build & Nutrition - Well nourished and Well developed.

Head and Neck

Neck

Global Assessment - normal alignment, tracheal midline, full range of motion, non-tender.

Thyroid

Gland Characteristics - no palpable enlargement.

Eye

Sclera/Conjunctiva - Bilateral - Normal.

Pupil - Bilateral - Normal.

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Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

January 4, 2021
Page 3
Office Visit

William Downes

Male DOB: 07/17/1965

232994

Home: (864) 630-5665
Ins: Aetna RHP (USE) payer 60054

ENMT

Nose and Sinuses

External Inspection of the Nose - The nose is normal. Inspection of the nares - Bilateral - symmetric.

Mouth and Throat

Oral Cavity/Oropharynx - Oropharynx - normal, no evidence of airway distress observed.

Chest and Lung Exam

Inspection

Shape - Normal. Movements - Symmetrical. Accessory muscles - No use of accessory muscles in breathing.

Auscultation

Breath sounds - Normal.

Cardiovascular

Inspection

Carotid artery - Bilateral - Inspection Normal.

Auscultation

Rhythm - Regular. Heart Sounds - Normal heart sounds.

Neurologic

Neurologic evaluation reveals - normal sensation, normal coordination and upper and lower extremity deep tendon reflexes intact bilaterally.

Cranial Nerves - Normal II - XII.

Neuropsychiatric

Mental status exam performed with findings of - Oriented X3 with appropriate mood and affect.

Musculoskeletal

Global Assessment

Strength - Normal - Right Upper Extremity, Left Upper Extremity, Right Lower Extremity and Left Lower Extremity.

Spine/Ribs/Pelvis

Gait and Station - Normal Exam - normal gait and normal station. Lumbosacral Spine - Examination of the lumbosacral spine reveals - no tenderness to palpation, pain, normal strength and tone, no laxity or crepitus, no paraspinal muscle spasm and no radicular symptoms with movement of lumbar spine. Functional Testing - negative straight leg raise, right, negative straight leg raise, left, Babinski Test negative, negative Clonus Test.

ASSESSMENT

Lumbar DDD/Spondylosis L5-S1 disc bulge

Degenerative disc disease, lumbar spine (ICD-722.52) (ICD10-M51.36)

PLAN

Follow up PRN

Matthew Estell AGACNP-BC transcribing for Dr. Monroe

New Orders:

Lifestyle Education Regarding Hypertension [SCT-443402002]

Finding of Hypertension Episode [SCT-62275004]

ANMED HEALTH Occupational Medicine

Ping Gao, M.D., MPH, FACOEM • Connie Simpson, MSN, APRN-BC

RE: IRE OF WILLIAM DOWNES

DATE OF BIRTH: 7/17/1965
SS#: XXX-XX-5011
DATE OF INJURY: 4/17/2018
EMPLOYER: Bon Scours
INSURANCE CARRIER: York Risk Services Group
CLAIM #: BSTK-034263
DATE OF EVALUATION: 9/23/2020



To Whom It May Concern:

William Downes was seen for a permanent impairment rating evaluation regarding his lumbar spine. The evaluation was performed at the AnMed Health Occupational Medicine Clinic on 9/23/2020. A photo identification of the examinee was obtained prior to my evaluation. The report and its conclusions were based on review of the information provided by the insurer or third-party administrator, along with the objective findings of the examination and history obtained from the examinee. The claimant presented accompanied by his girlfriend for today's appointment. No recording devices were used today.

At the beginning of the process, I explained to the examinee that I would obtain a complete history and/or interval history and conduct a pertinent and focused physical examination. The examinee was asked to move the joints to the maximum extent possible, up to the point such that no harm or injury would be incurred or excessive pain encountered. The examinee was also advised that the information provided would not be confidential, and a report would be sent to the requesting client. Informed consent was obtained, with the examinee providing written permission to proceed with the evaluation, including the physical examination. The examinee reported no difficulties occurring during the examination and after the evaluation. My nurse was present during the entire encounter assisting me.

HISTORY OF CLINICAL PRESENTATION: William Downes was employed as Respiratory Therapist at Bon Secours St. Francis Hospital at the time of injury. He allegedly sustained an injury to his lower back on 4/17/2018 at work while trying to prevent a heavy patient (about 500 lbs.) from falling off CT table. Mr. Downes states he felt a "pop" in his low back and felt pain. Claimant states he sought medical attention a day or two later at Bon Secours WorkWell clinic. Claimant states he experienced radiating pain to legs and N/T in legs predominantly on left side. He had X-Ray and was treated with ibuprofen, home exercise and light duty work with no improvement. Subsequently, he saw Dr. Bucci, a spine specialist and MRI of lumbar spine was obtained

IRE

9/23/2020

Page 2 of 7

RE: William Downes

reportedly showing "bulging or herniated disc at L4-5/ L5-S1". He was determined not a surgical candidate by Dr. Bucci and was referred to Dr. Han of pain management. During this period of time claimant was working on modified duty. Claimant states that he has had 4 epidural injections which provided brief pain improvement only without overall benefit.

Claimant states he sustained an injury to his left Achilles tendon in August 2018 and underwent surgical repair later in August. He stopped working ever since the Achilles tendon surgery. Claimant has undergone extensive physical therapy at two different facilities off and on for about one year for both his low back and left ankle. Physical therapy ended in July 2020. At his last visit with pain management specialist Dr. Han on 4/01/2020, claimant was assessed at MMI for his low back pain. Claimant states he has not seen any healthcare professionals for his low back since 4/01/2020.

Claimant states he has been taking Gabapentin, Cymbalta, Tylenol, and Ibuprofen for pain. Claimant had a Functional Capacity Evaluation at Garber Physical Therapy on 8/12/2020. He states he has completed all recommended treatments and currently does not see any physicians for this injury.

On inquiry of how he spends his time, claimant states he doesn't do much. He does state he performs activities of his daily living independently. He drives car.

CURRENT COMPLAINTS: "Constant chronic back pain and left leg pain; severe depression; lack of stamina; problems sleeping; periodic jaw pain; loss of muscle mass"

PAST MEDICAL HISTORY/PAST SURGICAL HISTORY: Depression, left Achilles tendon repair, jaw pain (right)

CURRENT MEDICATIONS: Gabapentin, Cymbalta, ibuprofen, ASA, Adderall, Celexa, Tylenol

PERSONAL HISTORY: Single lives with girlfriend; has associate degree; denies smoking or use of illicit substances.

DOCUMENTS REVIEWED: I reviewed all of the documents provided to me prior to the claimant's arrival.

IRE

9/23/2020

Page 3 of 7

RE: William Downes

1/3/2020, office visit with Dr. Sung J, Han, MD, of Piedmont Comprehensive Pain Management Group, LLC for musculoskeletal back pain, multilevel lumbar disk bulges with radiculitis. Continue PT.

4/1/2020, office visit with Dr. Sung J, Han, MD, of Piedmont Comprehensive Pain Management Group, LLC for musculoskeletal back pain, multilevel lumbar disk bulges with radiculitis. Claimant was assessed at MML.

7/2/2020. Physical therapy note from SSI Physical Therapy and Performance Training Center. Total PT visits 33.

7/21/2020. Physical therapy note from SSI Physical Therapy and Performance Training Center. Total PT visits 36.

8/12/2020. Functional Capacity Evaluation report at Garber Physical Therapy.

PHYSICAL EXAMINATION:

Vital sign: BP 130/82, P: 76, R: 18, T: 99.3, weight: 263 lb, height: 6'5", BMI: 31.9

GENERAL: William Downes is a 55 years old well-developed and well-nourished, pleasant Caucasian male who appears in no apparent distress. He is awake, alert and oriented to person, time, and place. His mood and affect are normal. He is cooperative to examination.

SPINE:

- Inspection: No appreciable deformity, no ecchymosis/dyscoloration/scars/mass/focal swelling.
- Palpation: Claimant exhibits tenderness to palpation over L4-S1 midline, no tenderness to palpation cervical and thoracic spine, paraspinal and SI joints. No muscle spasm.
- Motion: Claimant demonstrates the following ROM without increased pain: lateral flexion of 30° to left and 20° to right, 70° rotation bilaterally, 45° flexion.

UPPER EXTREMITY: Symmetrical without deformity, pain free FROM in joints.

LOWER EXTREMITY: Symmetrical bilaterally. No soft tissue swelling, no ecchymosis, no joint contracture, and no deformity. He demonstrates symmetrical pain free active range of motion in hip and knee bilaterally. ROM of right ankle and intrinsic joints of foot is full and pain free, ROM of left ankle is moderately decreased cited by claimant as of pain. Claimant also states unable to move intrinsic joint of left foot (did not measure the degrees since I have been informed of the left ankle has been rated elsewhere and is not part of this evaluation). He ambulates with a normal gait

IRE

9/23/2020

Page 4 of 7

RE: William Downes

and pace. Claimant can stand on heels and on the toes of right foot (stating unable to stand on toes of left foot). He walks with a slight limping on left due to decreased ROM in left ankle, without using any assistive devices.

SKIN: About 5 cm long healed surgical along left Achilles tendon without swelling or erythema, no obvious tenderness to palpation.

NEUROLOGICAL:

- Sensation to light touch is reported as symmetrical and intact in thigh and lower leg bilaterally, normal in right foot, decreased in dorsal and plantar of left foot.
- Muscle strength is 5/5 for flexion of hip, extension and flexion of knee bilaterally, and dorsal flexion and plantar flexion of right ankle. He demonstrates 4/5 muscle strength for dorsal flexion and plantar flexion of left foot.
- Measurement: The measurements were taken using a measuring tape when claimant was in supine position with the muscles in lower extremity were relaxed and the knee in 0° extension.
 - o Length of lower extremity was measured from the anterior superior iliac spine to the tip of medial malleolus. It is 104cm bilaterally.
 - o Circumference of thigh was measured at the level of 15cm proximal to the medial epicondyle of femur. It is 52cm (R) and 51cm (L).
 - o Circumference of the lower leg was measured at the level of 15cm distal to the medial epicondyle of femur. It is 41.5cm (R) and 39.5cm (L).
- Deep tendon reflex: 2+ at knee bilaterally. Negative Babinski bilaterally.
- Straight leg raising test: In seated position, it is negative at 80 degree bilaterally.

VASCULAR: Dorsalis pedis pulse is palpable bilaterally. Capillary refill is less than 2 seconds in toes.

FUNCTIONAL INVENTORIES:

Pain Disability Questionnaire (PDQ score 116) was completed and attached. Please note that claimant included his pain in low back and left leg into this questionnaire.

MAXIMUM MEDICAL IMPROVEMENT:

Review of medical notes and history from the claimant indicate that the claimant has completed all recommended treatment. He is 29+ months post injury of his low back. He is not a surgical candidate per Dr. Bucci. With a medical probability, in my opinion, claimant has reached maximum medical improvement (MMI) and his condition is unlikely to further improve in the

IRE

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RE: William Downes

future and therefore is ratable based on *American Medical Association Guides to the Evaluation of Permanent Impairment*, Sixth Edition.

CONCLUSIONS:

DIAGNOSES:

1. Chronic low back pain
2. S/p left Achilles tendon repair

PROGNOSIS: Good.

PERMANENT IMPAIRMENT EVALUATION: Permanent Impairment Evaluation was performed in accordance with the *American Medical Association Guides to the Evaluation of Permanent Impairment*, Sixth Edition, based on the data obtained during this evaluation and the criteria provided in the *Guides*.

RATABLE DIAGNOSIS/DISORDER:

Chronic low back pain

Reference the *American Medical Association Guides to the Evaluation of Permanent Impairment*. Page 570, Table 17-4: Lumbar Spine Regional Grid: Spine Impairments.

The claimant has strained typed injury with ongoing low back pain. On examination, there is non-verifiable finding for radiculopathy (negative SLR testing). He is assigned as Class 1 with default grade C (2% WPI).

Adjustment:

- a) Functional history adjustment (page 575, Table 17-6: Functional history adjustment: Spine). PDQ score 116 is grade modifier 3 which deviates from Class by 2. Per the *Guides*, it deemed unreliable and therefore will not be used for adjustment. (GMFH = N/A).
- b) Physical examination adjustment (page 576, Table 17-7: Physical Examination Adjustment: Spine). He has negative straight leg raising test for radicular pain. The reported decreased sensation in dorsum and plantar left foot does not follow any particular nerve root distribution. Atrophy in left thigh and left lower leg is more likely due to left Achilles tendon injury and subsequent surgery and immobilization/disuse than from possible nerve root disorder in lumbar spine. In light of the Achilles tendon injury and surgery, along with negative pathological reflexes throughout the course as well as examination today, atrophy in left lower

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RE: William Downes

extremity will not be considered a relevant finding of low back strain/low back pain. Motor strength is preserved and symmetrical to the contralateral leg. This is grade modifier 0 (GMPE = 0)

- c) Clinical studies adjustment (page 581, table 17-9: Clinical Studies Adjustment: Spine). I don't have access to any of his diagnostic images, nor have I received any reports of those studies. (GMCS = N/A)

$$\text{Adjustment} = (\text{GMPE} - \text{CDX}) = (0 - 1) = -1$$

Net adjustment shifts Grade from C to B, as 1% WPI.

FINAL IMPAIRMENT: Claimant has 1% WHOLE PERSON IMPAIRMENT due to chronic low back pain, secondary to the injury on 4/17/2018.

The above opinions have been offered to a reasonable degree of medical certainty, and are independent of the requesting party. This evaluation reflects the claimant's condition as he was seen on 9/23/2020.

Thank you for referring this case to my attention. Should you have any questions regarding the above-mentioned report, please do not hesitate to contact me.

Sincerely,



PING GAO, MD, MPH, FACOEM
CERTIFIED IMPAIRMENT RATER FOR SIXTH EDITION
DIPLOMAT OF THE AMERICAN BOARD OF PREVENTIVE MEDICINE, IN
OCCUPATIONAL MEDICINE
ANMED HEALTH
2000 E GREENVILLE STREET
ANDERSON, SC 29621
TELEPHONE: 864-512-4813

Enclosure:

The Orthopedic Center
William L. DeVault, MD
206 Wall Street
Piedmont, SC 29673

William Downes

William Downes, by report, was at his workplace (St. Francis of Bon Secours Health System) on April 17, 2018 when sustained a back injury after transfer lifting a 450 lb patient to and from a CT scanner. He had the onset of low back pain and subsequently left leg pain.

Scott Grubbs, MD

April 19, 2018

Dr. Grubbs of WorkWell Occupational Health diagnosed Mr. Downes with strain of lower back (S39.012A). He placed Mr. Downes on work restrictions of no strenuous pulling/pushing, weight limit 60 lbs, limited lifting at waist level with weight limit 20 lbs, limited lifting from floor to waist with weight limit 20 lbs. Dr. Grubbs prescribed Mr. Downes Naproxen and wanted to see him in 8 days for a follow up.

April 27, 2018

Dr. Grubbs saw Mr. Downes for his follow up appointment regarding his work injury. Dr. Grubbs determined that Mr. Downes' diagnosis of low back strain was the same, but it had improved slightly. Dr. Grubbs maintained his work restrictions, represcribed Mr. Downes Naproxen, and wanted to see him in 10 days for a follow up.

May 7, 2018

Dr. Grubbs saw Mr. Downes for his follow up appointment. Dr. Grubbs determined that Mr. Downes' diagnosis of low back strain was the same and persistent with no obvious improvement. Dr. Grubbs maintained his work restrictions and wanted to see him for a follow up.

May 30, 2018

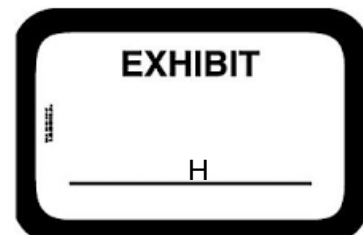
Dr. Grubbs saw Mr. Downes for his follow up appointment. Dr. Grubbs determined that Mr. Downes' diagnosis of low back strain was the same and significant with no obvious improvement. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), gave him a back brace as needed, and wanted to see him for a follow up in 2 weeks.

June 18, 2018

Dr. Grubbs saw Mr. Downes for his follow up appointment. Mr. Downes stated that his low back pain was still present, and he began to experience lower extremity radiation of pain. Dr. Grubbs decided to refer Mr. Downes to a chiropractor for 6 week sessions. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), newly prescribed OTC biofreeze, and told him to use the back brace as needed.

July 2, 2018

Dr. Grubbs ordered an MRI of Mr. Downes' lumbar spine without contrast. The MRI (read by Jeffery Shramek, MD) showed mild L3-4 through L5-S1 disc bulges, midline L5-S1 disc protrusion, mild left foraminal L3-4 disc protrusion, and mild left L3 foramen narrowing.



July 11, 2018

Dr. Grubbs saw Mr. Downes for a follow up appointment. Dr. Grubbs determined that in addition to the low back pain, Mr. Downes may also have an achilles tendon tear. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), and wanted to see him in 2 weeks for a follow up.

July 25, 2018

Dr. Grubbs saw Mr. Downes for his follow up appointment. Dr. Grubbs determined that Mr. Downes had low back strain and facet S1 disc issue. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), told him to use the back brace as needed, and wanted to see him in 4 weeks for a follow up.

Michael Tollison, MD

August 9, 2018

Dr. Tollison of Piedmont Orthopaedics saw Mr. Downes for his lower extremity/achilles tendon pain. Dr. Tollison determined that Mr. Downes had (in addition to the low back pain) left achilles tendonitis and suspected partial tear. Dr. Tollison placed him in a 3D boot and advised him to get an even-up device online to level the pelvis due to low back pain. Dr. Tollison also ordered an MRI of the left Achilles to assess for achilles tendon tearing. Dr. Tollison gave work restrictions (out of work until August 13).

August 24, 2018

Dr. Tollison saw Mr. Downes for his follow up appointment. Dr. Tollison reviewed the MRI results (August 17, read by Jeffrey Shramek, MD), which showed severe achilles tendonitis, intermediate severity interstitial partial-thickness tear, and peritendinitis; these were age indeterminate findings. Dr. Tollison discussed the option of surgery with Mr. Downes, to which Mr. Downes agreed. Dr. Tollison placed Mr. Downes on an out of work order until the surgery scheduled.

October 22, 2018

Dr. Tollison saw Mr. Downes for his preoperative appointment. Consent was explained and signed by Mr. Downes. Surgery was scheduled for October 31, 2018. Dr. Tollison ordered a knee scooter for Mr. Downes and wanted to see Mr. Downes for an additional postoperative appointment.

October 31, 2018

Dr. Tollison performed left achilles tendon debridement with reconstruction and great toe tendon transfer on Mr. Downes. The surgery took place at Bon Secours St. Francis Downtown Hospital. Surgery was successful without complications.

November 13, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. His splint was removed, and Dr. Tollison noted no complications. Sutures were left intact. Dr. Tollison maintained his out of work order, ordered a leg brace for the left ankle and a handicap parking placard (4 months), and wanted to see Mr. Downes for an additional postoperative appointment.

November 21, 2018

Mary Holt, RMA (on behalf of Dr. Tollison) saw Mr. Downes for his postoperative appointment. Dr. Tollison noted no complications. Sutures were removed and sterri-stripped. He placed Mr. Downes in a 3D walker boot and heel lift. Dr. Tollison maintained his out of work order and wanted to see Mr. Downes for an additional postoperative appointment in 6 weeks.

December 14, 2018

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes was still on a walker and in a 3D boot. Mr. Downes had mild achilles pain, but otherwise recovery was as expected. Dr. Tollison ordered formal physical therapy and advised Mr. Downes to wean off the 3D boot as tolerated. Dr. Tollison gave a work order of sitting work only and wanted to see Mr. Downes for an additional postoperative appointment.

January 25, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes was in physical therapy and was walking with a cane and 3D boot. Mr. Downes stated that he had pain from his heel to achilles. Dr. Tollison maintained the work order of sitting work only, ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

March 8, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes was in physical therapy and was slowly weaning off the 3D boot. Mr. Downes stated that he had burning pain in his achilles. Dr. Tollison prescribed ibuprofen 800mg. Dr. Tollison maintained the work order of sitting work only, ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

April 9, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes was in shoes but still had to wear the 3D boot due to swelling. Mr. Downes state that he had stinging pain in his achilles. Dr. Tollison gave work orders of sitting work with limited standing/walking to 20 minutes per hour. He ordered additional formal physical therapy, advised weaning off the 3D boot, and wanted to see Mr. Downes for an additional postoperative appointment.

May 10, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted minimal changes. Mr. Downes stated that he had sharp pain in his achilles. Dr. Tollison maintained work orders of sitting work with limited standing/walking to 20 minutes per hour. He ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

June 24, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes continued to have issues with healing (sharp pain still present) but felt it was a work in progress. Dr. Tollison gave work orders of sitting work with limited standing/walking to 30 minutes per hour. He ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

August 5, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes had soreness in his achilles. Dr. Tollison maintained work orders of sitting work with limited

standing/walking to 30 minutes per hour. He ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

September 16, 2019

Dr. Tollison saw Mr. Downes for his postoperative appointment. Dr. Tollison noted that Mr. Downes still had soreness in his achilles. Dr. Tollison maintained work orders of sitting work with limited standing/walking to 30 minutes per hour. He ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

April 24, 2020

Dr. Tollison saw Mr. Downes for his achilles. Dr. Tollison noted that Mr. Downes still had burning pain in his achilles. In addition, Mr. Downes started SSI physical therapy since his visit September 2019, but he had to stop due to LBP. Dr. Tollison discussed that Mr. Downes protects normal motion and needs to continue with HEP and physical therapy to improve. Dr. Tollison maintained work orders of sitting work with limited standing/walking to 30 minutes per hour. He ordered additional formal physical therapy, and wanted to see Mr. Downes for an additional postoperative appointment.

June 5, 2020

Dr. Tollison saw Mr. Downes for his achilles. Dr. Tollison noted physical therapy wondered if Mr. Downes had micro-tearing in the achilles. Dr. Tollison ordered an MRI of the left achilles, maintained work orders of sitting work with limited standing/walking to 30 minutes per hour, ordered additional formal physical therapy and FCE, and wanted to see Mr. Downes for an additional postoperative appointment.

July 16, 2020

Dr. Tollison ordered an MRI of the left achilles without contrast with Medical Imagine Express. The MRI (read by Gilbert H. Maulsby, MD) showed 1) marked hypertrophic tendinopathy and peritendinitis (persistent) with stress change noted within the posteriosuperior calcaneus; 2) muscle edema and atrophy hind foot muscles typical of chronic denervation; 3) chronic sprain anterior talofibular ligament; and 4) midfoot degeneration.

August 12, 2020

Dr. Tollison ordered a Functional Capacity Evaluation (FCE) of Mr. Downes. The conclusion (per Ryan Marx, DPT) indicated that Mr. Downes was capable of functioning at the Sedentary Level of work.

August 24, 2020

Dr. Tollison created a physician's statement regarding Mr. Downes. Dr. Tollison stated the following medical opinions to a reasonable degree of medical certainty:

- Mr. Downes has a diagnosis of achilles tendinitis of left lower extremity (M76.62) in the left achilles heel as based upon the AMA's Guides to the Evaluation of Permanent Impairment (5th and 6th Ed.)
- Mr. Downes has a permanent physical limitations as a result of this injury per FCE report.
- Mr. Downes possesses retained hardware of a Twinfix Anchor as a result of this injury.
- Mr. Downes does not need medical, surgical, hospital, or other treatments as a result of this injury for an additional time.

Michael N. Buccil, MD

August 21, 2018

Dr. Buccl of Piedmont Spine and Neurosurgical Group saw Mr. Downes for his low back pain. Dr. Buccl noted that the most recent MRI of the lumbar spine (July 2018) showed degenerative disc disease at L5-S1 with some minor bulging without malalignment or spinal stenosis. Dr. Buccl diagnosed Mr. Downes with acute bilateral low back pain without sciatica (ICD-10-CM M54.5, ICD-9-CM 724.2) and degenerative disc disease, lumbar (ICD-10-CM M51.36, ICD-9-CM 722.52). Dr. Buccl referred Mr. Downes to pain management and encouraged him to continue seeing the chiropractor for the time being. Dr. Buccl prescribed naproxen (500mg), soma compound (200-325mg), and ceflexa (40mg). Dr. Buccl gave an out of work order until Mr. Downes' appointment with pain management.

Sung Han, MD

October 17, 2018

Dr. Han saw Mr. Downes on referral from Dr. Buccl regarding low back pain management. Dr. Han scheduled Mr. Downes for lumbar epidural steroid injection (L5-S1) on October 24, 2018.

December 12, 2018

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han scheduled Mr. Downes for lumbar epidural steroid injection (L5-S1) on December 19, 2018.

January 25, 2019

Dr. Han rechecked Mr. Downes. He benefited from his repeat lumbar epidural steroid injection. He was still having pain in his left ankle post Achilles tendon repair. He was still nonweightbearing at that time. The assessment included multilevel lumbar disc bulges with radiculitis, status post to epidural injections, improved. Recommendations were to continue physical therapy.

January 27, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes to continue physical therapy and possible repeat epidural steroid injection if back pain is worse by 4-6 weeks followup.

March 8, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes to continue physical therapy but also gave prescription for PT to use modalities. He also gave work restrictions of no sitting/standing longer than tolerated. Dr. Han wanted to see Mr. Downes in 6 weeks for a followup.

May 1, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes to continue physical therapy. He gave work restrictions of alternating sitting/standing every 30 minutes. Dr. Han wanted to see Mr. Downes in 6 weeks for a followup.

June 21, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes to receive physical therapy with dry needling. He maintained work restrictions of alternating sitting/standing every 30 minutes. Dr. Han also considered possible repeat epidural steroid injection if back pain is worse. Dr. Han wanted to see Mr. Downes in 4 weeks for a followup.

July 24, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes to continue physical therapy with dry needling and modalities. He maintained work restrictions of alternating sitting/standing every 30 minutes. Dr. Han also scheduled repeat epidural steroid injection (L5-S1) on August 14, 2019.

August 14, 2019

Mr. Downes had an L5 – S1 interlaminar lumbar epidural steroid injection.

September 11, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han referred Mr. Downes to another physical therapy provider for modalities and back pain. He maintained work restrictions of alternating sitting/standing every 30 minutes. Dr. Han wanted to see Mr. Downes in 4 weeks for a followup.

October 9, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han ordered 2 more weeks of physical therapy with modalities and work conditioning in 2-3 weeks. He maintained work restrictions of alternating sitting/standing every 30 minutes. Dr. Han hoped to submit an MMI for the lumbar spine in the next 6-8 weeks. He wanted to see Mr. Downes in 6-8 weeks for a followup.

December 4, 2019

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes to hold work conditioning for 2-3 weeks. He maintained work restrictions of alternating sitting/standing every 30 minutes. Dr. Han also scheduled repeat epidural steroid injection (L5-S1) on December 11, 2019. Dr. Han wanted to see Mr. Downes 2 weeks after the injection and stated that an FCE would likely be needed.

December 11, 2019

Mr. Downes had an L5 – S1 lumbar epidural steroid injection.

January 3, 2020

Dr. Han saw Mr. Downes for a followup pain management appointment. Dr. Han advised Mr. Downes continue physical therapy and work conditioning. Dr. Han stated that an FCE would be needed followed by an impairment rating. Dr. Han wanted to see Mr. Downes in 3 months and hoped to give an MMI at that time.

Ping Gao, MD, MPH, FACOEM

September 23, 2020

Dr. Gao created a physician's statement regarding Mr. Downes. Dr. Gao stated the following medical opinions to a reasonable degree of medical certainty:

- Mr. Downes has a diagnosis of chronic low back pain in the lumbar spine as based upon the AMA's Guides to the Evaluation of Permanent Impairment (6th Ed.)
- Mr. Downes has a permanent physical impairment as a result of this injury of 1% to the low back.
- Mr. Downes does not have a permanent physical limitations as a result of this injury.
- Mr. Downes does not possess retained hardware as a result of this injury.

- Mr. Downes does not need medical, surgical, hospital, or other treatments as a result of this injury for an additional time.

Medical records were reviewed of William Downes' treatment by Mike D. Smith of Piedmont Psychiatric Services outlining treatment from May 6, 2019 with a diagnosis of major depression, recurrent episode, moderate and attention deficit hyperactivity disorder. Treatment records were reviewed through June 6, 2019. At that time, he was noted to have limitations to job performance including decreased concentration, energy, mood, interest and motivation with low frustration tolerance.

Records were reviewed from SSI physical therapy outlining treatment for William Downes with an initial visit on November 11, 2019. He was noted to have been injured on April, 2018 knee was transporting a large patient to the CT scanner while trying to breathe her with a bag. She had to be transferred back because she didn't fit into the machine. When she was being transferred, she started to fall and he twisted to catch her and felt a pop in his back. He subsequently went to visit the company doctor who checked his Achilles reflex and soreness was noted. Records were reviewed through July 30, 2020. Treatment included aquatic therapy, neuromuscular reeducation, manual stretching, joint mobilization and therapeutic exercise.

Mr. Downes reported that he was working as a respiratory therapist at Saint Frances Hospital on April 17, 2018. He was assisting a 450 pound morbidly obese patient into a CT scanner and subsequently back out of the CT scanner into bed and felt a pop in his back and left leg. He reported that he continues to have lumbar back pain, left leg pain and weakness and left great toe weakness at the site of the tendon graft used to repair his Achilles tendon. He reports he has difficulty trying to do activities of daily living such as getting on and off his shoes and socks secondary to his back pain and stiffness. He also reports he gets cramping in the left calf. He reported he's been out of work since August, 2018. He reported that he has had a significant worsening of his depression and takes 1.5 to 3.0 mg of Vraylar prescribed for depression. For his back pain and left leg pain he takes 1800 mg of gabapentin, 120 mg of Cymbalta and 800 mg of Ibuprofen. He reports that therapy has stopped now. He reported the epidural steroid injections only give him temporary relief. He reported he has some ongoing treatment plan through Dr. Esce in Spartanburg, South Carolina.

On physical examination, William Danny Downes has lumbar active assisted range of motion of flexion to bring hands to knee level, extension to 10°, right lateral flexion to 20° and left lateral flexion of 15°. Right and left lateral flexion was accompanied with palpable lower lumbar paraspinal muscular spasm worse on the left. Deep tendon reflexes are 2+ right and left patellar, one plus right Achilles and zero left Achilles. Straight leg raise testing was positive on the right at 90° with posterior thigh pain and posterior calf pain in the proximal one half of the lower leg. Straight leg raise testing was positive on the left at 90° with posterior thigh and proximal one third lower leg radiating discomfort. Right calf diameter measured 42.0 cm and left calf diameter measured 39.5 cm. There is a 10 cm scar over the Achilles on the left lower extremity. This appears to be well healed. The left Achilles tendon appears to be in good continuity to palpation. There is a 4 cm scar on the dorsum of the left great toe from the previous tendon graft area. This also appears to be well healed. Left ankle active assisted range of motion revealed 5° of extension, 20° of plantar flexion, 5° of inversion and 5° of eversion. Motor strength exam against examiner resistance revealed 4/5 strength to left ankle plantar flexion, dorsiflexion, inversion and eversion. Left great toe motor strength exam against examiner resistance revealed 4/5 strength to dorsiflexion and plantar flexion.

Within a reasonable degree of medical certainty, William "Danny" Downes sustained injuries to his lumbar spine and left Achilles tendon in the accident described above as occurring on April 17, 2018. 20 was working as a respiratory therapist at Saint Frances Hospital, assisting a patient in and out of a CT scanner. William Downes has had an exacerbation of his psychological depression secondary to the lumbar spine and left Achilles tendon injuries. Within a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on The American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category III, table 15 - 3, page 384. William Downes has 50% left lower extremity permanent and partial impairment secondary to his Achilles tendon injury and subsequent repair/reconstruction under ankle and foot motion impairment tables 17 - 11 and 12, page 537 with impairment due to lower extremity muscle weakness table 17 - 8, page 532. William Downes has an additional 10% left foot permanent and partial impairment secondary to left great toe weakness as a residual from the tendon graft for his Achilles injury. In order to maintain his current level of function, William Downes will need six physician visits per year and 16 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time.

I have discussed with the examinee that the independent medical evaluation does not constitute the establishment of a physician patient relationship. This independent medical evaluation is based on the physical exam findings at the time of this evaluation and the medical records available at the time of this evaluation with the assumption that the medical records are true and correct. If additional information becomes available in the future, the independent medical evaluation can be revised. There is a possibility of undetected illnesses or injuries at the time of this evaluation. This independent medical evaluation should not be construed as endorsing or criticizing the medical treatment provided. This independent medical evaluation is the opinion of William DeVault, MD.

William DeVault, MD
206 Wall Street
Piedmont, SC 29673
January 9, 2011

William DeVault, MD

Williams and Kamb, LLC
619 North Main Street
Greenville, South Carolina 29603
864-235-6254

Jan. 11, 2021 4:01PM

No. 9162 P. 2

Carolina Orthopaedic & Neurosurgical Associates
1330 Bolling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

January 11, 2021
Page 1
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

01/08/2021 - Office Visit: EPNC: Lumbar pain
Provider: Julie Justice NP
Location of Care: Carolina Orthopaedic & Neurosurgical Associates

History of Present Illness

Mr. William Downes is a 55 Years Old White / Caucasian male, who is here for a new problem.

Chief Complaint: Low back pain, lumbar radiculopathy.

History From: Patient

Race: White / Caucasian

Family Physician: Dr. Reed Natalas

The patient presents today with ongoing complaints of his back pain into his left lower extremity. He had an original work related injury that he was seeing Dr. Monroe for. He tells me that he was working as a respiratory therapist and had a 400+ patient fall on him. He has been treated with physical therapy which seems to aggravate his condition. He did not really progress and the FCE was completed. He did have ESIs four different occasions with minimal improvement in his symptoms. No recent MRI has been done. It appears his last MRI was close to three years ago. No lumbar surgery was completed.

Injury / Condition

Was this the result of an injury? yes

Injury Date: 04/17/2018

Are you claiming as Workers Compensation? no

Type of Problem

pain 5/10

Location of Your Injury / condition

ankle left, back pain bilateral

History of OA Fractures or Procedures:

Past Medical History

No significant medical history

Current Medications (reviewed today):

No known medications

Current Allergies (reviewed today):

No known allergies

Review of Systems

Psychiatric: Positive for anxiety, depression.

Social History

Patient is single, Never smoker, and lives alone. Has no children. Occupation: Respiratory Therapist.

EXHIBIT

1

55

Jan. 11. 2021 4:01PM

No. 9162 P. 3

Carolina Orthopaedic & Neurosurgical Associates
1330 Belling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

January 11, 2021

Page 2
Office Visit

William Downes

Male DOB: 07/17/1965

232994

Home: (864) 630-5665

Family History

Lung Disease (Father)
Cancer (Father, Mother)

Directives Added:

Added new directive of DISCUSSED - NO DECISION MADE

VITAL SIGNS

Body Mass Index in-lb

Height (in): 77
Weight (lb): 253
BMI (in-lb) 30.00
P: 81 R: 15 BP: 135/72

GENERAL EXAM

Appearance: Healthy

Mental Status: Alert & Oriented x 3, No Acute Distress

Hand Dominance: Right

Gait: Normal

Durable Goods: No

PHYSICAL EXAM:

General

Build & Nutrition - Well nourished and well developed.

Head and Neck

Neck - Global Assessment - Normal alignment, tracheal midline, full range of motion, nontender.

Thyroid - Gland characteristics - no palpable enlargement.

Eye

Sclera/conjunctiva - Bilateral - Normal.

Pupil - Bilateral - Normal.

ENMT

Nose and Sinuses - External inspection of the nose - The nose is normal. Inspection of the nares - bilateral - symmetric.

Mouth and Throat - Oral cavity/Oropharynx - Oropharynx - normal, no evidence of any airway distress observed.

Chest and Lung Exam

Chest and lung exam reveals - Normal excursion with symmetric chest walls and normal respiratory effort.

Cardiovascular Exam

Cardiovascular evaluation reveals - Carotid auscultation reveals no bruits and normal pedal pulses bilaterally.

Neurologic

Neurologic evaluation reveals - Normal sensation and upper and lower extremity deep tendon reflexes are intact bilaterally.

Coordination - Tandem walking normal, walking on toes normal, and walking on heels normal.

Neuropsychiatric

Mental status exam performed with the findings of - Oriented x3 with appropriate mood and affect.

Musculoskeletal

Global Assessment: Strength - Normal - Right upper extremity, left upper extremity, right lower extremity and left lower extremity.

Spine/Ribs/Pelvis - Gait and station - Normal gait patterns - nonantalgic gait. Lumbosacral spine -

Examination of the lumbosacral spine reveals - no tenderness to palpation, no pain, normal strength and tone, no laxity or crepitus and no paraspinous muscle spasm. Functional testing - Negative straight leg raise, right, negative straight leg raise, left, Babinski test. He has mild tenderness in his lower lumbar paraspinals. He has an Achilles tendon injury on the left so, therefore, he is unable to give full extension.

IMAGING:

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Carolina Orthopaedic & Neurosurgical Associates

1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

January 11, 2021

Page 3
Office Visit

William Downes

Male DOB: 07/17/1965

232994

Home: (864) 630-5665

Lumbar x-ray was completed today that shows advanced degenerative disk disease L5-S1.

ASSESSMENT

Lumbar HNP.

Low back pain (ICD-724.2) (ICD10-M54.5)

Prolapsed lumbar intervertebral disc (ICD-722.10) (ICD10-M51.26)

PLAN

Apparently, the patient has a history of a lumbar disk herniation that occurred following a work related injury. I do not have any recent imaging. We will go ahead and get a lumbar MRI to further evaluate and I would like for him to follow up with Dr. Esce after he has this for further direction.

Dictated by: Julie S. Justice, FNP
gb

New Orders:

Finding of Hypertension Episode [SCT-62275004]

Lifestyle Education Regarding Hypertension [SCT-443402002]

Referral to Alternate Provider [SCT-183516009]

Est. Level 4 [CPT-99214]

Lumbar Spine w/ Oblique min 4 Views [72110]

Disposition: Return to office after studies to see Dr. Esce

The patient declined the influenza vaccine.

]

Electronically signed by Julie Justice NP on 01/11/2021 at 2:59 PM

Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

February 12, 2021
Page 1
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

02/04/2021 - Office Visit: F/u: MRI Lumbar
Provider: Phillip Esce MD
Location of Care: Carolina Orthopaedic & Neurosurgical Associates

History of Present Illness

Mr. William Downes is a 55 Years Old White / Caucasian male, who is here for a follow-up appointment.

Chief Complaint: Low back pain to left lower extremity along the posterior aspect of the leg.

History From: Patient

Race: White / Caucasian

Family Physician: Dr. Reed Nataias

This is a 55-year-old male we are bringing back in today for MRI follow-up. On initial visit, this was a male who was reported having back pain and was seeing one of my prior partners. Apparently, he had been working as a respiratory therapist when he had a patient fall on him and started having difficulty with his back and leg. Underwent physical therapy, injections, multiple medications without any long term help. He never underwent any sort of lumbar surgery. In any event, since the persistent of symptoms, we ordered a new MRI on him. Patient rates pain 6/10. Worse with any sort of activity, sitting, standing or bending. Unable to do any work and has not worked since the injury.

Injury / Condition

Was this the result of an injury? yes

Injury Date: 04/17/2018

Are you claiming as Workers Compensation? no

Type of Problem

pain 6/10

Previous Treatment

Have you had any of the following for this problem? MRI Left Ankle @ Innversion 08/17/18, MRI Lumbar @ Inner 7/2/18 (Imported), MRI Lumbar @ PI 01/20/21

History of OA Fractures or Procedures:

Past Medical History

Depression / Anxiety

*** Please Note ***

Patient has Metal in Body.

Current Medications (reviewed today):

No known medications

Current Allergies (reviewed today):

No known allergies

Past Surgical History

Foot (Left)

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Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

February 12, 2021
Page 2
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

Review of Systems

General: Positive for fatigue.

Eyes: Patient denies blurring, vision loss 1 eye, discharge, vision loss both eyes, eye irritation.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Positive for shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, wheezing, cough, coughing up blood.

Gastrointestinal: Patient denies vomiting, diarrhea, nausea.

Genitourinary: Patient denies pain, urinary retention, frequent UTI.

Musculoskeletal: Positive for back pain, joint swelling, loss of strength, muscle aches, muscle weakness, stiffness.

Skin: Patient denies dryness, psoriasis, suspicious lesions, changes in color of skin, poor wound healing, unusual hair distribution.

Neurologic: Positive for numbness, tingling, weakness.

Psychiatric: Positive for anxiety, depression.

Heme/Lymphatic: Patient denies abnormal bruising.

Allergic/Immunologic: Patient denies seasonal allergies, persistent infections.

Social History

Patient is single, Never smoker, and lives alone. Has no children. Occupation: Respiratory Therapist.

Family History

Lung Disease (Father)

Cancer (Father, Mother)

Directives Added:

Added new directive of DISCUSSED - NO DECISION MADE - Signed

VITAL SIGNS

Body Mass Index in-lb

Height (in): 77

Weight (lb): 253

BMI (in-lb) 30.00

P: 73 R: 16 BP: 125/85

GENERAL EXAM

Appearance: Healthy

Mental Status: Alert & Oriented x 3, No Acute Distress

Hand Dominance: Right

Gait: Normal

Durable Goods: No

PHYSICAL EXAM:

Patient is awake, alert and oriented x3. Cranial nerves II-XII intact. He has decreased sensory deficit along the left side S1. Positive straight leg raise. Strength, though, is good. Tone is normal with the exception of at the Achilles on the left foot due to a prior surgery. Lungs were clear and cardiovascular regular rate and rhythm.

IMAGING:

MRI reviewed done at Piedmont Imaging shows L5-S1 moderate disk herniation central extending to the left side with

Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

February 12, 2021
Page 3
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

decreased disk height.

ASSESSMENT

Patient with lumbar radiculopathy secondary to decreased disk height and lumbar disk protrusion L5-S1.

PLAN

Plan is for a left L5-S1 microdiscectomy. Risks, benefits, and details of the procedure have been explained to the patient.

Dictated by: Phillip G. Esce, MD

kb

New Orders:

Est. Level 4 [CPT-99214]

Disposition: Return to office post op

Patient at risk for falls: no
The patient declined the influenza vaccine.
]

Electronically signed by Phillip Esce MD on 02/10/2021 at 8:05 PM

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Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

June 30, 2021
Page 1
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

06/28/2021 - Office Visit: F/u: Lumbar - discuss sx
Provider: Phillip Esce MD
Location of Care: Carolina Orthopaedic & Neurosurgical Associates
Status: ON HOLD DOCUMENT. Contents are preliminary

History of Present Illness

Mr. William Downes is a 55 Years Old White / Caucasian male, who is here for a follow-up appointment.

Chief Complaint:

History From: Patient

Race: White / Caucasian

Family Physician: Dr. Reed Natalias

The patient returns with persistent lumbar radiculopathy. He is a 55-year-old male who I last saw back in February. He continues to report low back and leg pain. He has a Worker's Compensation injury where a patient fell on him while working as a respiratory therapist. He has undergone multiple injections, physical therapy, and medications without relief. He was sent to me initially for evaluation of the herniated disk. He had an MRI done at Piedmont Imaging that showed an L5-S1 moderate-sized disk herniation extending to the left with decreased disk height, and at that time I reviewed it and given the fact he failed conservative care, recommended a left L5-S1 microdiscectomy. Workers' Comp then sent him over to Prisma, where he was Dr. Kanos who did not recommend surgery, but recommended further conservative care. Repeating the injections and physical therapy again. The patient then returned to my office with continued persistent complaints of severe back pain and lumbar radiculopathy, worse on the left than right side, weakness with movement of his foot.

Injury / Condition

Was this the result of an injury? no

Are you claiming as Workers Compensation? no

Type of Problem

pain 6/10

Location of Your Injury / condition

Ankle (Left), Back Pain (Both sides), back pain bilateral

History of OA Fractures or Procedures:

Past Medical History

Depression / Anxiety

*** Please Note ***

Patient has Metal in Body.

Current Medications (reviewed today):

No known medications

Current Allergies (reviewed today):

No known allergies

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Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

June 30, 2021
Page 2
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

Past Surgical History

Foot (Left)

Review of Systems

General: Positive for fatigue.

Eyes: Patient denies blurring, vision loss 1 eye, discharge, vision loss both eyes, eye irritation.

ENT: Patient denies decreased hearing, difficulty swallowing.

Cardiovascular: Positive for shortness of breath with exertion.

Respiratory: Patient denies shortness of breath, wheezing, cough, coughing up blood.

Gastrointestinal: Patient denies vomiting, diarrhea, nausea.

Genitourinary: Patient denies pain, urinary retention, frequent UTI.

Musculoskeletal: Positive for back pain, joint swelling, loss of strength, muscle aches, muscle weakness, stiffness.

Skin: Patient denies dryness, psoriasis, suspicious lesions, changes in color of skin, poor wound healing, unusual hair distribution.

Neurologic: Positive for numbness, tingling, weakness.

Psychiatric: Positive for anxiety, depression.

Heme/Lymphatic: Patient denies abnormal bruising.

Allergic/Immunologic: Patient denies seasonal allergies, persistent infections.

Social History

Patient is single, Never smoker, and lives alone. Has 0. No, patient does not drink alcohol. 0 times per week. Occupation: Respiratory Therapist.

Family History

Lung Disease (Father)

Cancer (Father, Mother)

Directives Added:

Added new directive of DISCUSSED - NO DECISION MADE

VITAL SIGNS

Body Mass Index in-lb

Height (in): 77

Weight (lb): 250

BMI (in-lb) 29.64

R: 14 BP: 130/80

GENERAL EXAM

Appearance: Healthy

Mental Status: Alert & Oriented x 3, No Acute Distress

Hand Dominance: Right

Gait: Normal

Durable Goods: No

PHYSICAL EXAM: On exam, the patient in moderate distress. Gait and station antalgic. Tone normal. He does have some weakness in the foot with calf muscle weakness on that left side.

Carolina Orthopaedic & Neurosurgical Associates
1330 Boiling Springs Road Suite 1600 Spartanburg, SC 29303
(864) 582-6396 Fax: (864) 542-2939

June 30, 2021
Page 3
Office Visit

William Downes
Male DOB: 07/17/1965

232994

Home: (864) 630-5665

ASSESSMENT

PLAN

Overall, I feel that, given the fact he has really done everything possible for this but no relief, a microdiscectomy at L5-S1 would be the next best available option. We are going ahead and try to get him set up for surgery. Dictated by: Phillip G. Esce, MD

New Orders:

Lifestyle Education Regarding Hypertension [SCT-443402002]
Est. Level 4 [CPT-99214]

Disposition: Return to office post op

Patient at risk for falls: no

]

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South Carolina Diagnostic Imaging
www.SCDiag.com

Piedmont Imaging
684 N. Pine Street, Spartanburg, SC 29303
p: (864) 542-0033 f: (864) 542-0025

PATIENT NAME: Downes, William
DOB: 07/17/1965
MRN: 08-1330877
PHONE: 864-630-5665
PHYSICIAN: Phillip Esce, MD
EXAM DATE: 01/20/2021

EXAM: MR-Lumbar Spine without contrast

REASON FOR EXAM: M54.5 - Low back pain / M51.26 - Other intervertebral disc displacement, lumbar region

ADDITIONAL HISTORY: 55-year-old male with low back pain into both legs. Weakness and numbness.

COMPARISONS: MRI lumbar spine without contrast dated 07/02/2018.

TECHNIQUE: The following sequences were obtained on a Siemens 3.0 Tesla MRI unit: Multiplanar, multisequence MRI acquisition without contrast.

FINDINGS: Again seen is early L3-L4, L4-L5 and marked L5-S1 degenerative disc disease.

Again, there is minimal canal, minimal right and mild left neural foraminal stenosis at the L3-L4 level due to combined disc bulge, shallow left foraminal disc protrusion and subtle facet joint hypertrophy. A left foraminal annular tear is again noted.

Again, there is minimal canal and mild bilateral neural foraminal stenosis at the L4-L5 level due to combined disc bulge and bilateral facet joint hypertrophy.

Again, there is minimal indentation of the ventral thecal sac and minimal bilateral neural foraminal encroachment at the L5-S1 level due to combined decreased disc height, disc bulge and shallow posterior central disc protrusion.

The remaining levels are unremarkable without disc herniations or significant disc bulges.

The remaining spinal canal neural foramen are patent.

The spinal cord is normal.

Radiology

PAGE 1 of 2

EXHIBIT

J

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PATIENT NAME: Downes, William
DOB: 07/17/1965
EXAM: MR-Lumbar Spine without contrast
EXAM DATE: 01/20/2021

No fractures, pars defect or spondylolisthesis apparent.

The facet joints are unremarkable without overt arthropathy.

No destructive bone lesions or paraspinal soft tissue pathology evident.

IMPRESSION:

1. No overall interval change.
2. Minor multilevel acquired spinal encroachment without spinal cord or nerve root compression apparent.
3. Multilevel degenerative disc disease, worse at the L5-S1 level.

Raul Ceballos, MD

*** THIS IS AN ELECTRONICALLY VERIFIED REPORT ***
1/21/2021 11:59 AM: Raul Ceballos, MD

RC/rc

DD: 01/21/2021 11:53 am

DT: 01/21/2021 11:59 am

Accession #: 08-4155269

PRISMA HEALTH

Southeastern
Neurosurgical and
Spine Institute-109
Doctors Drive
109 DOCTORS DRIVE
Greenville SC 29605-
5608

Downes, William D
MRN: 974745780, DOB: 7/17/1965, Sex: M
Visit date: 5/17/2021

Downes, William D

MRN: 974745780

Office Visit 5/17/2021
Southeastern Neurosurgical
and Spine Institute-109
Doctors Drive

Provider: Kanos, Charles Christopher, MD (Neurosurgery)
Primary diagnosis: Chronic bilateral low back pain with bilateral sciatica
Reason for Visit: New Patient; Referred by Kanos, Charles Christopher, MD

Progress Notes

Kanos, Charles Christopher, MD (Physician) • Neurosurgery

Progress Note

5/17/2021

Subjective:

Subjective

William D Downes is a 55 y.o. male.

Chief Complaint

Patient presents with

- New Patient

SEN WC IME LUMBAR PIEDMONT IMAGING 1/20/2021 DOI: 4/17/2018. 6/10 today.

HPI

55 y.o. male here for an IME regarding his lumbar spine. I have notes from work well, Dr. Tollison, Dr. Devault, chiropractic notes, Dr. Gao, Dr. Han, Dr. Lee, Dr. Esse and Innervision MRI reports. Patient was a respiratory therapist at SFH. He was hurt in 4.2018 transferring a morbidly obese patient. He did not have symptoms prior to this. He felt an immediate pop in the back while trying to fit the patient in a CT scan. He was treated with workwell and chiropractic treatment. An MRI was done on 7.28.18 that I reviewed. There was relatively mild bulging to L3-4 and L5-S1. He was referred to Dr. Han and had 4 ESI's and PT. October 2018 he saw Dr. Monroe for another opinion. Afterwards he saw Dr. Han. This was not a surgical recommendation. Session of PT were then completed. FCE was given with 1% impairment rating to the lumbar spine. He had an IME by Dr. Devault on 1.9.21 and he was given a 17% impairment. He was still having symptoms and went back to see Dr. Esse. An MRI on 1.10.21 was similar to 2018's MRI. There was DDD at L5-S1 with some lateral recess stenosis. He states that he was at workwell where he feels he suffered an achilles tendon injury during an ankle reflex exam. He had swelling after and denies any other trauma. At present he denies any symptoms prior to the 2018 claimed injury. He complains of left greater than right leg tingling with occasional shooting pains. He also has constant aching back pain. Symptoms are worse with prolonged standing/walking, it does not get better with sitting or laying down. He has not worked as he's been terminated. He saw Dr. Esse who recommended a microdiscectomy.

EXHIBIT

K

Review of Systems

Musculoskeletal: Positive for back pain.

Neurological: Positive for numbness.

Objective:

Objective

Physical Exam

Neurologic Exam

Ortho Exam

Assessment

Constitution: Obesity, NAD

Auscultation of heart: RRR, no murmurs

Auscultation of lungs: Clear, no rales, no wheezing

Auscultation of Carotids: No bruits

Musculoskeletal:

Gait: antalgic

Shoulder ROM: right - normal, left - normal

Hip ROM: right - normal, left - normal

Sacroiliac Tenderness: right - negative, left - negative

Trochanteric Tenderness: right - negative, left - negative

Can bend to 60%

Diffuse tenderness to mild palpitation

A, A + O x 4

Recent and Remote Memory: intact, provided thorough history

Attention Span: normal, attentive, no agitation

Language: fluent, appropriate, no dysnomia, no dysphasia, no dysarthria

Cranial Nerves:

PERRLA, No nystagmus

CN 2: VF grossly full all 4 quadrants

CN 3, 4, 6: EOMI

CN 5: nl facial sensation

CN 7: no facial symmetry

CN 8: nl hearing bilaterally

CN 9, 10: no hoarsness, palate rises symmetrically

CN 11: nl trapezius motor

CN 12: tongue midline, no deviation, no wasting, no fasciculations

Motor:

Iliopsoas, quadriceps, hamstring, dorsiflexion, plantar flexion, EHL: 5/5 bilaterally

Atrophy in the left calf
2/5 EHL on the left

Sensory:

Light touch, PP, vibration, proprioception: nl bilateral upper and lower extremities
No allodynia

Reflexes:

Bicep: right 1+, left 1+
Tricep: right 1+, left 1+
Knee Jerk: right 1+, left 1+
Ankle Jerk: deferred
Straight Leg Raise: +

Coordination:

Romberg: negative
Finger/Nose: no intention tremor
Rapid Alternating movements in UE: normal
No resting tremor

Assessment/Plan:

Problem List Items Addressed This Visit

Nervous and Auditory

Chronic bilateral low back pain with bilateral sciatica - Primary

I reviewed all available records, took his history, reviewed two MRI'S and examined him.

He did not have any pain prior to lifting injury in April. His main complaint has been back pain. This is the main reason he feels he needs treatment. This does appear work related as he did not have any symptoms prior.

I reviewed his MRI and there is relatively mild bulge at L5-S1. It's not causing significant stenosis. He does not have classic radicular pain but he will have tingling with occasional pain. He's got calf atrophy and EHL weakness as a results of his achilles injury and was told that some of the symptoms in the feet are related to that.

In terms of the L5-S1 discectomy. I am not inclined to recommend that. I think the odds of getting significant improvement in the back pain are low as his pain is strongly non mechanical. Also, radiculopathy is not his main complaint. His symptoms are approx 80% back/ 20% leg.

I feel he is at MMI with a 5% impairment rating to his lumbar spine based on AMA 6th edition guide.

He had an FCE that showed sedentary activity and I have no reason to dispute this. I think further medical treatment should include PM, medication, therapy or possible facet blocks or other injections.

I, Dr. Kanos, agree that the documentation is accurate and complete.

South Carolina Workers' Compensation Commission

P.O. Box 1715 ♦ 1333 Main Street, Suite 500
 Columbia, South Carolina 29202-1715
 (803) 737-5700 www.wcc.sc.gov

WCC File #

1809996

Carrier File #

Carrier Code #

Employer FEIN

William D. Downes**251-31-5011**

Claimant's Name

SSN

4024 Highway 14, Landrum, SC 29356

Address

Home Phone

Work Phone

Preparer's Name: Don KambLaw Firm: Williams & Kamb, LLCPreparer's Phone: (864) 235-6254**Bon Secours St. Francis**

Employer's Name

1 St. Francis Dr., Greenville, SC 29601

Address

Safety National Casualty Corp.

Carrier

claim for workers compensation benefits is made based on the following grounds:

☐ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. Claimant sustained accidental injury to back, left leg, psyche on or about 04/17/2018 in Greenville county, State of South Carolina.
 Body part(s) affected are: back, left leg, psyche
2. Briefly describe how accident occurred: Claimant felt pop in back while working with patient; left leg injured in medical treatment
3. Both claimant and employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of injury, claimant was performing services arising out of and in the course of employment.
6. Notice of accidental injury was given to employer on or about 04/17/2018, in the following manner: notified supervisor
7. Due to injury, claimant is in need of (check one):
☐ (a) medical examination and treatment for:
☒ (b) additional medical examination and treatment for: back, left leg, psyche
8. Due to injury, claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: cl recy TTD benefits
9. Due to injury, claimant has permanent disability of the following nature and extent: (check one)
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability ☐ Total ☐ Partial ☐ (3) Wage Loss
- 9a. Claimant at MMI: ☐ Yes ☒ No
10. Due to injury, claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of injury, claimant was paid weekly wages of \$ to be determined and demands accounting of days worked and wages earned as provide by law.
- 10b. Give names and addresses of all employers for whom claimant has worked since the date of accident: to be determined
11. Further grounds or unusual aspects of claim: See # 12. Claimant makes claim to any and all rights/benefits entitled to under the S.C. Workers' Compensation Act. Claimant requests payment of any award in lump sum with lifetime allocation. Claimant reserves the right to amend the Form 50
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated claimant as a result of the accident: Michael J Tollison, M.D., Piedmont Ortho. Assoc., 35 International Dr., Greenville, SC 29615; Michael N. Bucci, M.D., Piedmont Spine & Neurosurg Group, 3 St. Francis Dr., Ste. 490, Greenville, SC 29601-3973; Jeffrey Smith, M.D., Piedmont Psych.c Serv., 2094 Woodruff Rd Greenville, SC 29607; Phillip G. Esce, M.D., Carolina Ortho. & Neurosurg. Assoc., 1330 Boiling Springs Rd., Ste. 1600, Spartanburg SC 29303; Ping Gao, M.D., AnMed Health Occup. Med., 2000 E. Greenville St., Ste. 1300, Anderson, SC 29621; SSI PT, 140 Executiv Dr., Greer, SC 29651; ATI PT, 315 Medical Parkway, #150, Greer, SC 29650; Garber PT, 300 N. Main St., Greer, SC 29650; Sung Han, M.D., Piedmont Comp. Pain Mgt. Group, 3 St. Francis Dr., Ste. 480, Greenville, SC 29601
- 11b. To the best of your knowledge, was there any prior permanent disability? to be determined. If yes, describe: to be determined
12. Appropriate benefits as provided in the Act for above grounds and other relief as the Commission may direct as just and proper.
13. **I am filing a claim. I am not requesting a hearing at this time.**
14. **I am requesting a hearing. A \$50 fee is required.**

14. Estimated time needed for hearing: 45 mins for cl's case**Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SCWCC, P.O. Box 1715, Columbia, SC 29202-1715; William J haughnessy, Esq., via email: bill.shaughnessy@mgclaw.com and Ashley R. Forbes, Esq., via e-mail at ashley.forbes@mgclaw.com on the 26th day of Feb., 2021, by ☒ 1st class post. ☐ cert. mail ☐ pers. serv. ☒ elect. serv.

verify the contents of this form are accurate and true to the best of my knowledge.

Signature of Claimant/Representative

 Attorney
 Title

 dkamb@williamskamb.com
 Email

Date

EXHIBIT

L

2/26/2021

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC FORM #50

50

Employee's Notice of Claim and/or Request for Hearing.

Revised 1/19

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500 • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803)737-5723 www.wcc.sc.gov



WCC File #: 1809996

Carrier File #: BSTK-034263

Carrier Code #:

Employer FEIN #: 58-2504530

Claimant's Name: William D. Downes SSN 251-31-5011 Employer's Name: Bon Secours Mercy Health, Inc.
4024 Highway 414
 Address Landrum, South Carolina 29356 Address: Integrated Absence
2200 Jefferson Avenue
Toledo, Ohio 43604
 Home Phone: (864) 630-5665 Work Phone # _____ Insurance Carrier: Bon Secours Health System, Inc. c/o
4/17/18 Sedgwick Claims Management Inc.
 Preparer's Name: Ashley R. Forbes Law Firm McAngus Goudelock & Courie Preparer's Phone #: (864) 239-6709

Date of Injury or Illness: 4/17/18Estimated time for hearing: 1 hour

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer-Carrier in answer to the claim, respectfully shows:

- It is ☒ **Admitted** ☐ **Denied** the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are: Admitted as to the left leg (achilles tendon) and low back only; denied as to psyche and any other alleged body parts and denied as to the extent of injuries alleged.
- It is ☒ **Admitted** ☐ **Denied** both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: But see No. 1.
- It is ☒ **Admitted** ☐ **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are: But see No. 1.
- It is ☒ **Admitted** ☐ **Denied** at the time in question the employee was performing service arising out of and in the course of employment. The reasons for denial are: But see No. 1.
- It is ☒ **Admitted** ☐ **Denied** notice of injury was given the employer. The reasons for denial are: But see No. 1.
- It is ☐ **Admitted** ☒ **Denied** the employee ☒ **needs** ☒ **is entitled to additional** medical care as a result of injury or illness. The reasons for denial are: Claimant has reached MMI and is not entitled to additional medical treatment.
- It is ☐ **Admitted** ☒ **Denied** the employee is entitled to temporary total disability for the period(s) of: _____
- It is ☐ **Admitted** ☒ **Denied** the employee is permanently disabled. The reasons for denial are: No determination of permanent disability at this time.
- It is ☐ **Admitted** ☒ **Denied** the employee has serious disfigurement.
- It is contended that an average weekly wage of \$ 1,260.00 applies, according to attached Form 20 as provided by law.
- Further contentions, grounds of defense, or unusual aspects are: S.C. Code Ann. § 42-9-35; also see attached Addendum.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67.1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.**I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See attached Certificate of Service****Address See attached** on the 26th day of March, 2021 by:☒ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service****I verify the contents of this form are accurate and true to the best of my knowledge.**

Preparer's Signature

Attorney for Employer/Carrier

Title

ashley.forbes@mgclaw.com

Email

March 26, 2021

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51

Revised 07/15

51**Employer's Answer to Request for Hearing**

Addendum to Form 51

Defendants respectfully reserve the right to amend this Form 51 and claim any and all affirmative and specific defenses should facts be discovered during investigation which allow the defenses to be asserted in good faith, (see Reg. 67-603), including but not limited to Section 42-9-60, fraud in the application for employment, fraud in the inducement to sign Form 15, fraud in the initiation of the claim for benefits, pre-existing disability to allegedly injured members, election of remedies, and intervening trauma, no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury needs to be determined; statute of limitations, notice, defendants reserve the right to amend this Answer and plead additional defenses.

ORDER
of the
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
File No.: **180996**

William D. Downes,

Employee/Claimant,

vs.

Bon Secours Mercy Health, Inc.,

Employer, and

Safety National Casualty Corp.,

Carrier/Defendants.

Hearing: Held in Ninety Six, South Carolina on August 12, 2021

Appearances: Don Kamb, Esq. of Williams & Kamb, LLC for claimant

Ashley Rudisill Forbes, Esq. of McAngus Goudelock & Courie,
LLC, for defendants

Purpose: To determine issues as set forth on the Forms 50 & 51 and 21

Decision & Order: R. Michael Campbell, II, Commissioner

Filed: October 22, 2021

EXHIBIT

M

APA SUBMISSIONS
(as numbered and submitted by the parties)

By claimant:

#1	Employee Occurrence Report	4/17/2018	1
#2	Bon Secours Workwell	4/19/2018 – 7/25/2018	2 – 20
#3	Dr. Michael N. Bucci	8/21/2018 – 9/12/2018	21 – 29
#4	Dr. Sung Han, Piedmont Pain	10/17/2018	30 – 46
#5	Dr. Timothy Monroe, CONA	10/24/2018 – 1/6/2021	47 – 54
#6	Dr. Phillip Esce, CONA	1/6/2021 – 6/28/2021	55 – 67
#7	SC Diagnostic Imaging	1/20/2021	68 – 69

By defendants:

#1	D. Scott Grubbs, MD, Workwell	9/23/1993	1 – 2
#2	William L. DeVault, MD	1/9/[2021]	3 – 10
#3	Jeffrey Shramek, MD, Innervision	7/2/2018	11 – 12
#4	ATI Physical Therapy	10/17/2019	13
#5	Ping Gao, MD, AndMed Occup. Med.	9/23/2020	14 – 22
#6	Charles C. Kanos, MD, SE Neurosurg.	5/17/2021	23 – 27

STIPULATIONS

Counsel for all parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the issues set forth in the hearing notice, issues pled in the Forms 50, 51, and 21, and other issues timely brought before the Commissioner.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue is properly in Greenville County, but by agreement, the hearing is held in Ninety Six, South Carolina, in Greenwood County.
4. Claimant seeks benefits under the South Carolina Workers' Compensation Act based upon an admitted injury by accident which occurred on or about April 17, 2018

while he was working for employer-defendant, and therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

5. The Commission's file and the Hearing Commissioner's notes are a part of the record of this case, except for any self-serving declarations or unstipulated medical reports.

6. Claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21.

CLAIMANT'S BIOGRAPHICAL INFORMATION

Age:	56
Education:	High school graduate; Assoc. degree in respiratory therapy
Work History:	27 years with employer-defendant

STATEMENT OF THE CASE

Claimant seeks additional benefits for an admitted injury by accident that occurred on April 17, 2018 while working for employer-defendant. He has received authorized treatment for his low back and his left leg, and he is continuing to receive weekly temporary total disability compensation benefits. Claimant contends that he needs and is entitled to additional medical treatment for his back, specifically low back surgery recommended by neurosurgeon Dr. Esce. Defendants contend that such surgery is not warranted based on the opinions of the other physicians who have seen claimant, including neurosurgeons Dr. Bucci and Dr. Kanos. The parties stipulated that the only

issue for determination is claimant's entitlement to this low back surgery and that all other issues, including permanency, are held in abeyance.

EVIDENCE OF THE CASE

Claimant testified that he has worked for employer-defendant for 27 years as a respiratory therapist, which involves treating patients with lung diseases or who are on ventilators and requires lifting and transporting patients. He stated that prior to April 17, 2018, he had no significant low back problems or treatment. He has had some chiropractic adjustments.

On April 17, 2018, claimant was assisting with a large patient in the CT scanning area. When the patient began to fall, he caught her and immediately felt a painful pop in his low back. The pain radiated down both legs. Claimant stated he was sent to Workwell Occupational Medicine for evaluation and treatment, but he testified that the treatment provided did not help him. An MRI scan was obtained, and claimant stated that he was sent to Dr. Bucci and then to Dr. Han. Claimant testified that he was treated with four rounds of injections and some 18 months of physical therapy. He stated that this provided only temporary relief and that his low back and leg pain never entirely went away.

Of note, claimant sustained another injury to his left Achilles during evaluation and treatment at Workwell. He later underwent surgery for that injury and spent some time in a walking boot. Claimant stated that the boot affected his gait and increased his back pain.

Concerning his back, claimant testified that he inquired about returning to see Dr. Bucci again but explained that he was not allowed to do so. He therefore sought out further evaluation on his own at Carolina Orthopaedic & Neurosurgery, where he eventually saw Dr. Esce. Claimant stated that Dr. Esce recommended surgery to repair a disc in his low back. He was instead sent by the insurance carrier to Dr. Kanos for another opinion, and Dr. Kanos recommended continued conservative treatment rather than surgery. However, claimant testified that he has already undergone such conservative medical treatment since his accident on April 2018, and it has not made him any better. He stated that he needs and wants the surgery recommended by Dr. Esce so that his low back problem can be addressed, and he can become more functional.

A review of the medical evidence submitted into the record shows that following his injury, claimant was initially evaluated and treated at Workwell Occupational Health. He was seen on multiple occasions, was first diagnosed with "low back pain/strain," and treated with medication and work restrictions. He was allowed to attend chiropractic treatment for a period of time and was eventually referred for MRI scanning and neurosurgical evaluation when symptoms were determined to potentially include radiculopathy.

Neurosurgeon Dr. Michael Bucci saw claimant on August 20, 2018 and, after examination, opined in his office note as follows: "Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue on with this for the time being. No follow-up indicated here currently." From the submitted evidence, this appears to be claimant's only visit with Dr. Bucci.

Pain management physician Dr. Sung Han began treating claimant on October 17, 2018 with epidural steroid injections, physical therapy, and continued work restrictions. These conservative treatment measures continued until April 1, 2020, when Dr. Han placed claimant at MMI and noted again that he is “[n]ot a surgical candidate for lumbar spine, has seen Dr. Bucci.”

Defendants then sent claimant to occupational medicine physician Dr. Ping Gao on September 23, 2020 for an impairment assessment and Form 14B. Dr. Gao noted that he had not seen or reviewed any of the radiology studies or related reports. However, he opined that claimant was at MMI as of that date, had a 1% medical impairment to the low back, had no permanent physical limitations, and was not in need of additional medical treatment. This appears to be claimant’s only visit with Dr. Gao.

On January 6, 2021, claimant saw Julie Justice N.P. of Carolina Orthopaedic & Neurosurgical Associates. Ms. Justice noted that “[a]pparently, the patient has a history of a lumbar disc herniation that occurred following a work-related injury. I do not have any recent imaging. We will go ahead and get a lumbar MRI to further evaluate and I would like for him to follow up with Dr. Esce after he has this for further direction.”

Dr. William DeVault performed another impairment rating evaluation of claimant on January 9, 2021. He opined that “[w]ithin a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category three, table 153-3, page 384... In order to maintain his current level of function, William Downes will need six physician visits per

year and 15 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time." There is no evidence that claimant saw Dr. DeVault again.

On February 4, 2021, claimant returned to Carolina Orthopaedic & Neurosurgical Associates and was evaluated by neurosurgeon Dr. Philip Esce. Dr. Esce reviewed the updated MRI scan and ultimately opined that "MRI reviewed done at Piedmont Imaging shows L5-S1 moderate disc herniation central extending to the left side with decreased disc height... Plan is for a left L5-S1 micro- discectomy. Risk, benefits, and details of the procedure have been explained to the patient."

On a questionnaire dated March 1, 2021, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5- S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury."

Defendants responded by sending claimant for an IME with neurosurgeon Dr. Charles Kanos of Prisma Health Southeastern Neurosurgical & Spine. Dr. Kanos opined: "I reviewed his MRI and there is relatively mild bulge at L5-S1. Is not causing significant stenosis. He does not have classic radicular pain but he will have tingling with occasional pain. He's got calf atrophy and the EHL weakness as a result of his

Achilles injury and was told that some of the symptoms in the feet are related to that. In terms of the L5- S1 discectomy, I am not inclined to recommend that. I think the odds of getting significant improvement in the back are low as his pain is strongly non-mechanical. Also, radiculopathy is not his main complaint. His symptoms are approximate 80% back/20% leg. I feel he is at MMI with a 5% impairment rating to his lumbar spine based on the AMA Sixth Edition. He had an FCE that showed sedentary activity and I have no reason to dispute this. I think further medical treatment should include PM, medication, therapy or possible facet blocks or other injections." This was claimant's only visit with Dr. Kanos.

Claimant returned to Dr. Esce on June 28, 2021. He opined: "Workers' Comp then sent him over to Prisma, where he was Dr. Kanas who did not recommend surgery, but recommended further conservative care. Repeating the injections and physical therapy again. The patient then returned to my office with continued persistent complaints of severe back pain and lumbar radiculopathy, worse on the left side than right side, weakness with movement of his foot... Overall, I feel that given the fact he has really done everything possible for this but with no relief, a microdiscectomy at L5- S1 would be the next best available option. We are going ahead and try to get him set up for surgery."

FINDINGS OF FACT

1. An employee/employer relationship existed between the parties at the time of claimant's injury. This finding is based on the parties' stipulation.

2. Claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21. This finding is based on the parties' stipulation.

3. Claimant sustained admitted injuries to his low back and left Achilles tendon arising out of and in the course and scope of his employment on April 17, 2018. This finding is based on all the evidence on the record, including but not limited to defendants' admission.

4. Claimant underwent various evaluations and treatments for his admitted work-related injuries, including but not limited to medications, injections, and physical therapy for his back injury and surgery and physical therapy for his Achilles injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, and Dr. Han.

5. On August 20, 2018, in his medical notes, authorized treating physician Dr. Michael N. Bucci of SSA Piedmont Spine and Neurosurgical Group opined: "Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue on with this for the time being. No follow-up indicated here currently." (CI's APA p. 25) This finding is based on the medical records of Dr. Bucci.

6. On April 1, 2020, in his medical notes, authorized, treating physician Dr. Sung J. Han of Piedmont Comprehensive Pain Management Group, LLC opined: "Not a surgical candidate for lumbar spine, has seen Dr. Bucci." (CI's APA p. 46) This finding is based on the medical records of Dr. Han.

7. On September 23, 2020, on a Form 14B, Dr. Ping Gao of AnMed Health Occupational Medicine opined to a reasonable degree of medical certainty that claimant

was at MMI as of April 1, 2020, assigned a 1% medical impairment to the low back, assigned no permanent physical limitations, and recommended no additional medical treatment. (Defs' APA p. 21) Dr. Gao, who is not a surgeon, did not provide treatment for claimant but was retained by defendants to provide an impairment rating and other Form 14B information. This finding is based on the medical records of Dr. Gao.

8. On January 6, 2021, in her medical notes, nurse practitioner Julie Justice of Carolina Orthopaedic & Neurosurgical Associates opined: "Apparently, the patient has a history of a lumbar disc herniation that occurred following a work-related injury. I do not have any recent imaging. We will go ahead and get a lumbar MRI to further evaluate and I would like for him to follow up with Dr. Esce after he has this for further direction." (Cl's APA p. 57) Ms. Justice, who is not a surgeon, did not provide treatment for claimant but was sought out by him in an attempt to obtain another medical opinion on his low back condition when he was not allowed to return to Dr. Bucci. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Nurse Justice and Carolina Orthopaedic & Neurosurgical Associates.

9. On January 9, 2021, in an independent examination obtained by claimant, Dr. William Devault of the Orthopaedic Center opined: "Within a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category three, table 153-3, page 384... In order to maintain his current level of function, William Downes will need six physician

visits per year and 15 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time." (Defs' APA p. 10) Dr. DeVault did not provide treatment for claimant but was retained by him to provide an additional impairment rating and other permanency information. This finding is based on the medical records of Dr. DeVault.

10. On February 4, 2021, in a follow-up appointment at Carolina Orthopaedic & Neurosurgical Associates scheduled by Nurse Justice, neurosurgeon Dr. Philip Esce opined: "MRI reviewed done at Piedmont Imaging shows L5-S1 moderate disc herniation central extending to the left side with decreased disc height...Plan is for a left L5-S1 micro- discectomy. Risk, benefits, and details of the procedure have been explained to the patient." (CI's APA pgs. 61-62) This finding is based on the medical records of Dr. Esce.

11. On March 1, 2021, on a questionnaire obtained by claimant, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5- S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury." (CI's APA pgs. 66-67) This finding is based on the medical records of Dr. Esce.

12. On May 17, 2021, in an IME obtained by defendants, Dr. Kanos of Prisma Health Southeastern Neurosurgical & Spine Institute opined: "I reviewed his MRI and there is relatively mild bulge at L5-S1. Is not causing significant stenosis. He does not have classic radicular pain but he will have tingling with occasional pain. He's got calf atrophy and the EHL weakness as a result of his Achilles injury and was told that some of the symptoms in the feet are related to that. In terms of the L5- S1 discectomy, I am not inclined to recommend that. I think the odds of getting significant improvement in the back are low as his pain is strongly non-mechanical. Also, radiculopathy is not his main complaint. His symptoms are approximate 80% back/20% leg. I feel he is at MMI with a 5% impairment rating to his lumbar spine based on the AMA Sixth Edition. He had an FCE that showed sedentary activity, and I have no reason to dispute this. I think further medical treatment should include [pain management, medication, therapy or possible facet blocks or other injections." (Defs' APA p. 25) This finding is based on the medical records of Dr. Kanos.

13. On June 28, 2021, at a follow-up appointment, Dr. Esce opined: "Workers' Comp then sent him over to Prisma, where he was Dr. Kanos who did not recommend surgery, but recommended further conservative care. Repeating the injections and physical therapy again. The patient then returned to my office with continued persistent complaints of severe back pain and lumbar radiculopathy, worse on the left side than right side, weakness with movement of his foot... Overall, I feel that given the fact he has really done everything possible for this but with no relief, a microdiscectomy at L5- S1 would be the next best available option. We are going ahead

and try to get him set up for surgery." (Cl's APA pgs. 63 & 65) This finding is based on the medical records of Dr. Esce.

14. On August 12, 2021, at the hearing before the undersigned Commissioner, claimant testified regarding his work-related accident, the medical treatment he has received and the issues he continues to have.

(A) Claimant testified that on April 17, 2018, claimant was assisting with a large patient in the CT scanning area. When the patient began to fall, he caught her and immediately felt a painful pop in his low back. The pain radiated into both legs.

(B) Claimant stated he was sent to Workwell Occupational Medicine for evaluation and treatment, but he testified that the treatment provided did not help him.

(C) A lumbar MRI scan was obtained, and claimant stated that he was sent to Dr. Bucci and then to Dr. Han. Claimant testified that he was treated with four rounds of injections and some 18 months of physical therapy.

(D) Claimant testified that the injections and other conservative treatment he received provided only temporary relief and that his low back and leg pain never entirely went away.

(E) Claimant sustained another injury to his left Achilles during evaluation and treatment at Workwell. He later underwent surgery for that injury and spent some time in a walking boot. Claimant testified that the boot affected his gait and increased his back pain.

(F) Claimant testified that he inquired about returning to see Dr. Bucci again but explained that he was not allowed to do so. He stated that he therefore sought out further evaluation on his own at Carolina Orthopaedic & Neurosurgery, where he eventually saw Dr. Esce. Claimant stated that Dr. Esce recommended surgery to repair a disc in his low back.

(G) Claimant testified that rather than providing the surgery recommended, the insurance carrier sent him to Dr. Kanos for another opinion, and Dr. Kanos recommended continued conservative treatment rather than surgery. However, claimant testified that he has already undergone such conservative medical treatment since his accident on April 2018, and it has not made him any better.

(H) Claimant testified that he needs and wants the surgery recommended by Dr. Esce so that his low back problem can be addressed and he can become more functional.

This finding is based on claimant's testimony.

15. Given that Dr. Esce and Dr. Kanos are the only physicians in the record that had the benefit of the most recent MRI of claimant's back, I give their opinions the greatest weight, as compared to the physicians who saw claimant prior to the most recent MRI. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, Dr. Han, Dr. Esce, and Dr. Kanos.

16. Furthermore, given that Dr. Kanos only evaluated the claimant on one occasion, I give greater weight to the opinions of Dr. Esce, who along with his assistant

saw and evaluated claimant on several occasions. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Esce and Dr. Kanos.

17. Therefore, based on the opinions of Dr. Esce, as well as claimant's sworn testimony at the hearing, I hereby find claimant is not at MMI for his admitted low back injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, Dr. Han, Dr. Esce, and Dr. Kanos.

18. Based on Dr. Esce's recommendation, claimant is entitled to the back surgery recommended and requested, and all causally-related medical treatment, by a physician of the defendants' choosing with a specialty to the back. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

19. A determination of permanency is premature at this time.

20. All other issues are held in abeyance at this time.

RULINGS OF LAW

1. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits.

2. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21.

3. Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident arising out of and in the course of his employment with employer-defendant

on April 17, 2018 causing compensable injuries to his low back and left Achilles tendon (leg).

4. Claimant has not reached maximum medical improvement from his injuries. See Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E. 2d 593 (Ct. App. 1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment.

6. Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back.

ORDER

It is ordered that defendants shall provide the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back.

S.C. Workers' Compensation Commission



Commissioner Mike Campbell

Date: October 22, 2021

Parties served via Email:

Donald E. Kamb, Esquire: dkamb@williamskamb.com

Ashley Rudisill Forbes, Esquire: ashley.forbes@mgclaw.com

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 certified mail addressed to any unrepresented party.

October 22, 2021

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Campbell

South Carolina Workers' Compensation

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1809996
Carrier File #: BSTK-034263
Carrier Code #:
Employer FEIN #: 58-2504530

Claimant's Name: William D. Downes SSN: 251-31-5011
4024 Highway 414
Address: Landrum, South Carolina 29356

Employer's Name: Bon Secours Mercy Health, Inc.
2200 Jefferson Avenue
Address: Toledo, Ohio 43604

Home Phone: (864) 630-5665 Work Phone: _____

Insurance Carrier: Bon Secours Health System, Inc. c/o Sedgwick Claims Management Inc.

Preparer's Name: Ashley R. Forbes Law Firm: McAngus Goudelock & Courie Preparer's Phone Number: (864) 239-6709

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ Employer (check one) Date of Injury or Illness: April 17, 2018 (m/d/yyyy)

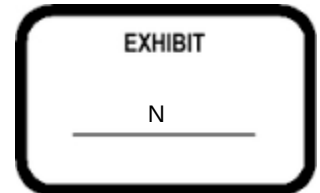
The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

PLEASE SEE ATTACHED.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ **Mediation**

- ☐ a. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.



Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

Donald E. Kamb, Jr., Esquire
Williams & Kamb, LLC
Post Office Box 10693
Greenville, South Carolina 29603

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to

Joe Mooneyham
Mooneyham Berry, LLC
Post Office Box 8359
Greenville, South Carolina 29604

on the 5th **day of** November **20** 21 **.**
by ☒ **first class postage** ☐ **certified mail** ☐ **personal service** ☐ **electronic service.**

Ashley R. Forbes

Preparer's Signature

Ashley R. Forbes
Attorney for Employer/Carrier
Title

ashley.forbes@mgclaw.com
Email

November 5, 2021
Date

Check this box if you are not represented by an attorney. ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

**DEFENDANTS BON SECOURS MERCY HEALTH, INC. AND SAFETY NATIONAL CASUALTY
CORP. GROUNDS FOR FULL COMMISSION REVIEW
William Downes v. Bon Secours Mercy Health, Inc., WCC No. 1809996**

1. Did the Single Commissioner err in finding as fact that the opinions of Dr. Esce and Dr. Kanos should be given the greatest weight as compared to the physicians who saw claimant prior to the most recent MRI (Finding of Fact No. 15) where the greater weight of the evidence does not support such a finding?
2. Did the Single Commissioner err in finding as fact that “given that Dr. Kanos only evaluated the claimant on one occasion, I give greater weight to the opinions of Dr. Esce, who along with his assistant saw and evaluated claimant on several occasions” (Finding of Fact No. 16) where the greater weight of the evidence does not support such a finding?
3. Did the Single Commissioner err in finding as fact that claimant is not at MMI for his admitted back injury (Finding of Fact No. 17) where the greater weight of the evidence does not support such a finding?
4. Did the Single Commissioner err in finding as fact that claimant is entitled to the back surgery recommended and requested and all causally-related medical treatment where the greater weight of the evidence does not support such a finding?
5. Did the Single Commissioner err in finding as a fact that a determination of permanency is premature at this time where the greater weight of the evidence does not support such a finding?
6. Did the Single Commissioner err in finding as fact that Claimant sought out further evaluation on his own at Carolina Orthopaedic & Neurosurgery because he was not allowed to return to Dr. Bucci (Finding of Fact No. 8 and 14(F)) where the greater weight of the evidence does not support such a finding?
7. Did the Single Commissioner err in finding as fact that the insurance carrier sent Claimant to Dr. Kanos for another opinion rather than providing the surgery recommended (Finding of Fact 14(G)) where the greater weight of the evidence does not support such a finding?
8. Did the Single Commissioner err in finding as fact that Claimant has already undergone conservative medical treatment since his accident on April 2018 and it has not made him any better (Finding of Fact 14(G)) where the greater weight of the evidence does not support such a finding?
9. Did the Single Commissioner err in failing to find that the January 20, 2021 MRI (Cl. APA 69) showed no overall interval change when compared to the MRI dated July 2, 2018, where the evidence would support such a finding?
10. Did the Single Commissioner err in failing to find that Dr. Kanos opined that “an MRI on 1.10.21 was similar to 2018s MRI” (D. APA 23), where the evidence would support such a finding?
11. Did the Single Commissioner err in failing to find that Dr. Gao also provided an opinion on MMI (D. APA 14-22), where the evidence would support such a finding?
12. Did the Single Commissioner err in failing to find that Dr. DeVault also provided an opinion on MMI (D. APA 3-10) where the evidence would support such a finding?

13. Did the Single Commissioner err in placing lesser weight on the opinions of Dr. Bucci (Cl. APA 21-29), Dr. Monroe (Cl. APA 47-54), Dr. Kanos (D. APA 23-27), Dr. Han (D. APA 30-46), Dr. Gao (D. APA 14-22) and Dr. DeVault (D. APA 3-10), where the greater weight of the evidence would suggest such opinions should be provided equal or greater weight than the opinion of Dr. Esce?
14. Did the Single Commissioner err in concluding as a matter of law that Claimant has not reached maximum medical improvement from his injuries where the greater weight of the evidence and applicable case and statutory law does not support such a finding?
15. Did the Single Commissioner err in concluding as a matter of law that claimant is entitled to and defendants are responsible for the back surgery recommended by Dr. Esce where the greater weight of the evidence and applicable case and statutory law does not support such a finding?
16. As a result of the foregoing, did the Single Commissioner err in ordering that Defendants shall provide the back surgery recommended by Dr. Esce where the greater weight of the evidence and applicable case and statutory law does not support such an order?

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

P. O. Box 1715 - 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

WCC File No. **1089996**

Carrier File #

Carrier Code #

Employer FEIN

William D. Downes

Claimant's Name SSN

Address City State Zip

(864) ()

Home Phone Work Phone

Bon Secours Mercy Health, Inc.

Employer's Name

Address City State Zip

Safety National Casualty Corp.

Insurance Carrier

Williams & Kamb, LLC

Preparer's Name

(864) 235-6254

Phone #

Request for Commission Review by **CLAIMANT. ORAL ARGUMENT IS REQUESTED.**

The undersigned makes application for review of the Hearing Commissioner's findings in the above matter. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

1. The Hearing Commissioner erred in failing to designate Dr. Esce as the treating physician for the surgery awarded; the error being that the conflict between the parties on the issue of back surgery empowers the Commission to designate the treating physician to provide the treatment awarded and the evidence overwhelmingly demonstrates that claimant is entitled to such treatment and has shown good cause under the circumstances supporting a change to Dr. Esce as the treating physician for the purposes of providing the treatment awarded.
2. The Hearing Commissioner erred in finding as a part of FOF#18 that "[b]ased on Dr. Esce's recommendation, claimant is entitled to the back surgery recommended and requested, and all causally-related medical treatment, by a physician of the defendants' choosing with a specialty to the back"; the error being that the conflict between the parties on the issue of back surgery empowers the Commission to designate the treating physician to provide the treatment awarded and the evidence overwhelmingly demonstrates that claimant is entitled to such treatment and has shown good cause under the circumstances supporting a change to Dr. Esce as the treating physician for the purposes of providing the treatment awarded.

CONTINUED ON ATTACHED SHEET.

ORAL ARGUMENT IS REQUESTED.☐ Mediation

- a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- b. Mediation is required pursuant to Reg. 67-1802.
- c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation @ wcc.sc.gov.

EXHIBIT

O

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to SCWCC, P.O. Box 1715, Columbia, SC 29202-1715; Ashley R. Forbes, Esq., by e-mail to ashley.forbes@mgclaw.com; and Joe Mooneyham, Esq., by e-mail to joe@mbllc.com on the 9th day of November, 2021, by ☒ 1st class post. ☐ cert. mail ☐ pers. serv ☒ electr. svc.

Preparer's Signature

Attorney for Claimant
Title

Date

If claimant appeals and is not represented by an attorney, the Judicial Department will prepare additional copies of this form and serve it on the opposing party. Rule 67-701(B). Otherwise, file the original and eight copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. Rule 67-205(D). Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to Rules 67-701 through -711 for additional information.

3. The Hearing Commissioner erred in finding as a part of ROL #6 that “[u]nder S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back”; the error being that the conflict between the parties on the issue of back surgery empowers the Commission to designate the treating physician to provide the treatment awarded and the evidence overwhelmingly demonstrates that claimant is entitled to such treatment and has shown good cause under the circumstances supporting a change to Dr. Esce as the treating physician for the purposes of providing the treatment awarded .
4. The Hearing Commissioner erred in ordering that “defendants shall provide the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back”; the error being that the conflict between the parties on the issue of back surgery empowers the Commission to designate the treating physician to provide the treatment awarded and the evidence overwhelmingly demonstrates that claimant is entitled to such treatment and has shown good cause under the circumstances supporting a change to Dr. Esce as the treating physician for the purposes of providing the treatment awarded .

DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

FILE NO.: 1809996

William D. Downes, Employee-Claimant,

Respondent-Appellant,

vs.

Bon Secours Mercy Health, Inc., Employer, and
Safety Nat'l Cas. Corp., Carrier-Defendants,

Appellants-Respondents.

Appellate Panel Review held virtually
on March 21, 2022, per notice timely
and properly served upon all parties of interest.

Appearances: Don Kamb, Esq. of Williams & Kamb, LLC of Greenville, South
Carolina for claimant

Ashley R. Forbes, Esq. of McAngus, Goudelock & Courie, LLC of
Greenville, SC for defendants.

Purpose: Appellate Panel Review of issues set forth on the parties'
respective Form 30 Requests for Commission Review

Filed: June 8, 2022

EXHIBIT

P

STATEMENT OF CASE

This claim initially came before the Commission on claimant's Form 50 seeking additional benefits for an admitted injury by accident that occurred on April 17, 2018 while he was working for employer-defendant. Claimant has received some authorized treatment for his low back and his left leg, and he is continuing to receive weekly temporary total disability compensation benefits. At the hearing, claimant contended he needs and is entitled to additional medical treatment for his back, specifically low back surgery recommended by neurosurgeon Dr. Esce. Defendants responded contending that such surgery is not warranted based on the opinions of the other physicians who have seen claimant, including neurosurgeons Dr. Bucci and Dr. Kanos. By stipulation, the only issue for determination at the hearing was claimant's entitlement to this low back surgery. All other issues, including permanency, were held in abeyance.

By Order dated October 22, 2021, the hearing Commissioner determined that claimant has not reached MMI and is entitled to the treatment and surgery recommended by Dr. Esce. Specifically, the Commissioner made the following findings, conclusions, and order:

FINDINGS OF FACT

1. *An employee/employer relationship existed between the parties at the time of claimant's injury. This finding is based on the parties' stipulation.*
2. *Claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21. This finding is based on the parties' stipulation.*
3. *Claimant sustained admitted injuries to his low back and left Achilles tendon arising out of and in the course and scope of his employment on April 17, 2018. This finding is based on all the evidence on the record, including but not limited to defendants' admission.*
4. *Claimant underwent various evaluations and treatments for his admitted work-related injuries, including but not limited to medications, injections, and physical therapy for his back injury and surgery and physical therapy for his Achilles injury. This finding is based on all the evidence on the record, including but not limited to claimant's*

testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, and Dr. Han.

5. On August 20, 2018, in his medical notes, authorized treating physician Dr. Michael N. Bucci of SSA Piedmont Spine and Neurosurgical Group opined: "Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue on with this for the time being. No follow-up indicated here currently." (Cl's APA p. 25) This finding is based on the medical records of Dr. Bucci.

6. On April 1, 2020, in his medical notes, authorized, treating physician Dr. Sung J. Han of Piedmont Comprehensive Pain Management Group, LLC opined: "Not a surgical candidate for lumbar spine, has seen Dr. Bucci." (Cl's APA p. 46) This finding is based on the medical records of Dr. Han.

7. On September 23, 2020, on a Form 14B, Dr. Ping Gao of AnMed Health Occupational Medicine opined to a reasonable degree of medical certainty that claimant was at MMI as of April 1, 2020, assigned a 1% medical impairment to the low back, assigned no permanent physical limitations, and recommended no additional medical treatment. (Defs' APA p. 21) Dr. Gao, who is not a surgeon, did not provide treatment for claimant but was retained by defendants to provide an impairment rating and other Form 14B information. This finding is based on the medical records of Dr. Gao.

8. On January 6, 2021, in her medical notes, nurse practitioner Julie Justice of Carolina Orthopaedic & Neurosurgical Associates opined: "Apparently, the patient has a history of a lumbar disc herniation that occurred following a work-related injury. I do not have any recent imaging. We will go ahead and get a lumbar MRI to further evaluate and I would like for him to follow up with Dr. Esce after he has this for further direction." (Cl's APA p. 57) Ms. Justice, who is not a surgeon, did not provide treatment for claimant but was sought out by him in an attempt to obtain another medical opinion on his low back condition when he was not allowed to return to Dr. Bucci. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Nurse Justice and Carolina Orthopaedic & Neurosurgical Associates.

9. On January 9, 2021, in an independent examination obtained by claimant, Dr. William Devault of the Orthopaedic Center opined: "Within a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category three, table 153-3, page 384... In order to maintain his current level of function, William Downes will need six physician visits per year and 15 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time." (Defs' APA p. 10) Dr. DeVault did not provide treatment for claimant but was retained by him to provide an additional impairment rating and other permanency information. This finding is based on the medical records of Dr. DeVault.

10. On February 4, 2021, in a follow-up appointment at Carolina Orthopaedic & Neurosurgical Associates scheduled by Nurse Justice, neurosurgeon Dr. Philip Esce opined: "MRI reviewed done at Piedmont Imaging shows L5-S1 moderate disc herniation central extending to the left side with decreased disc height...Plan is for a left L5-S1 micro-

discectomy. Risk, benefits, and details of the procedure have been explained to the patient." (CI's APA pgs. 61-62) This finding is based on the medical records of Dr. Esce.

11. On March 1, 2021, on a questionnaire obtained by claimant, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5-S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury." (CI's APA pgs. 66-67) This finding is based on the medical records of Dr. Esce.

12. On May 17, 2021, in an IME obtained by defendants, Dr. Kanos of Prisma Health Southeastern Neurosurgical & Spine Institute opined: "I reviewed his MRI and there is relatively mild bulge at L5-S1. Is not causing significant stenosis. He does not have classic radicular pain but he will have tingling with occasional pain. He's got calf atrophy and the EHL weakness as a result of his Achilles injury and was told that some of the symptoms in the feet are related to that. In terms of the L5-S1 discectomy, I am not inclined to recommend that. I think the odds of getting significant improvement in the back are low as his pain is strongly non-mechanical. Also, radiculopathy is not his main complaint. His symptoms are approximate 80% back/20% leg. I feel he is at MMI with a 5% impairment rating to his lumbar spine based on the AMA Sixth Edition. He had an FCE that showed sedentary activity, and I have no reason to dispute this. I think further medical treatment should include [pain management, medication, therapy or possible facet blocks or other injections]." (Defs' APA p. 25) This finding is based on the medical records of Dr. Kanos.

13. On June 28, 2021, at a follow-up appointment, Dr. Esce opined: "Workers' Comp then sent him over to Prisma, where he was Dr. Kanos who did not recommend surgery, but recommended further conservative care. Repeating the injections and physical therapy again. The patient then returned to my office with continued persistent complaints of severe back pain and lumbar radiculopathy, worse on the left side than right side, weakness with movement of his foot... Overall, I feel that given the fact he has really done everything possible for this but with no relief, a microdiscectomy at L5-S1 would be the next best available option. We are going ahead and try to get him set up for surgery." (CI's APA pgs. 63 & 65) This finding is based on the medical records of Dr. Esce.

14. On August 12, 2021, at the hearing before the undersigned Commissioner, claimant testified regarding his work-related accident, the medical treatment he has received and the issues he continues to have.

(A) Claimant testified that on April 17, 2018, claimant was assisting with a large patient in the CT scanning area. When the patient began to fall, he caught her and immediately felt a painful pop in his low back. The pain radiated into both legs.

(B) Claimant stated he was sent to Workwell Occupational Medicine for evaluation and treatment, but he testified that the treatment provided did not help him.

(C) A lumbar MRI scan was obtained, and claimant stated that he was sent to Dr. Bucci and then to Dr. Han. Claimant testified that he was treated with four rounds of injections and some 18 months of physical therapy.

(D) Claimant testified that the injections and other conservative treatment he received provided only temporary relief and that his low back and leg pain never entirely went away.

(E) Claimant sustained another injury to his left Achilles during evaluation and treatment at Workwell. He later underwent surgery for that injury and spent some time in a walking boot. Claimant testified that the boot affected his gait and increased his back pain.

(F) Claimant testified that he inquired about returning to see Dr. Bucci again but explained that he was not allowed to do so. He stated that he therefore sought out further evaluation on his own at Carolina Orthopaedic & Neurosurgery, where he eventually saw Dr. Esce. Claimant stated that Dr. Esce recommended surgery to repair a disc in his low back.

(G) Claimant testified that rather than providing the surgery recommended, the insurance carrier sent him to Dr. Kanos for another opinion, and Dr. Kanos recommended continued conservative treatment rather than surgery. However, claimant testified that he has already undergone such conservative medical treatment since his accident on April 2018, and it has not made him any better.

(H) Claimant testified that he needs and wants the surgery recommended by Dr. Esce so that his low back problem can be addressed and he can become more functional.

This finding is based on claimant's testimony.

15. Given that Dr. Esce and Dr. Kanos are the only physicians in the record that had the benefit of the most recent MRI of claimant's back, I give their opinions the greatest weight, as compared to the physicians who saw claimant prior to the most recent MRI. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, Dr. Han, Dr. Esce, and Dr. Kanos.

16. Furthermore, given that Dr. Kanos only evaluated the claimant on one occasion, I give greater weight to the opinions of Dr. Esce, who along with his assistant saw and evaluated claimant on several occasions. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Esce and Dr. Kanos.

17. Therefore, based on the opinions of Dr. Esce, as well as claimant's sworn testimony at the hearing, I hereby find claimant is not at MMI for his admitted low back injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, Dr. Han, Dr. Esce, and Dr. Kanos.

18. Based on Dr. Esce's recommendation, claimant is entitled to the back surgery recommended and requested, and all causally-related medical treatment, by a physician of the defendants' choosing with a specialty to the back. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

19. *A determination of permanency is premature at this time.*
20. *All other issues are held in abeyance at this time.*

RULINGS OF LAW

1. *Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits.*
2. *Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21.*
3. *Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident arising out of and in the course of his employment with employer-defendant on April 17, 2018 causing compensable injuries to his low back and left Achilles tendon (leg).*
4. *Claimant has not reached maximum medical improvement from his injuries. See Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E. 2d 593 (Ct. App. 1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment.*
6. *Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back.*

ORDER

It is ordered that defendants shall provide the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back.

Within the statutory period, both claimant and defendants filed an Application for Review in the case, a copy of which was furnished to all parties prior to briefing and oral argument before the Appellate Panel. By appeal, defendants respectfully submitted that the Commissioner erred as follows:

1. The Hearing Commissioner erred in placing lesser weight on the opinions of five physicians who evaluated Claimant prior to the Claimant's lumbar MRI on January 20, 2021.
 - a. The Hearing Commissioner provided no reasoning as to why there was a "benefit" to having reviewed the most recent MRI.
 - b. The reliable and probative evidence in the record establishes that there was no overall interval change in the MRI.
2. The Hearing Commissioner erred in placing greater weight on the opinion of Dr. Esce as compared to Dr. Kanos where Dr. Esce had only one more encounter with the Claimant.

3. The Hearing Commissioner erred in failing to find that the preponderance of the neurosurgical medical evidence establishes that a lumbar surgery is not a recommended treatment option.
4. The Hearing Commissioner erred in failing to find that the preponderance of the evidence establishes Claimant has reached maximum medical improvement.

By appeal, claimant respectfully submitted the Commissioner erred as follows:

1. The Hearing Commissioner erred in failing to designate Dr. Esce as the surgeon to provide the ordered treatment and surgery.

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration.

EVIDENCE OF THE CASE

At the hearing before the single Commissioner, the following summarized evidence was presented:

Claimant testified that he has worked for employer-defendant for 27 years as a respiratory therapist, which involves treating patients with lung diseases or who are on ventilators and requires lifting and transporting patients. He stated that prior to April 17, 2018, he had no significant low back problems or treatment. He has had some chiropractic adjustments.

On April 17, 2018, claimant was assisting with a large patient in the CT scanning area. When the patient began to fall, he caught her and immediately felt a painful pop in his low back. The pain radiated down both legs. Claimant stated he was sent to Workwell Occupational Medicine for evaluation and treatment, but he testified that the treatment provided did not

help him. An MRI scan was obtained, and claimant stated that he was sent to Dr. Bucci and then to Dr. Han. Claimant testified that he was treated with four rounds of injections and some 18 months of physical therapy. He stated that this provided only temporary relief and that his low back and leg pain never entirely went away.

Of note, claimant sustained another injury to his left Achilles during evaluation and treatment at Workwell. He later underwent surgery for that injury and spent some time in a walking boot. Claimant stated that the boot affected his gait and increased his back pain.

Concerning his back, claimant testified that he inquired about returning to see Dr. Bucci again but explained that he was not allowed to do so. He therefore sought out further evaluation on his own at Carolina Orthopaedic & Neurosurgery, where he eventually saw Dr. Esce. Claimant stated that Dr. Esce recommended surgery to repair a disc in his low back. He was instead sent by the insurance carrier to Dr. Kanos for another opinion, and Dr. Kanos recommended continued conservative treatment rather than surgery. However, claimant testified that he has already undergone such conservative medical treatment since his accident on April 2018, and it has not made him any better. He stated that he needs and wants the surgery recommended by Dr. Esce so that his low back problem can be addressed, and he can become more functional.

A review of the medical evidence submitted into the record shows that following his injury, claimant was initially evaluated and treated at Workwell Occupational Health. He was seen on multiple occasions, was first diagnosed with "low back pain/strain," and treated with medication and work restrictions. He was allowed to attend chiropractic treatment for

a period of time and was eventually referred for MRI scanning and neurosurgical evaluation when symptoms were determined to potentially include radiculopathy.

Neurosurgeon Dr. Michael Bucci saw claimant on August 20, 2018 and, after examination, opined in his office note as follows: "Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue on with this for the time being. No follow-up indicated here currently." From the submitted evidence, this appears to be claimant's only visit with Dr. Bucci.

Pain management physician Dr. Sung Han began treating claimant on October 17, 2018 with epidural steroid injections, physical therapy, and continued work restrictions. These conservative treatment measures continued until April 1, 2020, when Dr. Han placed claimant at MMI and noted again that he is "[n]ot a surgical candidate for lumbar spine, has seen Dr. Bucci."

Defendants then sent claimant to occupational medicine physician Dr. Ping Gao on September 23, 2020 for an impairment assessment and Form 14B. Dr. Gao noted that he had not seen or reviewed any of the radiology studies or related reports. However, he opined that claimant was at MMI as of that date, had a 1% medical impairment to the low back, had no permanent physical limitations, and was not in need of additional medical treatment. This appears to be claimant's only visit with Dr. Gao.

On January 6, 2021, claimant saw Julie Justice N.P. of Carolina Orthopaedic & Neurosurgical Associates. Ms. Justice noted that "[a]pparently, the patient has a history of a lumbar disc herniation that occurred following a work-related injury. I do not have any recent

imaging. We will go ahead and get a lumbar MRI to further evaluate and I would like for him to follow up with Dr. Esce after he has this for further direction."

Dr. William DeVault performed another impairment rating evaluation of claimant on January 9, 2021. He opined that "[w]ithin a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category three, table 153-3, page 384... In order to maintain his current level of function, William Downes will need six physician visits per year and 15 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time." There is no evidence that claimant saw Dr. DeVault again.

On February 4, 2021, claimant returned to Carolina Orthopaedic & Neurosurgical Associates and was evaluated by neurosurgeon Dr. Philip Esce. Dr. Esce reviewed the updated MRI scan and ultimately opined that "MRI reviewed done at Piedmont Imaging shows L5-S1 moderate disc herniation central extending to the left side with decreased disc height... Plan is for a left L5-S1 micro- discectomy. Risk, benefits, and details of the procedure have been explained to the patient."

On a questionnaire dated March 1, 2021, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or

was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5- S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury."

Defendants responded by sending claimant for an IME with neurosurgeon Dr. Charles Kanos of Prisma Health Southeastern Neurosurgical & Spine. Dr. Kanos opined: "I reviewed his MRI and there is relatively mild bulge at L5-S1. Is not causing significant stenosis. He does not have classic radicular pain but he will have tingling with occasional pain. He's got calf atrophy and the EHL weakness as a result of his Achilles injury and was told that some of the symptoms in the feet are related to that. In terms of the L5- S1 discectomy, I am not inclined to recommend that. I think the odds of getting significant improvement in the back are low as his pain is strongly non-mechanical. Also, radiculopathy is not his main complaint. His symptoms are approximate 80% back/20% leg. I feel he is at MMI with a 5% impairment rating to his lumbar spine based on the AMA Sixth Edition. He had an FCE that showed sedentary activity and I have no reason to dispute this. I think further medical treatment should include PM, medication, therapy or possible facet blocks or other injections." This was claimant's only visit with Dr. Kanos.

Claimant returned to Dr. Esce on June 28, 2021. He opined: "Workers' Comp then sent him over to Prisma, where he was Dr. Kanas who did not recommend surgery, but recommended further conservative care. Repeating the injections and physical therapy again. The patient then returned to my office with continued persistent complaints of severe

back pain and lumbar radiculopathy, worse on the left side than right side, weakness with movement of his foot... Overall, I feel that given the fact he has really done everything possible for this but with no relief, a microdiscectomy at L5- S1 would be the next best available option. We are going ahead and try to get him set up for surgery."

DECISION

Under S.C. Code Ann. § 42-17-50, an Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown therefore, make its own factual findings and legal conclusions consistent with or inconsistent with the Hearing Commissioner.

Based upon its review of all the evidence, the Panel hereby affirms in part and reverses in part the Order of the Hearing Commissioner. The Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. An employee/employer relationship existed between the parties at the time of claimant's injury. This finding is based on the parties' stipulation.
2. Claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21. This finding is based on the parties' stipulation.
3. Claimant sustained admitted injuries to his low back and left Achilles tendon arising out of and in the course and scope of his employment on April 17, 2018. This finding is based on all the evidence on the record, including but not limited to defendants' admission.

4. Claimant underwent various evaluations and treatments for his admitted work-related injuries, including but not limited to medications, injections, and physical therapy for his back injury and surgery and physical therapy for his Achilles injury. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, and Dr. Han.

5. On August 20, 2018, in his medical notes, authorized treating physician Dr. Michael N. Bucci of SSA Piedmont Spine and Neurosurgical Group opined: "Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue on with this for the time being. No follow-up indicated here currently." (CI's APA p. 25) This finding is based on the medical records of Dr. Bucci.

6. On April 1, 2020, in his medical notes, authorized, treating physician Dr. Sung J. Han of Piedmont Comprehensive Pain Management Group, LLC opined: "Not a surgical candidate for lumbar spine, has seen Dr. Bucci." (CI's APA p. 46) This finding is based on the medical records of Dr. Han.

7. On September 23, 2020, on a Form 14B, Dr. Ping Gao of AnMed Health Occupational Medicine opined to a reasonable degree of medical certainty that claimant was at MMI as of April 1, 2020, assigned a 1% medical impairment to the low back, assigned no permanent physical limitations, and recommended no additional medical treatment. (Defs' APA p. 21) Dr. Gao, who is not a surgeon, did not provide treatment for claimant but was retained by defendants to provide an impairment rating and other Form 14B information. This finding is based on the medical records of Dr. Gao.

8. On January 6, 2021, in her medical notes, nurse practitioner Julie Justice of Carolina Orthopaedic & Neurosurgical Associates opined: "Apparently, the patient has a history of a lumbar disc herniation that occurred following a work-related injury. I do not have any recent imaging. We will go ahead and get a lumbar MRI to further evaluate and I would like for him to follow up with Dr. Esce after he has this for further direction." (CI's APA p. 57) Ms. Justice, who is not a surgeon, did not provide treatment for claimant but was sought out by him in an attempt to obtain another medical opinion on his low back condition when he was not allowed to return to Dr. Bucci. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Nurse Justice and Carolina Orthopaedic & Neurosurgical Associates.

9. On January 9, 2021, in an independent examination obtained by claimant, Dr. William Devault of the Orthopaedic Center opined: "Within a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category three, table 153-3, page 384... In order to maintain his current level of function, William Downes will need six physician visits per year and 15 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time." (Defs' APA p. 10) Dr. DeVault did not provide treatment for claimant but

was retained by him to provide an additional impairment rating and other permanency information. This finding is based on the medical records of Dr. DeVault.

10. On February 4, 2021, in a follow-up appointment at Carolina Orthopaedic & Neurosurgical Associates scheduled by Nurse Justice, neurosurgeon Dr. Philip Esce opined: "MRI reviewed done at Piedmont Imaging shows L5-S1 moderate disc herniation central extending to the left side with decreased disc height...Plan is for a left L5-S1 micro-discectomy. Risk, benefits, and details of the procedure have been explained to the patient." (CI's APA pgs. 61-62) This finding is based on the medical records of Dr. Esce.

11. On March 1, 2021, on a questionnaire obtained by claimant, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5- S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury." (CI's APA pgs. 66-67) This finding is based on the medical records of Dr. Esce.

12. On May 17, 2021, in an IME obtained by defendants, Dr. Kanos of Prisma Health Southeastern Neurosurgical & Spine Institute opined: "I reviewed his MRI and there is relatively mild bulge at L5-S1. Is not causing significant stenosis. He does not have classic radicular pain but he will have tingling with occasional pain. He's got calf atrophy and the EHL weakness as a result of his Achilles injury and was told that some of

the symptoms in the feet are related to that. In terms of the L5- S1 discectomy, I am not inclined to recommend that. I think the odds of getting significant improvement in the back are low as his pain is strongly non-mechanical. Also, radiculopathy is not his main complaint. His symptoms are approximate 80% back/20% leg. I feel he is at MMI with a 5% impairment rating to his lumbar spine based on the AMA Sixth Edition. He had an FCE that showed sedentary activity, and I have no reason to dispute this. I think further medical treatment should include [pain management, medication, therapy or possible facet blocks or other injections." (Defs' APA p. 25) This finding is based on the medical records of Dr. Kanos.

13. On June 28, 2021, at a follow-up appointment, Dr. Esce opined: "Workers' Comp then sent him over to Prisma, where he was Dr. Kanos who did not recommend surgery, but recommended further conservative care. Repeating the injections and physical therapy again. The patient then returned to my office with continued persistent complaints of severe back pain and lumbar radiculopathy, worse on the left side than right side, weakness with movement of his foot... Overall, I feel that given the fact he has really done everything possible for this but with no relief, a microdiscectomy at L5- S1 would be the next best available option. We are going ahead and try to get him set up for surgery." (CI's APA pgs. 63 & 65) This finding is based on the medical records of Dr. Esce.

14. On August 12, 2021, at the hearing before the single Commissioner, claimant testified regarding his work-related accident, the medical treatment he has received and the issues he continues to have.

(A) Claimant testified that on April 17, 2018, claimant was assisting with a large patient in the CT scanning area. When the patient began to fall, he caught her and immediately felt a painful pop in his low back. The pain radiated into both legs.

(B) Claimant stated he was sent to Workwell Occupational Medicine for evaluation and treatment, but he testified that the treatment provided did not help him.

(C) A lumbar MRI scan was obtained, and claimant stated that he was sent to Dr. Bucci and then to Dr. Han. Claimant testified that he was treated with four rounds of injections and some 18 months of physical therapy.

(D) Claimant testified that the injections and other conservative treatment he received provided only temporary relief and that his low back and leg pain never entirely went away.

(E) Claimant sustained another injury to his left Achilles during evaluation and treatment at Workwell. He later underwent surgery for that injury and spent some time in a walking boot. Claimant testified that the boot affected his gait and increased his back pain.

(F) Claimant testified that he inquired about returning to see Dr. Bucci again but explained that he was not allowed to do so. He stated that he therefore sought out further evaluation on his own at Carolina Orthopaedic & Neurosurgery, where he eventually saw Dr. Esce. Claimant stated that Dr. Esce recommended surgery to repair a disc in his low back.

(G) Claimant testified that rather than providing the surgery recommended, the insurance carrier sent him to Dr. Kanos for another opinion, and Dr.

Kanos recommended continued conservative treatment rather than surgery. However, claimant testified that he has already undergone such conservative medical treatment since his accident on April 2018, and it has not made him any better.

(H) Claimant testified that he needs and wants the surgery recommended by Dr. Esce so that his low back problem can be addressed and he can become more functional.

This finding is based on claimant's testimony.

15. Given that Dr. Esce and Dr. Kanos are the only physicians in the record that had the benefit of the most recent MRI of claimant's back, their opinions are given the greatest weight, as compared to the physicians who saw claimant prior to the most recent MRI. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, Dr. Han, Dr. Esce, and Dr. Kanos.

16. Furthermore, given that Dr. Kanos only evaluated the claimant on one occasion, greater weight is given to the opinions of Dr. Esce, who along with his assistant saw and evaluated claimant on several occasions. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records of Dr. Esce and Dr. Kanos.

17. Therefore, based on the opinions of Dr. Esce, as well as claimant's sworn testimony at the hearing, claimant is not at MMI for his admitted low back injury. This finding is based on all the evidence on the record, including but not limited to claimant's

testimony and the medical records of Workwell Occupational Medicine, Dr. Bucci, Dr. Han, Dr. Esce, and Dr. Kanos.

18. Based on Dr. Esce's recommendation, claimant is entitled to the back surgery recommended and requested, and all causally-related medical treatment, with such surgery and treatment to be provided by Dr. Esce. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records.

19. Dr. Esce is hereby designated as the authorized treating physician. Defendants' denial of the recommended medical procedure and the differing opinions of the neurosurgeons constitutes good cause to designate a new authorized treating physician. This finding is based on all the evidence on the record, including but not limited to claimant's testimony and the medical records and opinions of Dr. Esce and Dr. Kanos.

20. A determination of permanency is premature at this time.

21. All other issues are held in abeyance at this time.

RULINGS OF LAW

1. Under S.C. Code Ann. § 42-17-50, the Appellate Panel is empowered to review the appealed award, weigh the evidence as presented at the initial hearing, and, if good grounds are shown therefore, make its own factual findings and legal conclusions consistent with or inconsistent with the Hearing Commissioner.

2. Under S.C. Code Ann. §§ 42-1-130 to -150, the South Carolina Workers' Compensation Commission has jurisdiction over claimant's claim for benefits.

3. Under S.C. Code Ann. § 42-1-40 and S.C. Code Reg. 67-1603, claimant's average weekly wage is \$1,260.00, for a corresponding compensation rate of \$838.21.

4. Under S.C. Code Ann. § 42-1-160, claimant sustained compensable injury by accident arising out of and in the course of his employment with employer-defendant on April 17, 2018 causing compensable injuries to his low back and left Achilles tendon (leg).

5. Claimant has not reached maximum medical improvement from his injuries. See Dodge v. Brucoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E. 2d 593 (Ct. App. 1999)(maximum medical improvement is plateau at which no further medical care or treatment will lessen the degree of impairment.

6. Under S.C. Code Ann. § 42-15-60, claimant is entitled to and defendants are responsible for the back surgery recommended by Dr. Esce.

7. Under S.C. Code Ann. § 42-15-60, and for good cause shown, Dr. Esce is hereby designated as the authorized treating physician.

ORDER

IT IS, THEREFORE, ORDERED that the Order of the Hearing Commissioner is hereby affirmed in part and reversed in part.

IT IS FURTHER ORDERED that defendants shall provide the back surgery recommended by Dr. Esce and that Dr. Esce is hereby designated as the authorized treating physician.

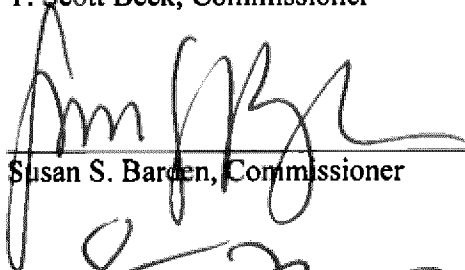
AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION



T. Scott Beck, Commissioner

CONCUR:



Susan S. Barden, Commissioner



Gene McCaskill, Commissioner

Date: June 6, 2022

Order Served via E-Mail:

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 8, 2022

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jul 05 2022

SC Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No.: 2022-000864

William D. Downes, Employee Respondent,

v.

Bon Secours Health System, Inc., Employer,
Safety National Casualty Corporation, Carrier, ... Appellants.

PROOF OF SERVICE

I certify that I have served the **Appellants' Memorandum on Appealability** on William D. Downes, by emailing it to his attorneys of record as follows:

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July 5, 2022

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