

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. Supreme Court

Judge Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2010-4737 (S. C. Ct. App. filed September 8, 2010)

FRANKLIN HUTSON, Claimant, ... Petitioner,

v.

S.C. STATE PORTS AUTHORITY, Employer,
and STATE ACCIDENT FUND, Carrier, ... Respondents.

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2007-CP-10-2305

Franklin Hutson,
Claimant

Appellant,

v.

SC State Ports Authority,
Employer

State Accident Fund
Carrier,

Respondents.

RECORD ON APPEAL

Thomas M. White, Esquire
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Attorney for Respondent

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NOV 28 2005

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA WORKERS'
COUNTY OF CHARLESTON	)	COMPENSATION COMMISSION
	)	
FRANKLIN HUTSON,	)	W.C.C. FILE NO. 0418244
	)	
Claimant,	)	
	)	
v.	)	ORDER
	)	
S.C. STATE PORTS AUTHORITY,	)	
	)	
Employer,	)	
	)	
STATE ACCIDENT FUND,	)	
	)	
Carrier.	)	
	)	

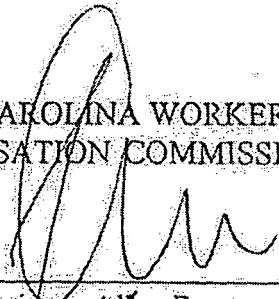
THIS MATTER came before the Commissioner on the Claimant's Form 50 and the Employer/Carrier Stop Pay. The Claimant presented a vocational report from Jean Hutchinson. In that report, Ms. Hutchinson recommends the Claimant complete training under this job training at the South Carolina Vocational Rehabilitation Center. As the Claimant is alleging loss under §42-9-20, the Commission is unable to make a determination until such time as the Claimant either completes training at the South Carolina Vocational Rehabilitation Center or other documentation is provided that he is unable to complete training at the South Carolina Vocational Rehabilitation Center.

As the Employer/Carrier filed a stop pay on August 31, 2005, they will be entitled to claim a credit from August 31, 2005 until the Claimant begins a program at the South Carolina Vocational Rehabilitation Center; however during the pendency of the Claimant's enrollment at the South Carolina Vocational Rehabilitation Center the Employer/Carrier will

be unable to request a credit. However, once the Claimant completes vocational rehabilitation the Employer/Carrier will be entitled to request a credit. This Commissioner shall retain jurisdiction of this case and upon completion of vocational rehabilitation the parties will contact him to schedule a hearing on the Forms 50, 51 and 21.

ORDERED, ADJUDGED, AND DECREED this 16 day of Nov, 2005.

SOUTH CAROLINA WORKER'S
COMPENSATION COMMISSION

By: 

Commissioner Allan Bass

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 23 day of November, 2005
By: Shannon Welch (for CM)
Administrative Assistant to the Commissioner

MMU
TMW

RECEIVED
JUN 28 2006

BY:.....

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0418244

FRANKLIN HUTSON,

EMPLOYEE,
CLAIMANT/RESPONENT,

- V -

S.C. STATE PORTS AUTHORITY,

EMPLOYER,

AND

STATE ACCIDENT FUND,

CARRIER,
DEFENDANTS/APPELLANTS.

Appellate Panel Review held in Columbia,
South Carolina on May 23, 2006 per notices
timely and properly served upon all parties of
interest.

Appellate Panel Decision and Order filed
June 26, 2006.

APPEARANCES:

Claimant/Respondent represented by Thomas
M. White, Esquire, of Goose Creek, South
Carolina.

Defendants/Appellants represented by
Margaret M. Urbanic, Esquire, of Charleston,
South Carolina.

STATEMENT OF CASE

The parties were heard by Commissioner J. Alan Bass on October 11, 2005 in North Charleston, South Carolina. On November 23, 2005, he issued the following Order:

THIS MATTER came before the Commissioner on the Claimant's Form 50 and the Employer/Carrier Stop Pay. The Claimant presented a vocational report from Jean Hutchinson. In that report, Ms. Hutchinson recommends the Claimant complete training under this job training at the South Carolina Vocational Rehabilitation Center. As the Claimant is alleging loss under §42-9-20, the Commission is unable to make a determination until such time as the Claimant either completes training at the South Carolina Vocational Rehabilitation Center or other documentation is provided that he is unable to complete training at the South Carolina Vocational Rehabilitation Center.

As the Employer/Carrier filed a stop pay on August 31, 2005, they will be entitled to claim a credit from August 31, 2005 until the Claimant begins a program at the South Carolina Vocational Rehabilitation Center; however during the pendency of the Claimant's enrollment at the South Carolina Vocational Rehabilitation Center the Employer/Carrier will be unable to request a credit. However, once the Claimant completes vocational rehabilitation the Employer/Carrier will be entitled to request a credit. This Commissioner shall retain jurisdiction of this case and upon completion of vocational rehabilitation the parties will contact him to schedule a hearing on the Forms 50, 51, and 21.

Within the statutory period, counsel for the Defendants filed an Application for Review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on May 23, 2006. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Defendants respectfully submitted the Hearing Commissioner erred in the following:

1. In ordering vocational rehabilitation and in ordering the Employer/Carrier to pay temporary total disability while the Claimant undergoes vocational rehabilitation.

2. In failing to find the Claimant was at maximum medical improvement.

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner.

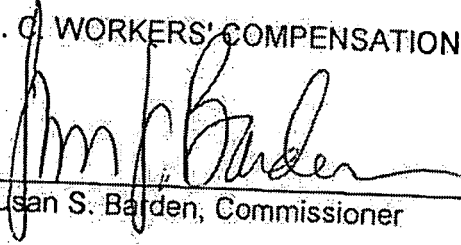
After careful review in the instant case, the Commission, by unanimous vote, has determined the Hearing Commissioner's Order is correct as stated. Accordingly, the Order is sustained in its entirety. The Hearing Commissioner's decision is incorporated by reference as if set forth verbatim herein.

ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on November 23, 2005 is hereby affirmed by the Panel and the same shall constitute the Decision and Order of the Appellate Panel.

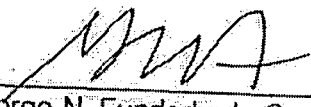
AND IT IS SO ORDERED.

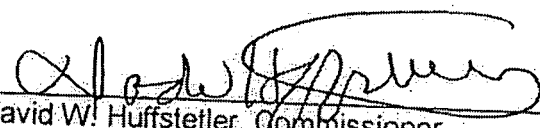
S. C. WORKERS' COMPENSATION COMMISSION


Susan S. Barden, Commissioner

FULL AFFIRMATION

CONCUR:


George N. Funderburk, Commissioner


David W. Huffstetler, Commissioner

(a:\0418244.ssb.app)

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 26 day of June, 2006
By Elaine M. Boyd
Administrative Assistant to the Commissioner

Handwritten:
TMC
MMU
CBP

JAN 12 2007

STATE OF SOUTH CAROLINA	)	BEFORE THE
	)	SOUTH CAROLINA WORKERS'
COUNTY OF CHARLESTON	)	COMPENSATION COMMISSION
	)	
FRANKLIN HUTSON,	)	W.C.C. FILE NO. 0418244
	)	
Claimant,	)	
	)	
v.	)	
	)	
S.C. STATE PORTS AUTHORITY,	)	DECISION AND ORDER
	)	
Employer,	)	
	)	
STATE ACCIDENT FUND,	)	
	)	
Carrier.	)	

HEARING: Held in Charleston, South Carolina
on August 1, 2006

APPEARANCES: Employee-Claimant represented by Thomas M. White, Esquire of Steinberg Law Firm; the Employer/Carrier was represented by Margaret M. Urbanic, Esquire of Clawson & Staubes, LLC.

PURPOSE OF HEARING: Forms 50 , 51, and 21

DECISION AND ORDER: J. Alan Bass, Commissioner

FILED: January 11, 2007.

STIPULATIONS

This case involves a workers' compensation claim brought pursuant to Title 42 of the South Carolina Code of Laws. A scheduled hearing was held on the above case on August 1, 2006, in Charleston, South Carolina before Commissioner J. Alan Bass. All parties were duly notified of the date, place and time of the hearing and evidence in the claim was submitted.

The following parties appeared and/or were represented by counsel: the Claimant, Thomas M. White, Esquire; the Employer/Carrier was represented by Margaret M. Urbanic, Esquire.

The parties stipulated to an average weekly wage of One Thousand Seven Hundred Thirty Dollars and No/100 (\$1,730.00) Dollars, making for a corresponding compensation rate of Five Hundred Seventy-Seven and 73/100 (\$577.73) which was the max compensation rate for the calendar year of 2004. This case is from an admitted injury to the back that occurred on October 21, 2004.

There were no objections to the APA Submissions of either party, and the parties stipulated to jurisdiction and venue.

CLAIMANT'S A.P.A. SUBMISSIONS

NAME OF PHYSICIAN

DATE OF REPORT NUMBER OF PAGES

	Medical Provider/Organization	Service Dates	Pages
1	Concentra Medical Center	10/26/04 - 11/09/04	7
2	Dr. Don Stovall	12/02/04 - 06/27/05	24
3	Healthsource Surgery Center	01/05/05	1
4	Lowcountry Surgery Center	04/04/05	1

5	University Family Medicine	10/25/04	2
6	Trident Regional Medical Center	06/22/05	4
7	Dr. Don Johnson	09/20/05	2
8	Various Letters from the Plaintiff's attorney and various parts of the Claimant's personnel file		111

DEFENDANT'S A.P.A. SUBMISSIONS

NAME OF PHYSICIAN DATE OF REPORT NUMBER OF PAGES

1	Concentra Medical Center	10/26/04 - 11/22/04	28
2	Tricounty Radiology Associates	11/17/04	2
3	Lowcountry Outpatient Surgery Center	02/4/05	1
4	South Carolina Vocational Rehabilitation Department	10/09/05 - 11/11/05	3

The Commission's files and notes were made a part of the record, absent any self-serving declarations and unstipulated medical reports. Claimant contends that he suffered injuries to his back and legs primarily his right leg and alleges maximum medical improvement on September 20, 2005. Claimant alleges he is permanently and totally disabled under §42-9-10 and/or §42-9-30 (19), in addition he is alleging that he suffered a wage loss under §42-9-20 and requests Dodge medicals as well. In addition, he is asking for a lump sum with Utica Mohawk Language. The Defendants admit an injury to the back only and allege maximum medical improvement as of June 25, 2005. The Form 21 was filed on August 31, 2005. The Defendants also ask for a credit for overpayment for all benefits paid after the date of maximum medical improvement and allege that the Claimant is only entitled to permanent partial disability. The Defendants deny that the Claimant is permanently and totally disabled or that he suffered a wage loss under §42-9-20.

EVIDENCE OF THE CASE

The Employer/Carrier relied on the medical records. The Claimant testified. He is currently 44 years old and divorced with three kids. He finished high school in 1980 and attended Trident Technical College. Claimant testified while at Trident Tech he studied Business Management and Culinary Arts and Food Sanitation. He worked for his step-father's company as a crane operator for approximately 7 years. He worked for General Dynamics as a crane operator until they shut down and worked at the Charleston Naval Shipyard for approximately a year. Claimant went to work for the State Ports Authority in 1997 as a crane operator. Claimant stated that he injured his back and it would radiate into his right leg. He was treated by Dr. Stovall and Dr. Warren. He underwent injections and physical therapy and medications. He was released from Dr. Stovall on June 27, 2005. The last day he worked was October 21, 2004. He testified that he had a prior injury to his right hand, where he was injured by a gun shot when he was 12. He has had several surgeries on his right hand. Claimant testified that as far as his future plans he plans to start his own restaurant business. His family has been in the restaurant business. He testified that enjoys cooking and that he could oversee people to work for him in a restaurant business earning a decent salary. Claimant testified that he has been researching locations, menu selections and pricing of equipment.

On cross-examination Claimant testified that he was able to drive himself from Huger, South Carolina to the hearing center which is approximately 45 minutes away. He lives by himself and is able to take care of all household chores. He has been working on the restaurant project since Dr. Stovall released him in June 2005. He testified that he would like to be a manager or owner of a restaurant. He is considering locations in Goose Creek and Moncks Corner. He estimates he is looking at possibly having a restaurant of 120 seating

capacity. Claimant testified that he has spoken with his family members that are in the restaurant business and he understands what it takes to run it. Family members have told him that it takes long hours to run the restaurant. He was unable to testify as to how much money he would earn from a restaurant. Claimant stated that it depends on how many people come into the restaurant and how good his food is.

A review of the medical records indicate the following. The Claimant was seen by Dr. Stovall beginning in December of 2004. The MRI of the lumbar spine showed a disc bulge at L2-3 on the left, the asymptomatic side and at L5-S1 there was spondylosis. His L2-3 disc bulge did not correlate with his right sided symptoms. Therefore, Dr. Stovall felt his symptoms were coming from the spondylosis. (Claimant's A.P.A. Submissions page 9.) Claimant underwent a series of injections on his lumbar back. In addition he also underwent some physical therapy. On June 27, 2005, Dr. Stovall indicated that the Claimant was at maximum medical improvement and he did not feel surgical intervention would benefit the Claimant and a 10% impairment to the whole person was appropriate. Claimant was assigned permanent work restrictions of no more than 30lbs on an occasional basis and no more than 25lbs on a frequent basis. Otherwise, Dr. Stovall felt that he was able to do a moderate level of work. Dr. Don Johnson saw the Claimant on September 20, 2005, by referral of the Claimant's attorney. Dr. Johnson agreed that the Claimant was not a surgical candidate.

FINDINGS OF FACT

Based upon the stipulations of the parties, the evidence and testimony received at the hearing on the merits, as well as any personal observations of the witnesses, the following findings of fact are made:

1. That the South Carolina Workers' Compensation Commission has jurisdiction of this matter. That all parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, and that Charleston County is

the proper venue.

2. That Claimant has an average weekly wage of One Thousand Seven Hundred Thirty and No/100 (\$1,730.00) Dollars making for a corresponding compensation rate of Five Hundred Seventy Seven and 73/100 (\$577.73) Dollars , the maximum compensation rate for the calendar year of 2004.

3. That Claimant suffered an admitted injury to his back on October 21, 2004.

4. Claimant suffers radicular symptoms into right leg. These symptoms affect function of Claimant's right leg.

5. Claimant has failed to prove that he suffered a loss of earning capacity under §42-9-20. Claimant testified that at the time of the hearing that he is planning on getting into the restaurant business. Claimant testified that he has family members in the restaurant business and he is aware of what it entails to work in the business. Claimant testified that he is able to manage or supervise a restaurant. Claimant testified that he would like to have a restaurant that seats 120 people. Claimant was unable to testify as to what his productive earnings would be in the restaurant business, therefore, there is absolutely no way for this Commissioner to determine any loss of earning capacity based on the testimony of the Claimant. Furthermore, when asked by this Commissioner, Claimant testified that he understood that even if he owned a restaurant he would still have to figure out the menu, write the checks, pay the bills and stand if he worked the registers. In addition, he admitted that he would have to stand to help in the kitchen as well. Based on Claimant's testimony I find that claimant understands what it entails to run a restaurant and he believes that he can do this type of work.

Claimant was given ample opportunity during my questioning to qualify or moderate his testimony concerning his perceived ability to run a restaurant. Frankly, his confidence runs contrary to the greater weight of the other evidence in the record. Nevertheless, he said what

he said. Had he not said it, I would have found him to be Permanently and Totally disabled under 42-9-10 (with the affects to the right leg taking the case out of Singleton).

6. That Claimant reached maximum medical improvement on June 27, 2005, based on the report and release of Dr. Stovall the authorized treating physician. Dr. Stovall found that the Claimant suffered a 10% impairment to his whole person.

7. After reviewing the medical records I find that the Claimant has suffered a 30% loss of use to his back under §42-9-30.

8. This case was originally set for a hearing on issues of permanency on 10-11-05. At that time, a continuance was granted so that Claimant could complete vocational rehab counseling. The Order continuing the case was appealed by Defendants. Though this Order was clearly interlocutory, no motion to dismiss the appeal was forthcoming. Nevertheless, the Full Commission affirmed the Order of Continuance on 6/26/06. The case was heard on 8/1/06.

The Defendants filed a Form 21 on August 31, 2005. The previous Order granting a continuance indicated that Defendants could claim a credit from 8/31/05 until Claimant commenced the program on 10/9/85 (Defendants APA #181). There is no evidence concerning when the counseling was completed. I am constrained to find, therefore, that the program was commenced and completed on 10/9/05. The hearing on permanency was delayed by Defendant's appeal from December 9, 2005 (the date on which their Form 30 was served) to June 26, 2006 (the date of Full Commission Order affirming Order of Continuance).

Credit for overpayment of TTDB is discretionary. In the exercise of my discretion, I find that Defendants are entitled to credit for overpayment of TTDB from 8/31/05-12/9/06 and from 6/26/06 to present. I find that it would be unfair to the Claimant to allow the Defendants credit for that period of time during which their appeal delayed the resolution of this claim.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Laws give the appropriate definition and provisions of the South Carolina Workers' Compensation Act as applicable to this case.

S.C. Code Ann. Section 42-1-40 defines average weekly wage in this state and Section 42-1-50 defines for the preceding year.

S.C. Code Ann. Section 42-1-120 defines disability.

S.C. Code Ann. Section 42-1-130 defines Employee.

S.C. Code Ann. Section 42-1-140 defines Employer.

S.C. Code Ann. Section 42-1-150 defines Employment.

S.C. Code Ann. Section 42-1-160 defines an injury by accident arising out of and in the course and scope of employment.

S.C. Code Ann. Section 42-9-30 governs the amount of compensation paid for specific disability.

S.C. Code Ann. Section 42-15-20 governs timely notice to the Employer.

S.C. Code Ann. Section 42-9-10 determines benefits when the incapacity to work is total.

S.C. Code Ann. Section 42-15-60 defines medical treatment to be furnished including lifetime medical benefits for a prosthetic device.

S.C. Code Ann. Section 42-1-400 defines "work which is a part of the owner's trade, business or occupation."

S.C. Code Ann. Section 42-9-400 determines Second Injury Fund claims.

ORDER

IT IS ORDERED, ADJUDGED AND DECREED that:

That the Employer/Carrier shall pay the Claimant permanent partial disability to 30% to

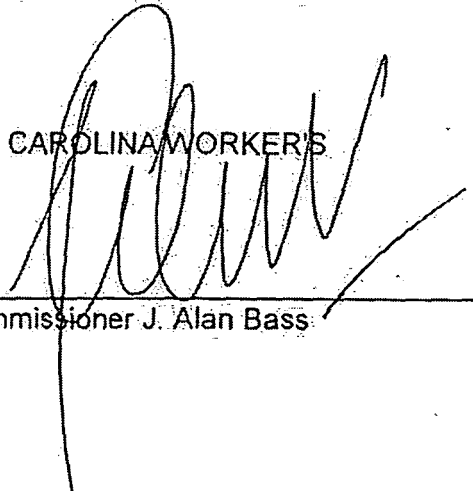
That the Employer/Carrier shall pay the Claimant permanent partial disability to 30% to his spine.

The Employer/Carrier is entitled to a credit of overpayment of temporary total benefits from 8/31/05-12/9/05 and from 6/26/06 forward.

No hearing costs are assessed in this matter.

IT IS SO ORDERED this 10TH day of January, 2007, at Columbia, South Carolina.

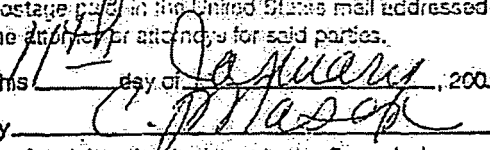
SOUTH CAROLINA WORKERS

By: 
Commissioner J. Alan Bass

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 11th day of January, 2007

By: 
Administrative Assistant to the Commissioner

TMLW
MMU

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 0418244

MAY 17 2007

FRANKLIN W. HUTSON, JR.

EMPLOYEE,
CLAIMANT/APPELLANT,

- V -

S.C. STATE PORTS AUTHORITY,

EMPLOYER,

AND

STATE ACCIDENT FUND,

CARRIER,
DEFENDANTS/RESPONDENTS.

Appellate Panel Review held in Columbia,
South Carolina on April 17, 2007 per notices
timely and properly served on all parties of
interest.

Appellate Panel Decision and Order filed
May 9, 2007.

APPEARANCES:

Claimant/Appellant represented by Thomas M.
White, Esquire, of Goose Creek, South
Carolina.

Defendants/Respondents represented by
Margaret M. Urbanic, Esquire, of Charleston
South Carolina.

STATEMENT OF CASE

The parties were heard by Commissioner J. Alan Bass on August 1, 2006 in Charleston, South Carolina. On January 11, 2007, he issued the following Order:

IT IS ORDERED, ADJUDGED AND DECREED that:

The Employer/Carrier shall pay the Claimant permanent partial disability up to 30% to the spine.

The Employer/Carrier is entitled to a credit of overpayment of temporary total benefits from 8/31/05 – 12/9/05 and from 6/26/06 forward.

Within the statutory period, counsel for the Claimant filed an Application for Review in the case setting forth his reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on April 17, 2007. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, Claimant respectfully submits the following:

1. Claimant suffered injuries to his back and leg entitling Claimant to make a claim under § 42-9-10 or § 42-9-20 or entitled the Claimant to impairment ratings to both the back and the leg under § 42-9-30.
2. Claimant suffered a wage loss and should have received benefits under § 42-9-20.
3. Claimant was totally disabled under § 42-9-10 or § 42-9-30.
4. Defendants should not receive a credit for overpayment of temporary benefits between August 31, 2005 to December 9, 2005 and June 26, 2006 forward.

5. It was error not to award future medicals under *Dodge*.

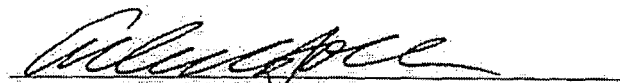
In an appellate review, the Panel shall, pursuant to S.C. Code Ann. §42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Panel, by majority vote, has determined all of the Hearing Commissioner's Findings of Fact and Rulings of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety. The Hearing Commissioner's decision is incorporated by reference as if set forth verbatim herein.

ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on January 11, 2007 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

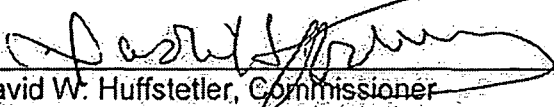
AND IT IS SO ORDERED.

S. C. WORKERS' COMPENSATION COMMISSION

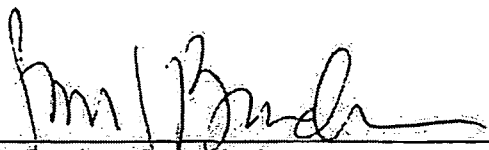

Andrea Pope Roche, Commissioner

MAJORITY AFFIRMATION

CONCUR:


David W. Huffstetler, Commissioner

DISSENT:


Susan S. Barden, Commissioner

I would have found wage loss pursuant to S.C. Code
Ann. § 42-9-20. Claimant has never owned or even
worked in a restaurant.

(L:\0418244\apr:app)

Remitted on May 15, 2007

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date *May*
served this order in the above entitled action upon all *AMC*
parties to this cause by depositing a copy hereof, *CSB*
postage paid, in the United States mail addressed to
the attorney or attorneys for said parties.

This *9th* day of *May*, 200*7*.
By *Berrara W. Chenevise*
Administrative Assistant to the Commissioner

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
FRANKLIN HUTSON,)
Claimant,)
)
v.)
)
S.C. STATE PORTS AUTHORITY,)
Employer,)
)
STATE ACCIDENT FUND,)
Carrier.)
_____)

IN THE COURT OF COMMON PLEAS
WCC FILE NO. 0418244

2007-CP-10-2305

ORDER

FILED
2008 APR 21 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT

RECEIVED
APR 24 2008
CLERK OF COURT

Date of Hearing: March 11, 2008
Trial Judge: Deadra L. Jefferson
Plaintiff's Attorney: Thomas White, Esq.
Defendant's Attorney: Margaret Urbanic, Esq.
Court Reporter: Anne Meyer

THIS MATTER came before the Court on March 11, 2008 upon Defendant's Appeal from the Workers' Compensation Commission's Order, which was entered on May 9, 2007. The full Commission affirmed the findings of the single Commissioner, dated January 11, 2007. The basis of the appeal is that the full Commission erred in finding the Claimant was not permanently and totally disabled or that he suffered a loss of earning capacity. Present at the hearing on this matter was Thomas White, Esq. for the Plaintiff and Margaret Urbanic, Esq. for the Defendant. After consideration of the findings of the Workers Compensation Commission and Commissioner, the Memoranda submitted by the parties, and the oral argument at the hearing, the Court affirms the findings of the Commission.

EVIDENCE SUMMARY

The Claimant was injured on October 21, 2004, while working as a crane operator at the

1 of 7
[Signature]

South Carolina State Ports Authority. (H.T. 4, l. 23-24) He suffered an admitted injury to his back only. (H.T. 5, l. 10-11) Dr. Stovall was his authorized treating physician. (H.T. 11, l. 5-7) The Claimant was forty-four years old at that time of the injury, and he is a high school graduate. (H.T. 6, l. 14-23) He has taken some courses at Trident Technical College, although he's never received a formal degree. (H.T. 6, l. 24-25; HT. 7, l. 1-11) Dr. Stovall first saw the Claimant on December 2, 2004. (APA #2, p. 8) After review of an MRI the diagnosis was made of an L2-3 disc bulge and at L5-S1 there was spondylosis. (APA #2, p. 9) Dr. Stovall noted that the L2-3 disc bulge was not correlated with his right sided symptoms and therefore thought that his symptoms were coming from spondylosis. (APA #2, p. 9) An epidural injection in L5-S1 was ordered. (APA #2, p. 9) In addition to the injections, the Claimant also underwent a course of physical therapy. (APA #2, p. 19) On June 27, 2005, Dr. Stovall found that the Claimant was at maximum medical improvement and noted that surgical intervention would not benefit the Claimant. (H.T. 29, l. 16-25; APA #2, p. 29) Dr. Stovall found a 10% impairment to his whole person. (APA #2, p. 29)

PROCEDURAL HISTORY

The hearing before the single Commissioner was held on August 1, 2006, and the Order of the same was entered on January 11, 2007. The Claimant sought recovery under SC Code §§ 42-9-10, 30, which provide for compensation for partial or total disability, as well as under § 42-9-20, which provides for a recovery based on wage loss. The single Commissioner found that the Claimant is not entitled to recovery under § 42-9-20 because he has not shown wage loss if he enters the restaurant business as planned. Under § 42-9-30, the Claimant was awarded a 30% rating of the whole person. The full Commission affirmed the findings of the single

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Commissioner in an Order dated May 9, 2007.

STANDARD OF REVIEW

"The Administrative Procedures Act applies to appeals from decisions of the Commission. In an appeal from the Commission, neither [the Court of Appeals] nor the circuit court may substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but it may reverse when the decision is affected by an error of law." Jones v. Harold Arnold's Sentry Buick, Pontiac, 376 S.C. 375, 656 S.E.2d 772 (Ct. App. 2008); S.C. Code Ann. § 1-23-310, et. seq. In an appeal from the South Carolina Workers' Compensation Commission, the standard of review is whether the findings of the Workers' Compensation Commission are supported by "substantial evidence." Stokes v. First Nat'l Bank, 306 S.C. 46, 410 S.E.2d 248 (1991); see also Doe v. S.C. Dept. of Disabilities and Special Needs, 2007 WL 5022448, 1, ---S.E.2d--- (2008). "Substantial evidence is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981); Etheridge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002). Furthermore, the "possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). Instead, where there are conflicts in the evidence on a factual issue, the findings of the Commission are conclusive, as the final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission. Stokes, 306 S.C. 46, 410 S.E.2d 248 (1991).

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CONCLUSIONS OF LAW

The Court finds that there is substantial evidence to support the findings of the full Commission under South Carolina Code §§ 42-9-20, 30, and 10 and the full Commission did not err in allowing credit for overpayment of benefits or in not allowing payment for future medical treatment.

1. § 42-9-20: There is substantial evidence to support the ruling that the Claimant did not suffer a wage loss under SC Code § 42-9-20, which provides for compensation based on partial disability. The Claimant contends that the only vocational evidence in the record was the report of Jean Hutchinson. The Commission is neither required to accept or rely fully on the report of Jean Hutchinson. The record indicates that the Claimant testified extensively about his plans for a restaurant. A review of the record indicates his testimony is quite extensive at the hearing in front of the Single Commissioner as found in Findings of Fact number 5 of the Single Commissioner's Order. Findings of Fact, #5, states:

The Claimant testified at the time of the hearing that he was planning to get into the restaurant business. Claimant testified that his family members are in the restaurant business and he is aware of what it entails to work in the business. Claimant testified that he's able to manage and supervise a restaurant. Claimant testified that he would like to have a restaurant that seats 120 people. Claimant was unable to testify as to what his productive earnings would be in the restaurant business, therefore, there is absolutely no way for this Commissioner to determine any loss of earning capacity based on the testimony of the Claimant. Furthermore, when asked by this Commissioner, Claimant testified that he understood that even if he owned a restaurant he would still have to figure out the menu, write the checks, pay the bills, and stand if he worked the registers. In addition, he admitted that he would have to stand to help in the kitchen as well. Based on the Claimant's testimony, I find the Claimant understands what it entails to run a restaurant and believes that he can do this type of

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[Signature]

work. Claimant was given ample opportunity during my questioning to qualify or moderate his testimony concerning his perceived ability to run a restaurant.

Therefore, there is substantial evidence in the record to support the findings of the Single Commissioner that the Claimant did not suffer a wage loss.

2. § 42-9-30: The Claimant contends that the Commission erred in limiting the award under SC Code § 42-9-30, which allows compensation for an injury to a specific body part. Claimant contends that under Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960), the award should not be limited to §42-9-30. In Singleton, the Single Commissioner found that the claimant was disabled because of the injury to his leg, even though the claimant had other injuries that did not contribute to his disability. Singleton, 114 S.E.2d at 844. The award there was limited to the scheduled award for the leg injury only. Id. The Singleton court found that "[w]here the injury is confined to the scheduled member, and there is no impairment of any other part of the body because of such injury, the employee is limited to the scheduled compensation." Id. at 845.

Although there is a Finding of Fact that the Claimant suffers radicular symptoms to his right leg, the Findings of Fact of the Single Commissioner indicate that this was an injury to the back that occurred on October 21, 2004. The Commission did not make a finding that the Claimant suffered a separate injury to his right leg; therefore, these symptoms in his leg can only be attributed to the back injury. The Commissioner took into account the leg problems in relation to his back injury when making the award under § 42-9-30. The Court finds that there is evidence in the record to support the findings of the Commission that the award was correct under § 42-9-30.

3. § 42-9-10: The Claimant alternatively argues that he should be found totally disabled under §42-9-10. Again, this Court finds that there is substantial evidence in the record to support the award under §42-9-30. Claimant suffered an injury to his back on October 21, 2004. He was given one epidural injection in L5-S1 and underwent a course of physical therapy. (APA #2, p. 19) No surgery was recommended. (APA #2, p. 29) He was assigned a 10% impairment by Dr. Stovall, the authorized treating physician. (APA #2, p. 29) He was sent by his attorney to Dr. Johnson for an Independent Medical Examination. (APA #7, p. 41) Dr. Johnson agreed that the Claimant was not a surgical candidate and placed him in the light to medium work category. (APA #7, p. 41) The Claimant's own testimony is that he can run a restaurant. (H.T. 37, l. 1-3) Upon consideration of Dr. Stovall's impairment rating and the testimony at the hearing, the single Commissioner assigned a 30% impairment to the whole person. Therefore, there is evidence in the record to support the award under § 42-9-30 and a finding that the Claimant was not totally and permanently disabled.

The Claimant relies on Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 664 (2006), to support the contention that his pre-existing injury to his hand should be taken into account under the Ellison case. Ellison was decided after this hearing and therefore the parties are not bound by the decision in Ellison.¹

4. Credit for overpayment: Claimant contends that the Commission's award for credit for

¹ The Ellison court held that "a claimant may recover for greater disability than that incurred from a single injury to a particular body part if the combination with any pre-existing condition hinders reemployment." Ellison, 371 S.C. at 164. The testimony of the Claimant, which was heavily relied upon by the single Commissioner, is that he is perfectly capable of running a restaurant, can drive himself long distances, do household chores, and more. Further, Dr. Stovall found a 10% impairment rating and that the Claimant can do a moderate level of work. Thus, there is no evidence to controvert the findings of the single Commissioner that the Claimant is not totally and permanently disabled, and the present facts are unlike Ellison's holding that this injury in addition to pre-existing conditions hindered reemployment.

overpayment of benefits between August 31, 2005, to December 9, 2005, and June 26, 2006 and forward was in error. The findings of the Commission regarding the overpayment of monetary awards are "binding on appeal unless there is an absence of competent evidence to support them." Brittle v. Raybestos-Manhattan, Inc., 241 S.C. 255, 127 S.E.2d 884, 885 (1962). This finding is within the discretion of the single Commissioner and no evidence to the contrary has been presented; thus, the Court finds no reason to overturn this part of the Commission's award.

5. No award for future medical treatment: Claimant further contends that the Commission erred in failing to award further medical treatment under Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 514 S.E.2d 593 (Ct. App. 1999). In Dodge, the court found that when a claimant reaches Maximum Medical Improvement, there may still be an option to require payment for future medical treatment. Id. at 581. Here, Dr. Stovall was the Claimant's main treating and authorized physician. On his last note of June 27, 2005, he did not recommend any further treatment for the Claimant that may tend to lessen his period of disability, and the Claimant is found not to be a surgical candidate. (H.T. 29, l. 16-25; APA #2, p. 29) The Commission gave great deference to the opinion of the treating physician, and therefore, there is substantial evidence to support the findings that future medical treatment is not awarded to the Claimant.

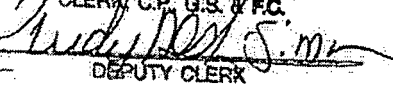
THEREFORE, IT IS ORDERED that the findings of the full Commission are
AFFIRMED.

IT IS SO ORDERED.


The Honorable Deadra L. Jefferson
Ninth Judicial Circuit

April 17, 2008
Charleston, South Carolina

Page 7 of 7

ALLIED & TOLSON COPY
JULIE J. ARMSTRONG (SEA)
CLERK, C.P., G.S. & F.C.

DEPUTY CLERK

NOV 30 2004

South Carolina Workers' Compensation Commission
P.O. Box 1715 ■ 1612 Marion Street
Columbia, South Carolina 29202-1715
AMENDED

WCC File # _____
Carrier File # _____
Carrier Code # 500
Employer FEIN 576000923

FRANKLIN W. HUTSON, JR.
Claimant's Name

SC STATE PORTS AUTHORITY
Employer's Name

SC 29450
Address City State Zip

Concord St., Charleston, SC
Address City State Zip

(843) 336-4145 ()
Home Phone # Work Phone #

State Accident Fund
Insurance Carrier

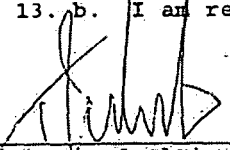
THOMAS M. WHITE, ESQUIRE
Preparer's Name

(843) 572-0700
Phone #

Complete each information blank. To request a hearing, check box 13. b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, and 8 and file this form in duplicate.

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

- [X] 1. a. The claimant sustained an accidental injury to back and right leg on 10/21/04 in Charleston County, State of SC
- [X] 1. b. Describe briefly how the accident occurred injured when jarred by crane.
- [X] 2. Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
- [X] 3. The relationship of employer and employee existed at the time of the injury.
- [X] 4. At the time of the injury the employee was performing services arising out of and in the course of employment.
- [X] 5. Notice of the accidental injury was given to the employer on 10/21/04 in the following manner: Supervisor was aware of the injury
- [X] 6. Due to injury, the claimant is in need of (check one):
[] (a) medical examination and treatment for _____
[X] (b) additional medical examination and treatment for back and right leg.
- [X] 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 10/23/04 to date and continuing.
- [X] 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
[X] (1) General Disability: [X] Total [] Partial
[] (2) Specific Disability: [] Total [] Partial
Body part(s) affected are: back and right leg.
- [] 9. Due to the injury, the claimant has a serious body disfigurement consisting of None
- [X] 10. a. At the time of the injury, the claimant was paid weekly wages of \$ 1730.00 and demands accounting of days worked and wages earned as provided by law.
- [X] 10. b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. Claimant has not been able to return to work
- [X] 11. a. Further grounds of claim: All allowable
- [X] 11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Concentra, Dr. Rodden - Charleston, SC
- [X] 11. c. To the best of your knowledge, did you have any prior permanent disability? NO
If yes, describe: _____
- [X] 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- [X] 13. a. I am filing a claim. I am not requesting a hearing at this time.
- [] 13. b. I am requesting a hearing.


Signature of Claimant/Representative

November 18, 2004
Date

Refer to R. 67-205, R.67-206, R.67-207, and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.

AUG 9 2005

South Carolina Workers' Compensation Commission
P.O. Box 1715 ■ 1612 Marion Street
Columbia, South Carolina 29202-1715
AMENDED

WCC File # _____
Carrier File # _____
Carrier Code # 500
Employer FEIN 576000923

FRANKLIN W. HUTSON, JR. SSN _____
Claimant's Name

Address City State Zip 9450
(843) 336-4145 ()
Home Phone # Work Phone #
THOMAS M. WHITE, ESQUIRE (843) 572-0700
Preparer's Name Phone #

SC STATE PORTS AUTHORITY
Employer's Name
Concord St., Charleston, SC
Address City State Zip
State Accident Fund
Insurance Carrier

Complete each information blank. To request a hearing, check box 13. b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, and 8 and file this form in duplicate.

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

- [X] 1. a. The claimant sustained an accidental injury to back and right leg on 10/21/04 in Charleston County, State of SC.
- [X] 1. b. Describe briefly how the accident occurred injured when jarred by crane.
- [X] 2. Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
- [X] 3. The relationship of employer and employee existed at the time of the injury.
- [X] 4. At the time of the injury the employee was performing services arising out of and in the course of employment.
- [X] 5. Notice of the accidental injury was given to the employer on 10/21/04 in the following manner: Supervisor was aware of the injury.
- [X] 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for _____
☒ (b) additional medical examination and treatment for back and right leg.
- [X] 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 10/23/04 to date and continuing.
- [X] 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
☒ (1) General Disability: ☒ Total ☐ (2) Specific Disability: ☐ Total
☐ Partial ☐ Partial
Body part(s) affected are: back and right leg.
- ☐ 9. Due to the injury, the claimant has a serious body disfigurement consisting of None.
- [X] 10. a. At the time of the injury, the claimant was paid weekly wages of \$ 1730.00 and demands accounting of days worked and wages earned as provided by law.
- [X] 10. b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. Claimant has not been able to return to work.
- [X] 11. a. Further grounds of claim: All allowable.
- [X] 11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Concentra, Dr. Rodden - Charleston, SC
- [X] 11. c. To the best of your knowledge, did you have any prior permanent disability? NO
If yes, describe: _____
- [X] 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13. a. I am filing a claim. I am not requesting a hearing at this time.
- [X] 13. b. I am requesting a hearing.

Signature of Claimant Representative

July 29, 2005
Date

Refer to R. 67-205, R. 67-206, R. 67-207, and R. 67-601 through R. 67-615. All questions about the use of this form may be directed to the Commission's Judicial Department.

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 0418244
Carrier File # 2004-5801
Carrier Code # 500-SF
Employer FEIN 576000923

Franklin Hutson		S.C. State Ports Authority	
Claimant's Name	SSN	Employer's Name	
		Post Office Box 2228	Charleston, SC 29413-2287
Address	City State Zip	Address	City State Zip
843-336-4145		State Accident Fund	
Home Phone #	Work Phone #	Insurance Carrier	
Margaret M. Urbanic	(843) 577-2026		
Preparer's Name	Phone #		

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part.

The employer-insurance carrier in answer to the claim, respectfully shows:

1. It is that the employee sustained an injury on or about the date set forth in the application. The reasons for denial are: Admit back injury; deny leg.
2. It is that both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Admit.
3. It is that the relationship of employer and employee existed at the time in question. The reasons for denial are: Admit.
4. It is that at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: Admit.
5. It is that notice of injury was given the employer. The reasons for denial are: Admit.
6. It is that the employee (needs) (is entitled to additional) medical care as a result of injury. The reasons for denial are: Denied; currently receiving treatment.
7. It is that the employee is entitled to temporary total disability for the period(s) of: Denied; currently receiving TT.
8. It is that the employee is permanently disabled. The reasons for denial are: Denied; to be determined.
9. It is Denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of \$(Form 20) applies, according to attached accounting of employee's earnings as provided by law.
11. Further contentions or grounds of defense are: See attached.

I certify that I have served this document pursuant to R.67-212 by delivering a copy to
Thomas M. White, Esq., 118 Goose Creek Boulevard, South, P.O. Box 1028, Goose Creek, SC 29445

Name Address
on the 9 day of August, 2005 by [✓] first class mail; [] personal service, [] certified mail.

Preparer's Signature

Attorney
Title

8/9/05
Date

ATTACHMENT TO FORM 51

Franklin Hutson v. S.C. State Ports Authority

W.C.C. NUMBER 0418244

11. Further contentions or grounds of defense are: All affirmative and specific defenses (see Reg. 67-603), including, but not limited to §42-1-360, § 42-9-60, § 42-15-20, § 42-15-40, § 42-17-90; and, upon information and belief, fraud in the application for employment pursuant to Cooper v. McDevitt & Street Co., 260 S.C. 463, 196 S.E.2d 833 (1973); election of remedies; intervening trauma; no compensable injury by accident under § 42-1-160; upon information and belief, the degree of disability, if any, attributable to this injury is speculative; upon information and belief, claimant's problems are personal in nature and not work-related; defendant-insurer reserves the right to amend this Answer and plead any applicable additional defenses.

South Carolina Workers' Compensation Commission
P.O. Box 1715 * 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 0418244
Carrier File # 2004-005801
Carrier Code # SF - 500
Employer FEIN

Frank Hutson

2004

Ports Authority

P.O. Box 22287, Charleston, SC

Preparer's Name: Cynthia Burns Polk, Esq., (803) 896-5896

The date of injury reported on the Form 12A is: 10/21/04

Check applicable section(s). The employer's representative requests a hearing to:

- ☒ I. Stop payment of compensation. Compensation payments are current as of 8/13/05 and shall continue until other wise ordered or until a Form 17 is signed by the claimant. A Form 17 was offered and refused on 8/24/05.

The basis of the stop payment hearing is (check one):

- ☒ (a) The authorized health care provider states the claimant has reached maximum medical improvement.
☐ (b) The authorized health care provider states the claimant is able to return to the same or other suitable job has assigned an impairment rating, if any, and the same or other suitable job has been offered to the claimant.
☐ (c) The authorized health care provider states the claimant is unable to return to the same or other suitable job and has assigned an impairment rating, if any.

- ☐ II. Terminate temporary compensation suspended per R.67-505. Date suspended:

The basis for suspension of benefits is (check one):

- ☐ (a) The claimant refuses medical treatment.
☐ (b) The employer states the claimant is working, has worked for at least fifteen calendar days, and the claimant refuses to sign the Form 17. Requesting:
☐ Informal Conference ☐ Hearing

- ☐ III. Pay Compensation in the amount of \$ to \$, based on the following grounds:

- ☒ IV. Request Credit for overpayment of temporary total compensation.

- ☐ V. Reduce Payment of Compensation from \$ to \$, based on the following grounds: compensation payments are current as of and shall continue until otherwise ordered or until a Form 17 is signed by the claimant.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Thomas M. White, Esquire, P.O. Box 1028, Goose Creek, SC 29445 on the 2nd day of August, 2005 by ☒ first class mail; ☐ personal service; ☐ certified mail. *Seyden*

Cynthia Burns Polk
Preparer's Signature

Cynthia Burns Polk, Esq.

State Accident Fund, PO Box 102100, Columbia, SC 29221-5000

Address

The claimant may respond in writing the preparer at the address above and filing a copy of the response with the Commission's Judicial Department at the address at the top of the form. Refer to R.67-208, R.67-211, R.67-505, and R.67-506, and R.67-601-R.67-616. Questions about the use of this form should be directed to the Judicial Department at (803) 737-5765.

South Carolina Workers' Compensation Commission
P.O. Box 1715 ■ 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 0418244
Carrier File # _____
Carrier Code # _____
Employer FEIN _____

FRANKLIN W. HUTSON, JR.
Claimant's Name

SC STATE PORTS AUTHORITY
Employer's Name

Address City State Zip

Address

Concord St., Charleston, SC
City State Zip

(843) 336-4145
Home Phone #

Work Phone #

STATE ACCIDENT FUND
Insurance Carrier

THOMAS M. WHITE, ESQUIRE

(843) 572-0700

Preparer's Name

Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

[☒] Injury by Accident [☐] Occupational Disease [☐] Both Injury by Accident and Disease [☐] Other

1. Date of accident: 10/21/04 2. AWW: \$ 1,730.00 Comp. Rate: \$ 577.73
3. Type of injury and body part(s) Back and right leg.
4. Facts in controversy: Injury is admitted. Issues in controversy are whether Claimant is at maximum medical improvement or does Claimant need more medical care? If Claimant needs additional medical care who should provide? If Claimant is at maximum medical improvement what is his loss of use and disability? Is Claimant permanently and totally disabled under §42-9-10 or §42-9-30? Has Claimant suffered a loss of earning capacity under §42-9-20? Does Claimant have a specific loss of use and disability? Does Claimant need future medical care under Dodge? Are the Defendants entitled to any type of credit for the overpayment of temporary total disability after Claimant was terminated as a result of his injury?
5. Legal issues involved: None other than those listed above
6. Unusual problems: Claimant was terminated after his injury.
7. Witnesses (designate if expert): Jim Pinson
8. Exhibits: Ltr from Pinson to Claimant dtd 1/5/05; ltr from Tom White to Pinson dtd 1/11/05; ltr to Pinson from Tom White dtd 3/2/05 ltr from Pinson to Claimant dtd 1/18/05; ltr from Pinson to Claimant dtd 3/14/05; ltr to Pinson from Steinberg Law Firm to Pinson dtd 3/18/05; ltr from Pinson to Claimant dtd 3/21/05; ltr from Tom White to Pinson dtd 4/4/05; Various parts of Claimant's personnel file to be submitted. Jean Hutchinson (Report to be submitted in lieu of live testimony).
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)
SEE ATTACHED LIST
10. Name, address, and specialty, if any, of the treating physician: Dr. Charleston, SC
11. Impairment rating(s); body part(s); physician and date of opinion: 6/27/05: Dr Stovall: 10% of the whole person. No lifting over 35 pounds occasional, 25 pound frequent. Moderate activity in medium work. 9/20/05: Dr. Donald Johnson 13 impairment to the whole person.

Signature

September 27, 2005

Date

DATE OF HEARING: October 12, 2005 TIME OF HEARING: 3:00 p.m.

On behalf of ☒ Claimant ☐ Employer

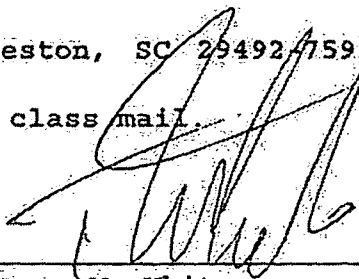
~~File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.~~
~~Commissioners reserve the right to admit expert witnesses at hearings.~~

WCC Form # 58. Rev. Date 3/96

58

PRE-HEARING BRIEF

I certify I have served these documents pursuant to R.67-212 and R.67-612 by delivering a copy to Margaret M. Urbanic, Esquire, 126 Seven Farms Drive, Suite 200, Charleston, SC 29492-7595 on the 27th day of September, 2005 by first class mail.



Thomas M. White
Attorney for Claimant

South Carolina Workers' Compensation Commission
P.O. Box 1715 ♦ 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File # 0418244
Carrier File # 2004-5801
Carrier Code # 500-SF
Employer FEIN 576000923

Franklin Hutson		S.C. State Ports Authority	
Claimant's Name	SSN	Employer's Name	
843-336-4145		Post Office Box 22287	Charleston, SC 29413-2287
Address	City State Zip	Address	City State Zip
Home Phone #	Work Phone #	State Accident Fund	
Margaret M. Urbanic		Insurance Carrier	
Preparer's Name		(843) 577-2026	
		Phone #	

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☒ Injury by Accident ☐ Occupational Disease ☐ Both Injury by Accident and Disease ☐ Other

1. Date of accident: October 21, 2004 2. AWW: \$ Comp. Rate: \$
3. Type of Injury and body part(s): Accepted as to back.
4. Facts in Controversy: Whether carrier can stop pay; whether carrier is entitled to a credit for overpayment; whether claimant has any permanency.
5. Legal issues involved: None.
6. Unusual problems: None known.
7. Witnesses (designate if expert)*: Employer representative, Mr. Campbell, Mr. Lempsis.
8. Exhibits: See attached APA Submissions.
9. Medical evidence: (indicate report pursuant to R.67-612; deposition or appearance)
See attached APA Submissions.
10. Name, address, and specialty, if any, of the treating physician: Dr. Don O. Stovall, orthopaedist, Charleston, SC.
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Stovall, 6/27/05, 10% whole person.

SIGNATURE

September 29, 2005
DATE

DATE OF HEARING: October 12, 2005

TIME OF HEARING: 3:00 p.m.

On Behalf of: ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R. 67-611 and 67-612. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Employee, FRANK HUTSON,)
Claimant)
V.)
STATE PORTS AUTHORITY,)
Employer,)
and)
STATE ACCIDENT FUND,)
Defendants.)

BEFORE THE
SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION
CASE NO. 0417736

MOTION TO RECONSIDER

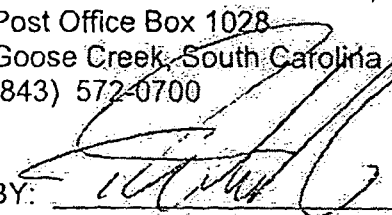
The Claimant moves for the Hearing Commissioner to reconsider the award given verbally following the hearing of August 1, 2006. Claimant specifically requests that three items be reconsidered by the Hearing Commissioner.

1. Awarding of a credit retroactive to June 27, 2005.
2. Failing to give an award under §42-9-20 for wage loss.
3. Failing to include an award to the leg as a compensable injury.

Claimant requests to be allowed to orally argue a reconsideration on the above three matters.

Claimant moves for this matter to be set for argument at the first available date.

THE STEINBERG LAW FIRM
118 Goose Creek Boulevard, South
Post Office Box 1028
Goose Creek, South Carolina 29445
(843) 572-0700

BY: 

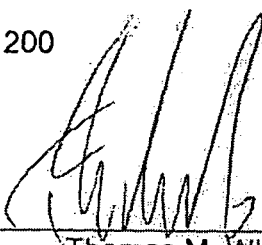
Thomas M. White
Attorney for Claimant

Goose Creek, South Carolina
August 3, 2006

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3 day of August, 2006, a copy of the foregoing Motion to Reconsider in the within matter was mailed by first class mail, with sufficient postage thereon, to the carrier for the Defendants at the following address:

Margaret M. Urbanic
126 Seven Farms Rd., Suite 200
Charleston, SC 29492-8144

BY: 

Thomas M. White
Attorneys for Claimant

South Carolina Workers' Compensation Commission
P.O. Box 1715 ■ 1612 Marion Street
Columbia, South Carolina 29202-1715
AMENDED

WCC File # _____
Carrier File # _____
Carrier Code # 500
Employer FEIN 576000923

FRANKLIN W. HUTSON, JR.
Claimant's Name

SSN _____

SC STATE PORTS AUTHORITY
Employer's Name

State Zip

Concord St., Charleston, SC
Address City State Zip

(843) 336-4145

Home Phone #

Work Phone #

State Accident Fund
Insurance Carrier

THOMAS M. WHITE, ESQUIRE
Preparer's Name

(843) 572-0700
Phone #

Request for Commission Review by ☒ claimant ☐ employer (check one)

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 the title and exhibit number. Use additional pages, if necessary).

1. The Hearing Commissioner erred in finding as a fact and ruling as a matter of law Finding of Fact #4 that the Claimant suffers radicular symptoms into the right leg and these symptoms affect function of Claimant's right leg; the error being that the Single Commissioner should have found that the Claimant was entitled to residual disability to his back and right leg and the Claimant was entitled to an award under §42-9-30 if that is the appropriate section for impairment ratings to the back and right leg.

2. The Hearing Commissioner erred in finding as a fact and ruling as a matter of law in Finding of Fact #5 that the Claimant failed to prove that he suffered a loss of earning capacity under §42-9-20, the error being that the only evidence in the record of what the Claimant could potentially earn was submitted by the Claimant in a vocational evaluation by their vocational expert, Jean Hutchinson, which showed the Claimant was capable of working but could only earn in the \$5.15 to \$6.00 an hour range.

3. The Hearing Commissioner erred in failing to find as a Finding of Fact and as a Conclusion of Law that the Claimant should be entitled to benefits under §42-9-20 and in further failing to find that those benefits should be paid in a lump sum as requested by the Claimant.

4. The Hearing Commissioner erred in finding as a fact and ruling as a matter law that his award is based upon the testimony of the Claimant that he hopes to one day open a restaurant, the error being that there is absolutely no proof in the record that the Claimant could run a restaurant or work in a restaurant and that it was simply a pipe dream on behalf of the

40 Claimant as to what he would try to do in the future if he had the ability to do it and the

funds to do it. It was error to make any findings that he was capable of performing such a job.

5. The Hearing Commissioner erred in finding as a fact and ruling as a matter of law that the ratings were ten percent to the whole person, the error being that there were also ratings from Dr. Johnson finding that the Claimant suffered a thirteen percent whole person impairment and further Dr. Johnson noted that the Claimant's disability was much greater than his impairment and that he could not return to work as a crane operator and noted that he was having radiating pain into both legs.

6. The Hearing Commissioner erred in failing to find as a finding of fact and ruling as a matter of law that the back injury also was affecting the use of both legs.

7. The Hearing Commissioner erred in failing to prove that the Claimant was permanently and totally disabled under §42-9-10 or §42-9-30 because the incapacity to work for the Claimant was total and he had lost more than fifty percent of the use of his back.

8. The Hearing Commissioner erred in finding as a fact and ruling as a matter of law that the Defendants were entitled to a credit for the overpayment of temporary total disability benefits when the evidence in the record would show that the Defendants should not receive a credit because Claimant was not capable to return to his job and was not offered any work by the Ports Authority and was not employable in his present condition.

9. The Hearing Commissioner erred in finding as a fact and ruling as a matter of law that the Claimant had suffered a thirty percent loss of use of his back under §42-9-30, the error being that his loss of use and disability is much greater than that and he was entitled to an award under §42-9-20, §42-9-10 or 50% loss of use of his back under §42-9-10.

10. The Hearing Commissioner erred in failing to find as a fact and rule as a matter of law that the Claimant was entitled to future medical care under Dodge, the error being that the evidence in the record was supportive in that the Claimant would need future medical care.

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

I certify that I have served this document pursuant to R.67-212 by delivering a copy to Margaret M. Urbanic, Esquire, at 1267 Seven Farms Drive, Suite 200, Charleston, SC 29492

Address

on the 19 day of January, 2007 by X : ☐ ass mail: ☐ personal service: ☐ certified mail.



Preparer's Signature

Attorney for the Claimant

Title

January 19, 2007

Date

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

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise file the original and 8 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. R.67-205D. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC Form #30. Rev. Date 9/90

Request for Commission Review.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W. C. C. FILE NO.: 0418244

FRANKLIN W. HUTSON, JR.,

Employee/Claimant

vs.

SC STATE PORTS AUTHORITY,

Employer/Defendant,

STATE ACCIDENT FUND,

Carrier/Defendants.

CLAIMANT/APPELLANT'S BRIEF

STATEMENT OF THE CASE

This matter came before the Commission on a Form 50 and a stop pay. Claimant contends that he was permanently and totally disabled under §42-9-10/42-9-30 or, in the alternative, suffered a wage loss under §42-9-20 as a result of his accepted on-the-job injury of October 21, 2004.

The Defendants contend the Claimant only has suffered a loss of use and disability to his back and should receive benefits under §42-9-30 and they should receive a credit for benefits paid after the Claimant reached maximum medical improvement on June 27, 2005.

This matter was heard August 1, 2006 and an Order issued January 11, 2007 finding that the Claimant should receive a thirty percent permanent partial disability to the back, and the Defendants should receive a credit for overpayment of temporary total benefits from August 31, 2005 to December 9, 2005 and from June 26, 2006 forward.

The Claimant timely filed a Form 30 Request for Commission Review and raised ten exceptions in his request. For the purpose of this appeal, that has been reduced to five arguments.

EVIDENCE SUMMARY

The Claimant was injured on October 21, 2004 while working as a crane operator at the South Carolina State Ports Authority. He injured his low back and the case was accepted and benefits were provided. Dr. Stovall was his authorized treating physician. The Claimant also has seen Dr. Don Johnson of the Southeastern Spine Institute and Dr. Jeffrey Faaberg of the Crowfield Pain Center for second opinions.

The Claimant was forty-four years of age and a high school graduate. He had taken some courses at Trident Technical College. He had never received a degree.

The Claimant had been a crane operator for twenty-four of his last twenty-five years. Other than a crane operator, he had only worked as a rigger for approximately one year. He described that job as being extremely physical with him having to lift up to one hundred pounds. (Tr., pg. 8).

The Claimant had been released by his treating physician, Dr. Stovall, as being at maximum medical improvement on June 27, 2005. He had permanent work limitations of no lifting over thirty-five pounds occasionally or twenty-five pounds frequently. He also had seen Dr. Donald Johnson who had noted that he could not return to work as

a crane operator because of the jarring and vibrations in the crane which was constantly aggravating his back. He noted that his disability greatly exceeded the impairment rating given of thirteen percent. Claimant had also seen Dr. Faaberg who felt he had a whole person impairment rating of twenty percent due to his back injury and an impairment rating of twenty-four percent to his right lower extremity. He noted his maximum sitting or standing was about fifteen minutes and his maximum lift was twenty pounds. He noted at best he could do sedentary work but it would have to be sheltered. The Claimant could not return to any of the work he had done in the past under his current restrictions. (Tr., pg. 9).

The Claimant had never had a workers' compensation claim before and Claimant had never been involved in an automobile wreck or pursued any type of claim. The Claimant had no previous back problems. The Claimant had no limitations whatsoever for working because of his back injury.

The Claimant did have a significant pre-existing condition due to a gunshot wound as a child. He had no use of the right hand for fine dexterity. (Tr., pg. 19). He had no computer or typewriting skills nor could he use his right hand to type or use on a computer. (Tr., pg. 19).

The Claimant had received conservative care from Dr. Stovall and Dr. Warren and got no relief except temporary relief. He was released on June 27, 2005.

The Claimant had not worked since October 21, 2004 the date of his injury. He was terminated by his employer on March 20, 2005. His employer never made any attempt to put him back to work under any of the restrictions or while he was under a doctor's care. (Tr., pg. 12). The only vocational evidence in the record noted that the

Claimant had been referred to the South Carolina Department of Vocational Rehabilitation. In his present status, he was unemployable but upon successful completion of a vocational training program, it was the vocational expert's opinion that his earnings would be between \$5.15 an hour and \$6.50 an hour. (Report of Jean Hutchinson, 10/4/05, pg. 154h). The Claimant had been averaging \$1,730.00 per week in income as a crane operator at the Ports Authority.

The parties had previously appeared in front of the Single Commissioner and an Order was issued November 16, 2005 continuing the case until the Claimant either completed training at the S.C. Department of Vocational Rehabilitation Center or documentation was received that he could not complete the training. The reason for the continuance was that the Commissioner had evidence in the record reflecting that the Claimant had suffered a significant loss of earning capacity and was entitled to benefits under §42-9-20. The Commissioner wanted this additional evidence on this issue.

The Defendants appealed that and their appeal was denied and the Full Commission affirmed the Order of the Single Commissioner finding that the matter was to be reset upon Claimant either completing his training through voc rehab or documentation that he could not complete the training.

ARGUMENT I

THE CLAIMANT SUFFERED INJURIES TO HIS
BACK AND LEG ENTITLING CLAIMANT TO
MAKE A CLAIM UNDER §42-9-10 OR §42-9-20
OR ENTITLED THE CLAIMANT TO
IMPAIRMENT RATINGS TO BOTH THE BACK
AND THE LEG UNDER §42-9-30.

The Order of the Single Commissioner found as a fact that the Claimant suffers radicular symptoms into his right leg and these symptoms affect the function of Claimant's right leg. This was not appealed by the Defendants. The Claimant suffered back pain and pain which radiated down his leg to his toes. (Tr., pg. 11). The treatment he received had only provided temporary relief. The Claimant had constant low back pain and, at its best, was a five out of ten and it would flair to a ten out of ten when it was aggravated by sitting or bending.

The Claimant suffered pain into his right leg that was sharp and stinging. He described his right leg as throbbing. He had spasms with cramping that radiated down his leg and would go all the way to his toes. (Tr., pg. 15). He had pain in his leg every day and estimated the pain level to be at a five to six out of ten. Sitting made it worse. (Tr., pg. 15). His leg was going numb and giving out. (Tr, pg. 15).

The report of Dr. Don Johnson dated September 20, 2005 (Claimant's APA's, pg. 41), noted he had seventy-five percent back pain and twenty-five percent leg pain with the right leg being worse. Claimant also saw Dr. Jeffrey Faaberg who also noted he was having significant pain into his legs. He found that the Claimant had a twenty-four percent impairment of the right lower extremity. (Report of Dr. Faaberg 8/23/05, Claimant's APA's, pg. 159).

At the second hearing on this matter also heard by the Single Commissioner, the Commissioner stated:

"As far as the leg is concerned, I don't have the proposed order yet. I don't know how it was phrased but, in its final form, the order is going to make clear that I found that his leg was—the function of his leg was affected. The purpose of that finding was to take this case out of Singleton and Wigfall. I

believe this was an injury that affected not only his back but also his leg." (Transcript 8/25/06, pg. 9).

Later in the same transcript, the Single Commissioner states:

"I thought there was no question in my mind that your client suffered a profound injury to his back. There is no question but that his leg is affected. There is no question in my mind that this case is outside the purview of Singleton & Wigfall..." (Transcript of 8/25/06, pg. 10).

If the effects of the loss of the member extend to other parts of the body and interfere with their efficiency, the Claimant should have the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section. Brown v. Owen Steel, 450 S.E.2d 57 (Ct.App. 1994); Morgan v. JPS Automotives, 467 S.E.2d 457 (S.C. Ct.App. 1996).

Here, the Claimant clearly suffered an injury to the back and the leg and there should have been a finding he was totally disabled under §42-9-10, suffered a wage loss under §42-9-20 or that he had impairment to multiple body parts under §42-9-30.

ARGUMENT II

THE CLAIMANT SUFFERED A WAGE LOSS AND SHOULD HAVE RECEIVED BENEFITS UNDER §42-9-20.

The Claimant had an average weekly wage of \$1,730.00 per week, almost \$90,000.00 a year. He had been making \$21.50 an hour with a lot of overtime.

The Claimant had an injury that affected both his back and his leg and, as evidenced by the Commissioner's comments and the case law, the Claimant was not limited to a finding under §42-9-30. The Claimant had made an attempt to go to the South

Carolina Department of Vocational Rehabilitation and they were not able to help him. (Tr., pg. 20). He had since been looking for work without success. He had no idea what he was going to do but had dreams of opening a restaurant as other family members of his had been successful in the restaurant business.

Other than the Claimant saying that he thought he could run a restaurant, there is absolutely no evidence anywhere in the record that Claimant was capable of performing that type of work or even had any idea of what it would take to run a restaurant. (Tr., pg. 22-23).

The only vocational evidence in the record revealed that the Claimant could return to some type of work after being properly trained through the S. C. Department of Vocational Rehabilitation but, at best, he could expect to make was \$6.50 per hour. There is no other evidence anywhere in the record as to the Claimant's earning potential. In his hopes of opening a restaurant, he has no idea the type of money he could make or what it would cost to run the restaurant. (Tr., pg. 22-26 of Claimant's testimony regarding a restaurant). His only testimony was that he thought they made decent money. (Tr., pg. 22).

Claimant contends he was totally and permanently disabled but, if not, he suffered a significant wage loss in that his earning capacity was at best \$260.00 per week as opposed to what he had been making of \$1,730.00 per week. Defendants failed to offer any vocational evidence and the report of Jean Hutchinson is uncontroverted.

ARGUMENT III

THE CLAIMANT WAS TOTALLY DISABLED UNDER §42-9-10 OR §42-9-30.

The Claimant had been a crane operator for the previous twenty-five years. He could not return to either one of those jobs. He got relief by laying down and using a heating pad and soaking. (Tr., pg. 16). He estimated he was down seventy-five percent of the day. (Tr., pg. 16). Sitting was limited to about fifteen minutes, standing fifteen minutes, walking about fifteen minutes and he would alternate these positions. (Tr., pg. 17). His lifting was about twenty pounds. (Tr., pg. 18). He could not bend and bending in a position such as to shave, caused extreme pain. (Tr., pg. 18).

The Claimant had a significant prior right arm injury when he was shot at age twelve. (Tr., pg. 19). The wound was to his right hand and it was right hand dominant. He had no use of his right hand for fine dexterity. (Tr., pg. 19). He could not use his arm for computer or typing. (Tr., pg. 19). He also had lost grip strength in his right hand. (Tr., pg. 19).

The Claimant had attempted to go to the S.C. Department of Vocational Rehabilitation but they could not help him. (Tr., pg. 20). He had looked for work with no luck. He did not know what to do. He had always wanted to go into the restaurant business and had studied culinary arts many years ago at Trident Technical College but never received a degree. He had family members in the restaurant business. He thought that he could possibly supervise other people and make a decent income. (Tr., pg. 22). When questioned by the Commissioner at length, the Claimant clearly had no idea what it would take to run the restaurant, had never owned his own business and did not know

what type of money could be made in running a restaurant. He said he thought he could work in a restaurant but had never tried it and did not know what it would take to be in the business. He thought he could stand in the kitchen or stand at the register and sit as needed. (Tr., pg. 31). Claimant testified that he was trying to think of some way he could earn money and have somewhere near the same income he had been earning at the State Ports Authority. (Tr., pg. 34).

The Hearing Commissioner obviously was upset with the Claimant and when he finished questioning him, stated, "I'm done with him". (Tr., pg. 37). At the hearing August 25th, the Single Commissioner stated:

~~"I would have totaled your client had he not said he was capable of running a restaurant".~~ (Tr. August 25, 2006, pg. 9-10).

Further down ne states,

"When I asked him questions, I gave him ample opportunity to back off that statement. He wouldn't do it. That was the only reason he wasn't totaled". (Tr., August 25, 2006, pg. 10). He later says, "There is no question in my mind that this case is outside the purview of Singleton & Wigfall and but for his testimony about running a restaurant, I would have totaled him". (Tr., August 25, 2006, pg. 10).

In the Order, which was unappealed by the Defendants in Finding of Fact 5, the Single Commissioner states that the Claimant was given ample opportunity to moderate his testimony concerning his perceived ability to run a restaurant. Frankly, his confidence runs contrary to the greater weight of the other evidence in the record. Nevertheless, he said what he said. Had he not said it, I would have found him permanently and totally disabled under §42-9-10 (with affects to the right leg taking the case out of Singleton).

The Claimant had dreams of one day running a restaurant and was trying to think of somehow earning the type of money he had made as a crane operator. It was not unreasonable for him to think that if he received a lump sum award that he could possibly attempt to invest in a restaurant. There is absolutely no indication anywhere in the record that he is capable of running a restaurant or that he would have the mental or physical capabilities to do so. He has never done it before and had no experience doing it but had simply been trying to research it while he was out of work.

The Claimant suffered from a severe pre-existing condition with loss of use to his right hand where he could not use it for fine dexterity. Under Ellison v. Frigidaire Home Products, (S.Ct. November 20, 2006, Opinion No. 26227, S.C. Advance Sheet), the Single Commissioner should have found that if the Claimant suffered only a single injury to a particular body part that, in combination with his significant right hand disability, hindered employment and he was therefore totally disabled. The combined effects of the workplace injury and pre-existing conditions result in the Claimant being permanently and totally disabled.

Upon questioning by the Single Commissioner, he admitted he really had no clue as to what it would take to run a restaurant, what the costs would be, or what he could earn. He simply testified that he thought he could do it if given the chance. To find that the Claimant was not permanently and totally disabled based upon his testimony that he had dreams of one day owning and running a restaurant is contrary to the evidence in the record. The evidence in the record clearly supports a finding that the Claimant was not capable of employment in any capacity and faced with the restrictions of the doctors and his testimony.

ARGUMENT IV

THE DEFENDANTS SHOULD NOT RECEIVE A CREDIT FOR OVERPAYMENT OF TEMPORARY TOTAL BENEFITS BETWEEN AUGUST 31, 2005 TO DECEMBER 9, 2005 AND JUNE 26, 2006 FORWARD.

The Claimant was referred to the South Carolina Department of Vocational Rehabilitation by the only vocational consultant that he saw. The Claimant made the effort to go to voc rehab but they could not assist him. (Tr., pg. 20). He had made three trips to them without any success. He had looked for work in several locations and had not had any success in finding work. (Tr., pg. 21). The Claimant was fired by the Defendants because he could not come back to do his job as a crane operator. They made no effort whatsoever to put him back to work in any capacity and simply terminated him six months after his injury.

The discretion is within the Commission to award a credit. Delays in this case were caused by the Defendants' appeal of the Order of the Single Commissioner dated November 16, 2005. There should have been no credit given to the Defendants since the Claimant had never been offered a chance to come back to work and there had been no effort to employ him by the Defendants and he had been looking for work and working with the S. C. Department of Vocational Rehabilitation as directed by Commission Order. The award of a credit was an abuse of discretion.

ARGUMENT V

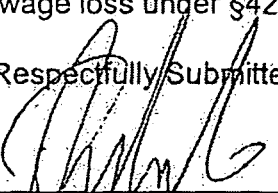
IT WAS ERROR NOT TO AWARD FUTURE MEDICALS UNDER DODGE.

The Claimant was found to be at maximum medical improvement with significant restrictions. He had spondylosis at L5 and a disc protrusion at L2-L3. It was Dr. Faaberg's opinion that he would benefit by evaluation and treatment by a board certified pain physician. It was Dr. Faaberg's opinion he would respond to interventional therapies to include facet joint injections and denervation of the lower lumbar facets. He also continued to take Lortab. These medicals were needed to lessen the Claimant's overall disability and should have been ordered under the Dodge case.

CONCLUSION

The Claimant has not suffered a loss of use only to his back. The Claimant has suffered a loss of use to his back and right leg. He is either permanently and totally disabled or has a loss of earning capacity. The Single Commissioner's comments in the transcript of August 25, 2006 and the Order concerning the Claimant's back injury, leg injury and his feelings about permanent and total disability show that the Order of the Single Commissioner was done in error and should be reversed with the Claimant receiving either total disability under §42-9-10 or a wage loss under §42-9-20.

Respectfully Submitted,


THOMAS M. WHITE

DATED: 2/21/07

STATE OF SOUTH CAROLINA	)	BEFORE THE
COUNTY OF CHARLESTON	)	SOUTH CAROLINA WORKERS'
FRANKLIN HUTSON,	)	COMPENSATION COMMISSION
	)	W.C.C. FILE NO. 0418244
Claimant,	)	
	)	
v.	)	RESPONDENTS' BRIEF
S.C. STATE PORTS AUTHORITY,	)	
	)	
Employer,	)	
	)	
STATE ACCIDENT FUND,	)	
	)	
Carrier.	)	

A hearing was held in this case on August 1, 2006, in front of the Single Commissioner. The hearing was held on a Form 50 and a Form 21. This case arises out of an admitted accident that occurred on October 21, 2004. The Form 21 had been filed on August 31, 2005. The Defendants asked for a credit for all benefits paid after the date of MMI. A prior Order had been issued on November 16, 2005, continuing the case until the Claimant either completed training through the Department of Vocational Rehabilitation ("Voc Rehab"), or documentation was received that the training could not be completed. This Order was appealed, and later affirmed by the Full Commission. The hearing was then re-set in front of Commissioner Bass. The Claimant was seen by Voc Rehab for several days. However, he did not complete any program there as they did not have a program for him.

The Single Commissioner found, in an Order dated January 11, 2007, that the Claimant failed to prove a loss of earning capacity under § 42-9-20. The Claimant testified

at the time of the hearing that he was planning on getting into the restaurant business. The Claimant testified that he has family members in the restaurant business and is aware of what it entails to work in that business. Claimant testified that he is able to manage or supervise a restaurant. Claimant testified that he would like to have a restaurant that seats approximately 120 people. Claimant was unable to testify as to what his productive earnings would be in the restaurant business; therefore, there is absolutely no way for this Commissioner to determine any loss of earning capacity, based on the testimony of the Claimant.

The Single Commissioner found that the Claimant suffered a 30% loss of use to his back under § 42-9-30. The Single Commissioner also found that this case was originally set for a hearing under issues of permanency on October 11, 2005. The Order continuing the case was appealed by the Defendants, and it was affirmed by the Full Commission on June 26, 2006. The previous Order granting a continuance indicated that the Defendants could claim a credit from August 31, 2005, until Claimant commenced the vocational rehabilitation program on October 9, 2005. There is no evidence concerning whether counseling was completed. Therefore, the Single Commissioner felt that the program was commenced and completed on October 9, 2005, based on the evidence presented. The Single Commissioner also found that the credit for overpayment of temporary total disability benefits is discretionary. In an exercise of his discretion, the Single Commissioner found the Defendants were entitled to full credit for overpayment of temporary total disability benefits from August 31, 2005, through December 9, 2006, and from June 26, 2006 through the present. The Single Commissioner found that it would be unfair for the Claimant to allow the Defendants a credit for the period of time during which their appeal

delayed the resolution of this claim.

The Claimant appeals the findings of the Single Commissioner that limit the award to §42-9-30. After the first hearing on August 1, 2006, the Claimant filed a Motion for Reconsideration. The Order of the Single Commissioner was not signed until January 11, 2007. At the start of the August 25, 2006 hearing for the Motion to Reconsider, the Single Commissioner stated that there is a regulation prohibiting the Commission from determining motions on the merit, and did not have jurisdiction to hear the Motion. The Commission did allow counsel to put arguments on the record. However, arguments of counsel are not evidence in the case. Just as a judge instructs a jury not to consider opening statements and closing arguments of parties at a trial, the same is true in a workers' comp. hearing – arguments are not evidence.

Furthermore, at the beginning of the August 25 hearing, the Commissioner stated he did not have jurisdiction to hear this matter. Therefore, it is not appropriate to rely on statements made by anyone at the August 25, 2006 hearing. This appeal arises out of the case heard on August 1, 2006, and the subsequent Order signed on January 11, 2007. Furthermore, until an Order is signed, the Commissioner or Hearing Officer can change their decision. In this case, the Order was actually signed on January 11, 2007, several months after the hearing on August 25, 2006.

Appellant contends that under Singleton v. Young Lumber Company, the award should not be limited to § 42-9-30. In Appellant's Brief, the Appellant acknowledges that the Claimant suffered back pain and pain that radiated down to his toes. The Single Commissioner did not find that the Claimant suffered a separate injury to his right leg, merely that his symptoms arose from his injury to his back. Therefore, as the symptoms

in his leg can only be attributed to the back injury, and that it was not for his back injury, his leg would not be affected, therefore the Single Commissioner was correct in limiting the award to the back under § 42-9-30.

The Appellant contends that the Claimant suffered a wage loss and should have received benefits under § 42-9-20. Claimant has the burden of proof of proving that he suffered a wage loss. At the hearing on August 1, 2006, the Claimant testified that he was looking into starting his own restaurant. He testified that his family has been in the restaurant business. He stated that he enjoys cooking and does not find it to be as strenuous as manual labor. He testified that he could supervise other people to work for him "and make, you know, a decent salary." (TR, p. 22). The Claimant testified he was looking to be the manager/owner of the restaurant. He was looking at locations in the Goose Creek/Moncks Corner area. The Claimant was asked if he looked into what type of revenues restaurants in that area tend to generate, and he responded that the restaurants do not disclose what they gross. (TR, p. 26). He testified he was looking at a seating capacity of approximately 120 people for his restaurant.

The Single Commissioner asked the Claimant questions about his restaurant business. (TR, pp. 30-38). The Single Commissioner asked him if he was able to figure out the menu, write the checks, pay the bills, and stand if he had to work at the register. The Claimant testified he could do all that and, in addition, he would be able to stand and help in the kitchen, as well. The Claimant testified that he has family members that run restaurants and he has talked to them about what it entails. The Claimant testified that he knows that it is hard work. He testified that he does not know how much money he will make, as this depends on how many people come to his restaurant and how good his food

is.

The Claimant repeatedly testified at the hearing that he believed he was able to run a restaurant and knew the type of work that involved. He was not able to testify as to the earnings of a restaurant or how much income he could expect to make from that type of business. Therefore, there was not enough information in front of the Single Commissioner to determine loss of earning capacity, if there will be any. It is conceivable that the Claimant may be very successful and earn more money in the future than he has in the past by running this restaurant.

The third issue on appeal is whether or not the Claimant is totally disabled under Sections 42-9-10 or 42-9-30. Claimant suffered an admitted injury to his back on October 21, 2004. Claimant was initially seen at Concentra Medical Center. He was subsequently referred to Dr. Stovall for complaints of lower back pain radiating into his leg. Dr. Stovall first saw the Claimant on December 2, 2004. After review of an MRI, the diagnosis was of an L2-3 disc bulge and L5 spondylosis. Dr. Stovall noted that the L2-3 disc bulge was not correlated with his right-sided symptoms, and therefore felt that his symptoms were probably coming from his spondylosis. An epidural injection at L5-S1 was ordered. In addition to the injections, he also underwent a course of physical therapy. On June 27, 2005, Dr. Stovall found that the Claimant was at maximum medical improvement. Dr. Stovall noted that he did not feel that surgical intervention would benefit this patient. He gave the Claimant a 10% rating of the whole person. In addition, he gave him restrictions that would include lifting no more than 35 pounds on an occasional basis and no more than 25 pounds on a frequent basis, but otherwise felt that he could do a moderate level of activity at medium work capacity. Claimant was sent by his attorney to Dr. Don Johnson

for a second opinion. Dr. Johnson agreed that the Claimant was not a surgical candidate. Dr. Johnson placed him in a light to medium work category.

A review of the transcript indicates that the Claimant was also adamant that he understands what it takes to run a restaurant and believes that he is capable of doing it. Appellants contend that there is no indication in the record that he is capable of running a restaurant. However, the testimony of the Claimant indicates that he believes that he is capable of running a restaurant, and he has family members who run a restaurant and he has spoken to them about what it involves.

The Appellants also rely on Ellison v. Frigidaire Home Products. Ellison was decided after this hearing, and therefore the parties should not be bound by Ellison. Furthermore, the pre-existing injury that the Claimant is alleging that hampers his employment is a wound to his right hand. Claimant apparently was injured by a gunshot wound at the age of 12. The Respondents contend that the pre-existing condition to his arm is not much of a hindrance to his employment, as he was successfully able to work for many years as a crane operator. The only vocational report in evidence is that from Jean Hutchinson, who contends that he is able to do some form of work and may possibly suffer a loss of earning capacity. Therefore, for all the foregoing reasons, the Single Commissioner was correct in not finding that Claimant was permanently and totally disabled.

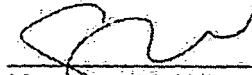
The Appellants contend that the Single Commissioner award and the credit for overpayment of benefits between August 31, 2005 to December 9, 2005, and June 26, 2006, forward. The Appellants agree that it is within the discretion of the Commissioner to award the credit for overpayments. Prior to the signing of the Order of January 11,

2007, the Single Commissioner had originally indicated he was granting a credit from the date of MMI, June 27, 2005, to the present. The Single Commissioner revised the Order to the date that the Form 21 was originally filed, from August 31, 2005 to December 9, 2005, the date of an earlier Order. The June 26, 2006 date is when the Full Commission affirmed the prior Order in this case. Therefore, the Single Commissioner reviewed the evidence, looked at it, and decided that these were the appropriate periods for which the Respondents should be able to claim a credit. Apparently, after further reflection, the Single Commissioner did not believe it was appropriate for the Defendants to have a credit from the date of MMI. Therefore, if there were any delays caused by the Appellants, clearly it was contemplated by the Single Commissioner, and his award for credit was adjusted.

The Appellants contend that the Single Commissioner failed to award further medical treatment under Dodge, and therefore the Order should be reversed on those grounds. Dr. Stovall was the Claimant's main treating physician. On his last note of June 27, 2005, he does not recommend any further treatment for the Claimant that may tend to lessen his period of disability. The Claimant's attorney sent the Claimant to Dr. Don Johnson and Dr. Faaberg. Dr. Faaberg indicated he felt that the Claimant should have additional treatment. However, he is merely an IME doctor, not a treating physician. Obviously, the Commissioner gave a great deal of deference to the treating physician, Dr. Stovall, and was correct in not awarding additional medicals, as Dr. Faaberg recommended.

Therefore, for all the foregoing reasons, the Order of the Single Commissioner should be affirmed.

Respectfully submitted,



Margaret M. Urbanic
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

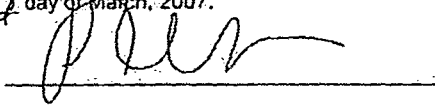
Attorney for Respondents

Charleston, South Carolina

March 15, 2007

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 14 day of March, 2007.



STATE OF SOUTH CAROLINA

IN THE COURT OF THE COMMON PLEAS

COUNTY OF CHARLESTON

FRANKLIN W. HUTSON, JR.,)

Employee,)

Claimant)

vs.)

S. C. STATE PORTS)
AUTHORITY,)

Employer,)

AND)

STATE ACCIDENT FUND,)

Carrier,)

Defendants.)

Civil Action No. _____
WCC File No. 0418244

FILED
2007 JUN -1 AM 9:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: MARGARET M. URBANIC, ESQUIRE, AND CYNTHIA POLK, ESQUIRE,
ATTORNEYS FOR DEFENDANT/RESPONDENT; AND THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

YOU WILL PLEASE TAKE NOTICE that, pursuant to S.C. Code Ann. §42-17-60,
FRANKLIN W. HUTSON, JR., ["Appellant"] hereby appeals the Decision and Order of the
South Carolina Workers' Compensation Commission ["Commission"] dated May 9, 2007,
affirming the Order of the Single Commissioner dated January 11, 2007 to the Court of
Common Pleas for Charleston County, South Carolina.

Appellant submits his substantial rights have been prejudiced because of the
Commission's findings, inferences, conclusions, and decisions are affected by an error of
law and are clearly erroneous in view of the reliable, probative and substantial evidence in
the record. Appellant further submits his Petition for Review to the Court of Common
Pleas is based on the following grounds.

1. Appellant respectfully submits the Commission erred in failing to find that the Claimant was entitled to residual disability to his back and right leg and the Claimant was entitled to an award under §42-9-30 if Claimant was not permanently and totally disabled under §42-9-10 or §42-9-30 or did not suffer a wage loss under §42-9-20.

2. Appellant respectfully submits the Commission erred in failing to find the Claimant suffered a loss of earning capacity under §42-9-20 when the only evidence in the record was that Claimant was capable of working but could only earn in the \$5.15 to \$6.00 an hour range.

3. Appellant respectfully submits the Commission erred in failing to find that the Claimant should be entitled to benefits under §42-9-20 and further in failing to find that said benefits should be paid in a lump sum as requested by the Claimant.

4. Appellant respectfully submits the Commission erred in finding that the Claimant was capable of opening a restaurant and that his award was reduced because of his belief that he wanted to try to open a restaurant when there is no proof in the record that Claimant could run a restaurant, work in a restaurant, had knowledge of a restaurant or had ever put forth a reasonable plan to buy or operate a restaurant. To base any findings from the Claimant's testimony and the pipe dream he had was clearly erroneous and there was no evidence in the record to support any such findings.

5. Appellant respectfully submits the Commission erred in awarding a thirty percent loss of use and disability to the Claimant greatly exceeded this amount.

6. Appellant respectfully submits the Commission erred in failing to rule and find that the Claimant's injury affected the use of both legs.

7. Appellant respectfully submits the Commission erred in failing to find that the Claimant was permanently and totally disabled under §42-9-10 and/or §42-9-30 because the incapacity to work for the Claimant was total and he had lost more than fifty percent of

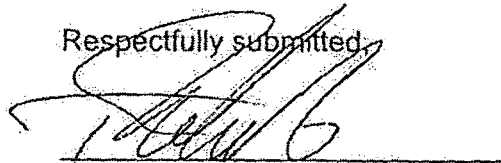
the use of his back.

8. Appellant respectfully submits the Commission erred in finding as a fact and ruling as a matter of law that Defendants were entitled to a credit for any overpayment of temporary total disability benefits when the record shows the Claimant was not capable of returning to his job and was not offered any work by his employer and there was no employment available within his restrictions.

9. Appellant respectfully submits the Commission erred in ruling that the Claimant had a thirty percent loss of use to his back under §42-9-30 when the evidence supported a finding that he was entitled to an award under §42-9-10, §42-9-20 and had a loss of use to his back that exceeded fifty percent under §42-9-30 and was totally disabled.

10. Appellant respectfully submits the Commission erred in failing to find and rule that the Claimant was entitled to future medical care under Dodge v. Bruccolli, 334 S.C. 574, 514 S.E.2d 593 (Ct.App. 1999), when there was evidence that there was future medicals that will tend to lessen the Claimant's overall disability.

Respectfully submitted,



Thomas M. White
THE STEINBERG LAW FIRM
118 Goose Creek Boulevard, South
Post Office Box 1028
Goose Creek, South Carolina 29445
(843) 572-0700

Goose Creek, South Carolina
May 30, 2007

RECEIVED
SEP 06 2006

1

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC File No. 0418244

BY:.....

FRANK HUTSON,

Employee/Claimant,

- vs -

SOUTH CAROLINA PORTS
AUTHORITY,

Employer,

and

STATE ACCIDENT FUND,

Carrier.

COPY

COMMISSIONER: Commissioner J. Alan Bass

DATE TAKEN: August 1, 2006

TIME TAKEN: 9:03 a.m.

LOCATION: The Perimeter Center
4050 Bridge View Drive
Conference Room A
N. Charleston, South Carolina

REPORTED BY: Joanne D. Bargesser, CR

1 A-P-P-E-A-R-A-N-C-E-S:

2

3 Appearances for the Claimant

4 By: Thomas M. White, Esquire
5 THE STEINBERG LAW FIRM, LLP
6 118 Goose Creek Boulevard
7 Goose Creek, South Carolina 29445
8 (843) 572-0700

7

8 Appearances for the Employer/Carrier

9 By: Margaret M. Urbanic, Esquire
10 CLAWSON & STAUBES, LLC
11 126 Seven Farms Drive, Suite 200
12 Charleston, South Carolina 29492-8144
13 (843) 577-2026

12

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24 Reporter.

25

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12 INDEX TO EXHIBITS

13 No exhibits were marked for identification.

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1 COMMISSIONER BASS: This is August 1st,
2 2006. It is 9:03 in the morning. This is WCC file
3 number 0418244. This is the claim of Frank Hutson.
4 Mr. Hutson is present and represented by Tom White.
5 The employer is the South Carolina State Ports
6 Authority. State Accident Fund is the carrier.
7 They are represented by Peggy Urbanic. This is a
8 50/51 hearing.

9 Prior to the call of the hearing, a
10 pre-hearing conference was held with the attorneys,
11 and as a result there are a few things I need to
12 place on the record.

13 First of all, there are no stated
14 objections to jurisdiction, venue, or to the
15 Commission file being made a part of the record with
16 the exception of self-serving declarations and
17 unstipulated medical. I have APA submissions from
18 both sides. There are no objections to either set
19 of documents.

20 The parties agree to an average weekly
21 wage of \$1,730 and a comp. rate of \$577.73, which
22 was the max comp. rate for the calendar year 2004.

23 This is an admitted accident that occurred
24 on October 21st, 2004. Claimant alleges injuries to
25 his back and his legs, primarily his right leg. He

 Joanne D. Bargesser, Independent Court Reporter
 phone (843) 849-8202 fax (843) 849-8449

1 alleges MMI on September 20th, 2005. He alleges
2 that he is permanently and totally disabled under
3 42-9-10 and/or subsection 30 dash 9 -- or, excuse
4 me, 42-9-30, subsection 19. In the alternative, he
5 is alleging that suffered a wage loss under 42-9-20,
6 or permanent partial disability to the affected body
7 parts, with Dodge medical for those, too. He's
8 asking that his monetary benefits be paid in a lump
9 sum with *Utica-Mohawk* apportionment.

10 The defendants admit an injury to the
11 back only. They allege MMI was reached on 06/25/05.
12 The Form 21 was filed on August 31st, 2005. They're
13 asking for credit for all benefits paid after the
14 date of MMI. They allege that the claimant is
15 entitled to PPD only. They deny the claimant is
16 permanently and totally disabled, and they deny that
17 the claimant has suffered a wage loss under 42-9-20.
18 They object to lump sum and *Utica-Mohawk*.

19 Those are the issues. Is there anything
20 else we need to put on the record before we begin
21 testimony?

22 Mr. White?

23 MR. WHITE: Nothing, Your Honor.

24 COMMISSIONER BASS: Ms. Urbanic?

25 MS. URBANIC: No, sir.

1 COMMISSIONER BASS: Mr. Hutson, raise your
2 right hand, please.

3 (FRANK HUTSON, having been first duly
4 sworn, testified as follows:)

5 COMMISSIONER BASS: All right. Mr. White?

6 MR. WHITE: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. WHITE:

9 Q State your full name, please.

10 A Franklin W. Hutson, Jr.

11 Q And you go by Bubba?

12 A That's -- yes, sir.

13 Q All right. Bubba, you're -- I'm going to
14 lead you through a lot of this. You're 44 years
15 old; is that correct?

16 A Yes, sir.

17 Q Born May 14th, 1962?

18 A Correct.

19 Q Divorced and have three kids and a
20 grandchild?

21 A Yes, sir.

22 Q What year did you finish high school?

23 A 1980.

24 Q And did you take some courses at Trident
25 Tech after --

1 A Yes.

2 Q -- that?

3 A Yes, sir.

4 Q Did you ever get any additional degrees or
5 certificates?

6 A No, sir. I didn't finish.

7 Q What type of courses did you take at
8 Trident Tech?

9 A Business management, culinary arts --

10 Q All right.

11 A -- and food sanitation.

12 Q All right. And tell me, after high
13 school, just kind of run through your work history.
14 You worked for a piling company, driving pilings as
15 a crane operator; is that correct?

16 A Yes, sir.

17 Q How did you learn the trade of being a
18 crane operator?

19 A My stepfather had a company and he taught
20 me his trade.

21 Q And I believe you worked for them for
22 about seven years; is that correct?

23 A Yes, sir.

24 Q And I think you left there to go work for
25 another crane company building a pier, for more --

1 more money, building a pier down at the shipyard?

2 A Yes, sir.

3 Q You also worked at General Dynamics as a
4 crane operator until they shut down?

5 A That's correct.

6 Q You also worked as a rigger for a period
7 of time for the Charleston Naval Shipyard for about
8 a year?

9 A Yes, sir.

10 Q Was that because you couldn't find a crane
11 job?

12 A They weren't hiring, and they said I was
13 overqualified, so the only opening they had was
14 rigger.

15 Q All right. Tell me just a little bit
16 about being a rigger. What type of lifting was
17 required with that job?

18 A Around 100 pounds.

19 Q And then you did that for a year and then
20 you went back to being a crane operator?

21 A That's correct.

22 Q Okay. You also worked for, I think,
23 Public Contracting and Trailer Brothers as a crane
24 operator on the James Island Connector?

25 A Yes, sir.

1 Q And then went to work at the State Ports
2 Authority in 1997 as a crane operator; is that
3 correct?

4 A That's correct.

5 Q To go over the last 25 years of your work
6 history, have you basically worked, it looks like
7 maybe 24 of those 25 years, as a crane operator?

8 A That's correct.

9 Q And the only other work you're really done
10 is as a rigger?

11 A Yes, sir.

12 Q Under your current restrictions from
13 Dr. Stovall and Dr. Faaberg, could you return to
14 either one of those jobs?

15 A No, sir.

16 Q And I -- and include Dr. Johnson. Prior
17 to October 21st, 2004, had you ever had a workman's
18 comp. case before?

19 A No, sir.

20 Q Ever been involved in an auto wreck where
21 you were injured?

22 A No, sir.

23 Q Ever made any type of claim against an
24 insurance company?

25 A No, sir.

1 Q Had you ever had any previous problems
2 with your back?

3 A No, sir.

4 Q Ever have any limitations as far as work
5 goes?

6 A No, sir.

7 Q All right. This case was accepted. At
8 the time of this injury you were making about
9 \$90,000 a year. What was your hourly rate?

10 A I think it was \$21.50 or -- roughly.

11 Q All right. And did you get a lot of
12 overtime --

13 A Yes.

14 Q -- at the Ports Authority? Was your
15 earning for the previous year -- tell us what you
16 made prior to this year, approximately, each year.

17 A I think I made eighty -- around eighty --
18 approximately \$80,000 the year before.

19 Q All right. And, tell me, when you were
20 originally injured -- we've got the medical records
21 we've already submitted -- it looks like your
22 primary injury was to your low back; is that
23 correct?

24 A Yes, sir.

25 Q You also were having pain into which leg

1 when you first got hurt?

2 A My right leg.

3 Q And how far down did the pain radiate?

4 A All the way to my toes.

5 Q It looks like you treated with Dr. Stovall

6 and Dr. Warren. They were authorized to treat you?

7 A Yes, sir.

8 Q And it was primarily what we would call

9 conservative care: injections, physical therapy,
10 medication?

11 A That's correct.

12 Q Did you get much relief from the

13 injections that you received?

14 A For about a week or two, and it -- it kind

15 of eased back off and then started hurting real bad

16 again. Just -- just temporary relief.

17 Q It looks like you were released by

18 Dr. Stovall on June 27th of '05?

19 A That's correct.

20 Q All right. You last worked the date of

21 your injury, October 21st, 2004; is that correct?

22 A Yes, sir.

23 Q And it looks like you were taken out of

24 work completely by Concentra and by Dr. Stovall and

25 then eventually you were released to light duty.

1 Were you ever offered any light duty back at the
2 Ports Authority?

3 A No, sir.

4 Q And what happened to your job at the Ports
5 Authority?

6 A I was terminated.

7 Q In looking at the APA submissions,
8 particularly on page 49, there was a letter here
9 that you were terminated because they didn't have
10 the medical information, and you were terminated as
11 of March 20th, 2005?

12 A That's correct.

13 Q All right. And prior to that, we have
14 multiple letters to them sending to them all medical
15 records, and that's all included in Commissioner
16 Bass's brief?

17 A Yes, sir.

18 Q All right. Tell me, at any time were you
19 ever offered any light duty at all --

20 A No.

21 Q -- even after you got released by
22 Dr. Stovall?

23 A No, sir.

24 Q Was there ever any attempt to put you back
25 to work in any capacity after you were released by

1 Stovall?

2 A No, sir.

3 Q And all their requests for medical
4 records, was that complied with? The medicals were
5 submitted?

6 A Yes, sir.

7 Q Tell me, when you got released by
8 Dr. Stovall in June of 2005, has there been much
9 change in your -- your pain condition since then, or
10 is it still about the same?

11 A About the same.

12 Q Tell us about your low back. Would you
13 describe where the pain is and describe it for us,
14 please?

15 A Right in the -- which they call L1 and 2,
16 which is about mid-ways down. And then I have a
17 cracked vertebra on my L-5, is what I was told.

18 Q Okay.

19 COMMISSIONER BASS: Sir, you can't --

20 BY MR. WHITE:

21 Q All I want you to do is describe the pain,
22 okay?

23 A Oh, okay.

24 Q Don't tell us what you were told.

25 A Yes, sir.

1 Q Tell us again, the pain that you have in
2 your back, how often is the pain in your back?

3 A It's bad. I have pain every day, so.
4 Some days it's -- it's really worse than others.

5 Q Tell us on a good day, on a scale of 0
6 being no pain, 10 being the worst pain you could
7 imagine, where is -- on a good day, where is your
8 pain level?

9 A Around 5.

10 Q Around 5 all the time? All right.

11 A Yes, sir.

12 Q Is that as good as it gets?

13 A That's about it, yes, sir.

14 Q All right. And what will it flare up to?

15 A Well, I've had it all the way up to 10
16 several days, you know, during the week. It just
17 depends on the weather, I think.

18 Q And what tends to aggravate it?

19 A Sitting a long time and bending over, like
20 shaving, doing any type of -- you know, like
21 bending, sitting for long periods of time.

22 Q Describe for me, if you would, the pain in
23 your right leg. Can you tell us where that pain is
24 and still how far down your right leg does it go?

25 A It's sharp, stinging pain, and it throbs.

1 And then I have some spasms in it. And then I have
2 cramps in my toes and pain in my toes.

3 Q And how often do you have pain in the
4 right leg?

5 A Every day.

6 Q And is that part of the time, all the
7 time?

8 A All the time.

9 Q And where is that level of pain, on a 0 to
10 10 scale, as good as it gets?

11 A A 5 or 6.

12 Q And what tends to flare up your leg pain
13 or make you go higher?

14 A Sometimes sitting. Sometimes when I lay
15 down, if I -- it affects me. I can't get
16 comfortable.

17 Q And how does it affect the use of your
18 right leg?

19 A Sometimes I -- I get numbness in it, and
20 -- and I -- it has given out on me on a couple
21 occasions.

22 Q Do you have any symptoms into your left
23 leg?

24 A Some.

25 Q Okay. How often do you have pain in your

1 left leg?

2 A Not as bad as the first, my right leg, but
3 it -- it does occur, you know, periodically, a
4 couple of days. Sometimes three days or so.

5 Q Three days out of a week?

6 A Yes, sir.

7 Q And how far down your leg does that pain
8 go?

9 A It does all the way to my toe.

10 Q And on a pain scale of 0 to 10, where is
11 that pain scale?

12 A Around 6, sometimes. When it's real
13 severe, it goes up about 8.

14 Q How do you get relief from your pain?
15 What's your most comfortable position?

16 A I usually lay down and use a heating pad
17 or soak in a tub. I have a -- a big garden tub I
18 soak in.

19 Q Tell me, in a -- in a typical day, say
20 between 8:00 in the morning and 6:00 at night, what
21 time -- time do you spend reclining? How much of
22 the day are you down?

23 A About 75 percent.

24 Q If you had a job --

25 COMMISSIONER BASS: Excuse me, but you

1 spend 75 percent of the day lying down?

2 THE WITNESS: Yes, sir.

3 BY MR. WHITE:

4 Q Can you maybe just break that down for us
5 between a good day and a bad day?

6 A Repeat that, what did you say?

7 Q On a good day, how often are you down? On
8 a bad day, how often are you down?

9 A Well, usually when I get up out of the
10 bed, I lay on the couch. And then I'll get up, you
11 know, use the bathroom and get something to eat.
12 That's the majority of my day.

13 Q Tell me, if you had a job that required
14 you to sit, how long do you believe you could remain
15 in a sitting position if you were trying to work?

16 A About 15 minutes.

17 Q How about standing?

18 A About the same. It hurts when I stand a
19 lot.

20 Q How about walking?

21 A Walking is not as bad as sitting or
22 standing for long periods of time.

23 Q How long do you think you could walk if
24 you had a job that requires you to walk?

25 A Probably about 10 or 15 minutes.

1 Q Lifting restrictions, it looks like you
2 were about 20 pounds. Do you agree with that --

3 A Yes, sir.

4 Q -- is that what you can lift? Okay. Tell
5 me about bending over, if you have -- if you were in
6 a bent position?

7 A That's when it really affects me, like
8 when you lean over to shave and over the sink and
9 stuff like that.

10 Q Now, after you got released by
11 Dr. Stovall, you got a couple of opinions. We sent
12 you to Dr. Donald Johnson for an opinion, and you
13 saw him one time; is that correct?

14 A Yes.

15 Q And you also saw Dr. Faaberg, who we
16 referred you to; is that correct?

17 A Yes, sir.

18 Q And you also had an evaluation done by
19 Jean Hutchinson, who we referred you to?

20 A Yes, sir.

21 Q And I just noticed -- I'm looking through
22 Dr. Johnson's records and Jean Hutchinson. They
23 both make mention of some problems with your right
24 arm. I know you didn't injure your right arm. Are
25 you right handed or left handed?

1 A Right handed.

2 Q Can you tell us what happened to your
3 right arm?

4 A I had a gunshot wound when I was 12. A
5 fellow shot me with a .308 high-powered rifle.

6 Q And how does that affect the use of your
7 right arm?

8 A I have -- I have no -- not a lot of
9 coordination in my hand. In fact, I had several
10 surgeries, but they can't correct it back to normal.

11 Q And you were able to do your crane job
12 with that limitation; is that correct?

13 A Yes, sir.

14 Q All right. As far as making a fist and
15 spreading your fingers out, could you use those,
16 your fingers and your arm, for fine dexterity,
17 punching a computer or something like that?

18 A No. I can -- I can grip, but I can't, you
19 know, like type with it.

20 Q All right. And is the grip strength in
21 your right the same as the left?

22 A No.

23 Q How would you compare the two?

24 A I'm a lot stronger in my left hand. You
25 can tell.

1 (Off-the-record conversation.)

2 BY MR. WHITE:

3 Q Now, when we -- we appeared in front of
4 Commissioner Bass -- God knows, I guess it was last
5 summer, August, maybe -- and at that time you had
6 contacted -- or you had seen Jean Hutchinson. She
7 had told you to go see voc rehab; is that correct?

8 A Yes.

9 Q And it looks like -- who was your case
10 worker at voc rehab?

11 A Ingrid. I can't remember her last name.

12 Q All right. And did you --

13 A I call her Ms. Ingrid.

14 Q Okay. It looks like you went there, and
15 did they test you?

16 A Yes, sir.

17 Q And on how many occasions did you go to
18 voc rehab?

19 A I think it was three.

20 Q And as a result of going to vocational
21 rehabilitation, did they provide you or offer you
22 any type of education, training, or were they able
23 to help you?

24 A No.

25 Q And have you worked anywhere since we were

1 last in front of -- in front of Commissioner Bass?

2 A No.

3 Q Tell me, have you made any attempts to
4 look for work since then?

5 A Yes.

6 Q Tell us about that, please.

7 A I tried -- I applied for a stock clerk,
8 you know, stock groceries in a store, but I
9 couldn't. With my restrictions, they -- I couldn't
10 pick --

11 Q Don't tell us what they said, just tell
12 us --

13 A Oh, with my restrictions, I couldn't pick
14 up over 20 pounds.

15 Q Okay. Any other type of work you've
16 looked for?

17 A Yes, I applied for apprentice for a
18 plumbing company.

19 Q And did you get that job? Did they offer
20 you that?

21 A No.

22 Q Anything else you've looked for?

23 A I offered -- I went to apply for a
24 landscaping position, which requires a lot of heavy
25 lifting, too.

1 Q Tell me, at this point, what -- what do
2 you want to do? Tell me about your plans, what do
3 you foresee in your future?

4 A Well, what I would like to do is -- is
5 start a business of my own as far as -- I'm looking
6 into maybe a restaurant business.

7 Q And I know that when you were back -- you
8 were taking culinary arts at Trident Tech and taking
9 some other food-related courses. Do you have any
10 particular interest in that business?

11 A Oh, yeah.

12 Q Why are you interested in that?

13 A Well, my family has been in the restaurant
14 business all their lives, you know. I have several
15 -- my uncles and aunts, they're in the business.
16 And I just enjoy cooking. And it's not -- I -- it's
17 not as strenuous as manual labor. And if I could
18 establish something like that, I can supervise other
19 people to work for me and make, you know, a decent
20 salary.

21 Q Have you -- have you put any efforts into
22 that? Kind of tell us what have you been doing over
23 the last -- since we were last in front of the
24 Commissioner?

25 A I've been researching locations, getting

1 menu selections up, pricing equipment and stuff, and
2 trying to get an idea of what it would take to -- to
3 set up an establishment.

4 Q And you say you've got family members that
5 are in the business?

6 A Yes.

7 Q Family and cousins that are involved in
8 restaurants?

9 A Yes, sir.

10 Q All right. We've asked that -- we've
11 asked, basically, for two things. One, that you be
12 found totally disabled, and two, that you have a
13 wage loss evaluation. Are you asking that that
14 money be paid in a lump sum?

15 A That's correct.

16 Q And do you need that money paid in a lump
17 sum to try to do something in the future as far as
18 maybe starting up a business or getting invested or
19 do something?

20 A Yes, sir.

21 Q In the past, you've made as much as
22 \$90,000 a year. Since going on workman's comp.,
23 have you been able to meet all your obligations
24 based on what you're getting now?

25 A As far as --

1 Q House payment, car payments?

2 A Yeah, I'm -- it's barely. I mean, I'm
3 scratching because I had an increase in taxes and
4 insurance this year and it's about -- about to put
5 me out.

6 Q And were you forced to use your retirement
7 money through the Ports Authority after they
8 terminated you?

9 A Yes.

10 Q And you used that to pay debts?

11 A Yes, sir.

12 Q Okay. And so you're planning on trying to
13 use this money to pay off your house, get out of
14 debt, that type of thing?

15 A Yes, sir, paying off some debt.

16 Q Can you tell us what type of debts you'd
17 want to pay off and maybe what the payoff is on your
18 house?

19 A My payoff on my house is around \$125,000.

20 Q All right. And what's your monthly
21 payment?

22 A \$1,159, I think it is, a month.

23 Q What other debts would you want to pay off
24 if you got a lump amount?

25 A A couple of credit cards, which I only owe

1 about \$5,000 on them.

2 Q How about -- do you have any vehicles that
3 need to be paid off?

4 A Yes, sir, I have a '03 Toyota, which I owe
5 \$17,000.

6 MR. WHITE: Your Honor, that's all the
7 questions I have.

8 COMMISSIONER BASS: Ms. Urbanic?

9 MS. URBANIC: Thank you.

10 CROSS-EXAMINATION

11 BY MS. URBANIC:

12 Q Mr. Hutson, you live in Huger, South
13 Carolina?

14 A Yes, ma'am.

15 Q How long did it take you to get here this
16 morning?

17 A Around -- I live -- about 45 minutes.

18 Q Okay. And you drove yourself in?

19 A Yes, ma'am.

20 Q Okay. And you live by yourself?

21 A Yes, ma'am.

22 Q Do you take care of all your own household
23 chores and that sort of thing?

24 A Yes, ma'am.

25 Q Okay. And this restaurant business, how

1 long -- it sounds like you've started looking into
2 how to get into that type of business?

3 A Yes, ma'am.

4 Q Okay. How long have you been working on
5 that project?

6 A Since Dr. Stovall released me.

7 Q Okay. And are you looking to be the chef
8 of the restaurant or to be like the restaurant
9 manager?

10 A The manager.

11 Q Okay.

12 A Or owner.

13 Q Or owner?

14 A Yes, ma'am.

15 Q Okay. And where would that restaurant be
16 located?

17 A Well, I have several locations that I'm
18 looking at in the Goose Creek/Moncks Corner area.

19 Q And have you looked into what type of
20 revenues restaurants in that area tend to generate?

21 A They kind of tend to -- to not disclose,
22 you know, what they gross or whatever. I just went
23 by what my cousin and my aunt and uncles told me,
24 you know, what they bring in as far as gross income
25 and overhead projections.

1 Q Do you have any idea what that is?

2 A Well, it depends on how size, how big a
3 restaurant and what kind of food you're going to
4 serve.

5 Q And, of course, how good it is?

6 A Yes, ma'am.

7 Q Okay. What type of restaurant are you
8 looking?

9 A Well, basically right now I'm looking at a
10 seafood restaurant.

11 Q And how big of a restaurant? Do you have
12 any idea how many tables?

13 A To start out, I didn't want to get too
14 big. I just want to start small and maybe expand
15 later. I'm looking at probably around 120 seating
16 capacity.

17 Q Okay. And you've not returned to
18 Dr. Stovall since June of 2005; is that --

19 A That's correct.

20 Q Okay. And you saw Dr. Johnson one time;
21 is that right?

22 A Yes, ma'am.

23 Q A visit in September, if I have my dates
24 correct; is that right?_____

25 A Yes, ma'am.

1 Q And you saw Dr. Faaberg once, as well?

2 A That's correct.

3 Q Okay. And you haven't returned to either

4 one of those doctors for any treatment?

5 A No, ma'am.

6 Q Okay. And you haven't been back to any

7 treatment --

8 A No, ma'am.

9 Q -- really, since June of 2005; is that

10 right?

11 A That's right.

12 Q Okay. You're not actually behind in any

13 of your current bills?

14 A No, ma'am.

15 Q Okay. Everything's caught up?

16 A Yes, ma'am.

17 Q And the -- the right arm, you were able to

18 use the levers on the -- there's levers and controls

19 that you use to operate the cranes; is that right?

20 A Yes, ma'am.

21 Q Okay. And you have to use both of your

22 hands to do that --

23 A That's right.

24 Q -- type of work; is that correct?

25 A Yes, ma'am.

1 Q And you were able to do that type of work?

2 A Yes, ma'am. Basically, it's levers. It's
3 just gripping and forward and back and forth.

4 Q And you were prescribed a back brace, I
5 believe, by Dr. Stovall?

6 A Yes.

7 Q And you never actually wore the brace; is
8 that right?

9 A Yes, ma'am. I did wear it, but it -- it
10 really irritated me because I couldn't -- somehow it
11 just rubbed on me. I got -- and it made me sweat
12 and it made it worse, it seemed like, just wearing
13 it. And I told him that, you know, it didn't do any
14 good to wear it because of my, you know, protrusion
15 on the ...

16 Q Okay. Well, no doctor has recommended
17 surgery for you?

18 A Dr. Stovall did recommend that he could
19 fuse the two discs, but he -- he said it wasn't
20 feasible and he didn't think that it would help.

21 Q Okay. So do you know why he put in the
22 records, then, "I do not feel that surgical
23 intervention would benefit this patient?"

24 COMMISSIONER BASS: That's what he just
25 said.

1 MS. URBANIC: Well, okay.

2 COMMISSIONER BASS: The two of you
3 discussed surgery, but he determined that it
4 wouldn't be good for you?

5 THE WITNESS: Yes, sir.

6 COMMISSIONER BASS: Okay.

7 MS. URBANIC: I think that's all the
8 questions I have.

9 COMMISSIONER BASS: All right.

10 MR. WHITE: Just briefly.

11 REDIRECT EXAMINATION

12 BY MR. WHITE:

13 Q And, just briefly, in keeping your bills
14 current you exhausted your 401(k) money; is that
15 correct?

16 A That's correct.

17 Q How much was that that you got out of.
18 that, approximately?

19 A I think it was right at, total, around
20 \$40,000.

21 Q Okay. And has that been basically used
22 over the last year?

23 A Yes, sir. Paying the child support and
24 stuff like that.

25 MR. WHITE: That's all I have, Your Honor.

1 COMMISSIONER BASS: Ma'am, anything else?

2 MS. URBANIC: No.

3 COMMISSIONER BASS: I've got a couple of
4 questions for you. You don't own a restaurant at
5 the present time?

6 THE WITNESS: No, sir.

7 COMMISSIONER BASS: Okay. Now, as far as
8 the restaurant work is concerned, even if you bought
9 a restaurant, you'd still have to sit to figure out
10 menus?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER BASS: You'd still have to
13 sit to write the checks and pay the bills?

14 THE WITNESS: Correct.

15 COMMISSIONER BASS: You'd have to stand if
16 you had to work the register?

17 THE WITNESS: Yes, sir.

18 COMMISSIONER BASS: You'd still have to
19 stand to help in the kitchen, if need be?

20 THE WITNESS: That's correct.

21 COMMISSIONER BASS: You've not tried to do
22 this stuff yet, I take it?

23 THE WITNESS: No, I've never tried to make
24 an income at it.

25 COMMISSIONER BASS: All right. Now, when

1 you were doing your culinary arts stuff at Tech, you
2 were able to do it then?

3 THE WITNESS: Yes, sir.

4 COMMISSIONER BASS: Okay. Have you ever
5 owned your own business?

6 THE WITNESS: No, sir.

7 COMMISSIONER BASS: How many jobs have you
8 looked -- have you actually applied for?

9 THE WITNESS: Three.

10 COMMISSIONER BASS: Okay. How -- why
11 haven't you applied for any more than three?

12 THE WITNESS: Well, because all I've known
13 is crane operating all my life, you know, running
14 heavy equipment. And with the restrictions that
15 Dr. Stovall put me on, he told me not to get any
16 more --

17 COMMISSIONER BASS: You can't tell me what
18 he told you.

19 THE WITNESS: I'm sorry.

20 COMMISSIONER BASS: I under -- I
21 understand what you're --

22 THE WITNESS: From what I understand, he
23 -- he --

24 COMMISSIONER BASS: You can't do that.
25 All I'm asking you is, I know what your restrictions

Joanne D. Bargesser, Independent Court Reporter
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1 are.

2 THE WITNESS: Yes, sir.

3 COMMISSIONER BASS: What I'm asking you
4 is, now, you will agree with me that every day
5 there's a blue million jobs for -- listed in the
6 paper?

7 THE WITNESS: That's correct.

8 COMMISSIONER BASS: Okay. Why haven't you
9 gone down those jobs and circled more than three in
10 the past many, many, many months to go see if you
11 could do them?

12 THE WITNESS: I've applied for three and
13 I've asked several companies, and they've turned me
14 down because of my previous back injury.

15 COMMISSIONER BASS: All right. When
16 you've contacted these people that you've mentioned
17 here, were you honest enough to tell them about your
18 back problem?

19 THE WITNESS: Yes, sir.

20 COMMISSIONER BASS: Who have you contacted
21 to look for work?

22 THE WITNESS: Terry Delk (ph) with Delk
23 Plumbing, Pam Morris with a grocery store she owns,
24 and a friend of mine, he's got a landscaping
25 company.

1 COMMISSIONER BASS: Well, these are the
2 three that you already applied for. Other than
3 those three, that's -- what -- that's what I'm
4 trying to figure out.

5 THE WITNESS: Oh, okay.

6 COMMISSIONER BASS: Other than those
7 three, have you asked anywhere else?

8 THE WITNESS: No, not -- I mean, I -- I
9 knew a couple people I talked to that have
10 construction companies and equipment, but they --
11 they asked me, you know, if I had any previous back
12 injury and I told them, yes, that I was on workers'
13 comp. and it was pending. And they said they didn't
14 want --

15 COMMISSIONER BASS: Can't -- you can't
16 tell me what they said. Did they hire you?

17 THE WITNESS: No, sir.

18 COMMISSIONER BASS: Okay. All right.

19 Questions?

20 MR. WHITE: One question.

21 FURTHER EXAMINATION

22 BY MR. WHITE:

23 Q In -- in trying to come up with a plan for
24 the future, part of it has based upon your past
25 income in trying to get up to another income bracket

1 like you had before; is that correct?

2 A Yes.

3 MR. WHITE: That's all I have, Your Honor.

4 COMMISSIONER BASS: Ms. Urbanic?

5 RECROSS EXAMINATION

6 BY MS. URBANIC:

7 Q Do you have family members that currently
8 own restaurants?

9 A Yes.

10 Q Okay. And you've talked with them about
11 what it takes to run a restaurant?

12 A Yes.

13 MS. URBANIC: Okay. No questions.

14 COMMISSIONER BASS: I don't understand. I
15 mean, all the other stuff here -- I have a problem
16 with you not looking for work any more than you
17 have.

18 THE WITNESS: Uh-huh.

19 COMMISSIONER BASS: But this business
20 about the restaurant, you said that you talked to
21 your family members about what it took to run a
22 restaurant?

23 THE WITNESS: That's correct.

24 COMMISSIONER BASS: Did they tell you it
25 took long hours?

1 THE WITNESS: Yes.

2 COMMISSIONER BASS: Did they tell you that
3 it was hard work?

4 THE WITNESS: Only if they do manual labor
5 theirself (sic).

6 COMMISSIONER BASS: Well, what do they do?
7 Do they sit around and --

8 THE WITNESS: Supervise.

9 COMMISSIONER BASS: -- do nothing?

10 THE WITNESS: Supervise.

11 COMMISSIONER BASS: Supervise?

12 THE WITNESS: Yes.

13 COMMISSIONER BASS: How much money did
14 they have to put into it in order to do that?

15 THE WITNESS: To establish a restaurant?

16 COMMISSIONER BASS: Uh-huh.

17 THE WITNESS: Basically, 10 percent down
18 is what most banks will do.

19 COMMISSIONER BASS: 10 percent of what?

20 THE WITNESS: It depends on what it costs.

21 It's your overhead cost to rent or lease the
22 building. I'm not looking at buying a new location
23 because I can't afford it. But any bank that you go
24 to apply for a business loan will want at least 10
25 percent down.

1 COMMISSIONER BASS: Okay. All right. Do
2 you know for sure you can do that?

3 THE WITNESS: Sure.

4 COMMISSIONER BASS: Not go to the bank,
5 run a restaurant.

6 THE WITNESS: Oh, yes.

7 COMMISSIONER BASS: Well, then, how much
8 can you make?

9 THE WITNESS: How much can I make in
10 gross, yearly?

11 COMMISSIONER BASS: Yeah. You say you can
12 run a restaurant. How much money do you expect you
13 can make?

14 THE WITNESS: It depends on how many
15 people I get coming in there. My food's good.

16 COMMISSIONER BASS: Again, I'm just trying
17 to figure out where you're coming from. Your
18 vocational expert says that you're never going to be
19 able to earn more than minimum wage.

20 THE WITNESS: Uh-huh --

21 COMMISSIONER BASS: Okay --

22 THE WITNESS: -- if I work doing physical
23 labor.

24 COMMISSIONER BASS: Okay. Never mind.
25 I'm done with him.

1 Anything else?

2 MR. WHITE: Nothing further, Your Honor.

3 COMMISSIONER BASS: Okay. This concludes
4 the hearing. Let me speak to the lawyers, please.

5

6 (Hearing was concluded at 9:31 a.m.)

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

FRANKLIN HUTSON,
Employee,
vs.

WCC NO. 0418244

STATE PORTS AUTHORITY,
Employer.

THE PROCEEDINGS were held on August 25,
2006, commencing at 11:35 a.m., at 4050 Bridgeview
Drive, Conference Room A, North Charleston,
South Carolina.

COPY

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CERTIFICATE OF REPORTER

I, Joanne D. Bargesser, Court Reporter and Notary Public in and for the State of South Carolina do hereby certify that the aforementioned hearing held before Commissioner Bass was recorded by me and transcribed through computer-aided transcription by me to the best of my ability.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by the said witnesses at the time and place specified.

I FURTHER CERTIFY that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, or financially interested in this action.

IN WITNESS WHEREOF, I have set my hand and seal this 9th day of August, 2006.



Joanne D. Bargesser, CR
My commission expires on
04/04/2012

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(INDEX AT REAR OF TRANSCRIPT)

1 P R O C E E D I N G S.

2 (11:35 a.m.)

3

4 THE COMMISSIONER: This is August 25th,
5 2006. It is 11:39 in the morning. This is WCC
6 File No. 0418244. This is the claim of Frank
7 Hudson. He is not present in the hearing room but
8 he is represented by Tom White. South Carolina
9 Ports Authority is the employer; State Accident
10 Fund is the carrier. They're represented by Peggy
11 Urbanic.

12 This is a hearing set on the claimant's
13 motion for reconsideration. This was a hearing
14 that was recently held before me on August 1, 2006.
15 I remember this case very well.

16 The motion is for a reconsideration of
17 my ruling. As I understand it I have not yet
18 signed an order. However, the motion for
19 reconsideration is a motion on the merits. There
20 is a regulation that specifically prohibits us from
21 considering motions on the merits.

22 Mr. White, you don't dispute that your
23 motion for reconsideration is on the merits?

24 MR. WHITE: Yes, Your Honor.

25 THE COMMISSIONER: We had a prehearing

1 conference concerning some of the issues that he
2 wished to raise, the credit issue specifically.
3 Mr. White, to be perfectly honest with you, I'm
4 very sympathetic to your argument as far as the
5 credit is concerned. I have to be honest that when
6 I made my ruling about credit, I did not have in
7 mind that this hearing or that this case has a
8 fairly tortured procedural history. That the --
9 this fellow had been recommended to voc rehab,
10 that I had issued an order -- that State Accident
11 Fund had appealed my order and it was rightfully
12 affirmed.

13 A long time elapsed and I understand
14 that, but I did not have that in mind at the time I
15 made my decision. Anyway, the only thing I can
16 tell you about that is that I wish you the best of
17 luck. I think that is probably something that in
18 all fairness ought to be resolved in the claimant's
19 favor.

20 The other things I think I certainly
21 don't -- I certainly understand why you may have
22 disagreed with my ruling on the other matters, but
23 that one I certainly didn't have in mind when I
24 told Ms. Urbanic what to put in the order. So
25 given that your motion speaks to the merits of this

1 particular case -- well, I'll tell you what, other
2 than the credit issue, do you have anything else
3 that you want to put on the record?

4 MR. WHITE: Yes, sir.

5 THE COMMISSIONER: Let's briefly
6 discuss them, and then I'll make a ruling on the
7 motion. Go ahead.

8 MR. WHITE: The rehashment I've already
9 said, Your Honor. We have three issues we raised
10 in the Motion for Consider. First the credit --

11 (Off-the-record conference.)

12 MR. WHITE: Your Honor, the hearing was
13 October 12, '05 originally. We issued an order
14 since my client was going to voc rehab to state the
15 hearing of the case until he completed vocational
16 rehabilitation. That was appealed by the State
17 Accident Fund. It was affirmed approximately six
18 months later and came back in front of you.

19 So our first objection was to give a
20 credit when my client was making every attempt to
21 get back on his feet. He had been fired by the
22 State Ports Authority. They made no effort to put
23 him back to work, never offered him light duty. He
24 couldn't return to any work he'd ever done.

25 He's been a crane operator for 23

1 years. Under these restrictions -- he had done
2 what basically the order had instructed him to do
3 and attempted to get back on his feet. We object
4 to the credit and thought it was overbearing and
5 not fair to him especially to go all the way back
6 to the date of maximum medical improvement.

7 The stop pay was not until August 31st,
8 '05 which was about two and a half months later.
9 And again, we thought it would only be fair to give
10 no credit and have a credit back to the date of the
11 hearing. That was my first issue, Your Honor.

12 The second issue, Your Honor, was you
13 made a finding that his leg was affected by his
14 injury, but you did not give us a rating to the
15 leg. There was an impairment rating in the file to
16 the leg from Dr. Faaberg of 24 percent of the lower
17 extremity. We believe that his overall earning
18 capacity was affected by his back and leg injury.

19 You took the only vocational evidence
20 in the record -- his average weekly wage had gone
21 from about 1,800 a month down to about \$350 a
22 month. It was really a case that was more
23 appropriate for an award of 42,920. Those are my
24 arguments in a nutshell, just so they are on the
25 record as to what we were complaining about.

1 THE COMMISSIONER: Ms. Urbanic, I think
2 I mentioned that there may be a procedural problem
3 with the motion. Do you wish to speak to the
4 merits of this argument?

5 MS. URBANIC: Just briefly. Obviously
6 I think there's a jurisdictional issue to the
7 motion. These are probably all things that need to
8 be brought up on appeal in front of the full
9 commission.

10 As to the credit, we would contend that
11 one, you're allowed to ask from credit from the
12 date of MMI was June of 2005 up to the exact
13 date -- the stop pay was filed August 31, '05, and
14 the previous order, the original order -- not the
15 original order but the one that sent him to voc
16 rehab I think allowed for the credit to be released
17 from the date of the stop pay.

18 I think it's up to the Commission to
19 determine if that is not appropriate. There was
20 testimony that he was working on his restaurant
21 project from the date of MMI, June of '05, at the
22 time of the hearing.

23 With regards to his back, I believe the
24 injury is to his back. Again, that is a factual
25 issue. The commission to review the medical

1 records as to that, I believe Dr. Stovall's rating
2 was to the back. I know there were some additional
3 IME ratings from two other doctors in this case. I
4 think the treating physician found it to be of the
5 back.

6 MR. WHITE: That's correct.

7 MS. URBANIC: Is that all the issues?

8 MR. WHITE: Yes.

9 THE COMMISSIONER: Let me address the
10 merits. Procedurally I am going to have to dismiss
11 the motion because it's on the merits. I'm going
12 to have to dismiss your motion. I do want to
13 comment on the issues that you have raised.

14 As far as the credit is concerned,
15 Mr. White, to be perfectly honest with you I think
16 you raised very valid points. If I had to do it
17 over again I think I probably would have done it
18 differently.

19 I forgot, quite frankly, the procedural
20 history of the case. I did not have that in mind
21 when I made my ruling. Had I had it in mind, I
22 would not have ruled the way I did to be perfectly
23 honest with you.

24 As far as the leg is concerned, I don't
25 have the proposed order yet. I don't know how it

1 was phrased, but in it's final form the order is
2 going to make clear that I found that his leg
3 was -- the function of his leg was affected. The
4 purpose of that finding was to take this case out
5 of Singleton and Wigfall (phonetic). I believe
6 that this was an injury that affected not only his
7 back but also his leg.

8 It was my expressed intent -- it was my
9 intent to take this case out of Wigfall. That's
10 why I phrased it the way I did. There's no
11 question in my mind it would affect it. Whether or
12 not I gave it a separate rating or not, I guess
13 that's something that I had in mind, and that's not
14 really something that I generally do unless there's
15 drop foot or something of that nature in a case. I
16 generally don't give a separate rating to the leg
17 but I take it into account when I give ratings to
18 the back.

19 Now, one can argue that I didn't take
20 it into account enough. Certainly that's a
21 reasonable enough argument.

22 As far as the wage loss is concerned,
23 as I said before, I specifically remember this
24 case. I remember it very well. I would have
25 totaled your client had he not said he was capable

1 of running a restaurant.

2 As I recall, when I asked him questions
3 I gave him -- I think he told you during his direct
4 examination or redirect that he thought he could
5 run a restaurant. When I asked him questions, I
6 gave him ample opportunity to back off that
7 statement. He wouldn't do it. That was the only
8 reason he wasn't totaled.

9 I thought there was no question in my
10 mind that your client suffered a profound injury to
11 his back. There's no question but that his leg is
12 affected. There's no question in my mind that this
13 case is outside the purview of Singleton and
14 Wigfall and but for his testimony about running the
15 restaurant, I would have totaled him.

16 It's an unfortunate situation, but he
17 said what he said. Anyway, I have tremendous
18 sympathy for the points that you raised in your
19 motion, but unfortunately I am going to have to
20 dismiss your motion.

21 (The proceedings were concluded at
22 11:45 a.m.)

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25

CERTIFICATE OF REPORTER

I, Christine A. Smith, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 3rd day of October, 2006 at
Charleston, Charleston County, South Carolina.

Christine A. Smith
Court Reporter
My Commission expires
January 17, 2010

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OR COMMON PLEAS
2007-CP-10-2305

3 FRANKLIN W. HUTSON, JR.

4 Appellant,

5 V.

6 SC STATE PORTS AUTHORITY and
7 SC STATE ACCIDENT FUND,

8 Respondent.

TRANSCRIPT OF RECORD

9
10 March 11, 2008
11 Charleston, South Carolina

12
13
14 B E F O R E:

15 THE HONORABLE DEADRA L. JEFFERSON, JR., JUDGE
16
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18

19 A P P E A R A N C E S:

20 MR. THOMAS M. WHITE, ESQUIRE
21 Representing the Appellant

22 MS. MARGARET M. URBANIC, ESQUIRE
23 Representing the Respondent

24 Anne Bouley Meyer, RPR
25 Circuit Court Reporter

1 THE COURT: Franklin Hutson versus South Carolina
2 State Port's Authority, 07-CP-10-2305. This is an appeal
3 from the decision of the worker's compensation division.
4 The worker's compensation commission issued an opinion in
5 this matter on May 9, 2007, affirming the order of the
6 single commissioner which was dated January 11, 2007.

7 And that decision of the final commission is deemed
8 appealed.

9 Mr. White, you may proceed with your appeal.

10 MR. WHITE: May it please the Court, Your Honor.

11 THE COURT: Yes, sir.

12 MR. WHITE: Your Honor, as you are aware in this
13 case the claimant had been a crane operator for I think all
14 of his adult life and worked for the State's Port Authority
15 when he had a back injury that also affected his leg. He
16 had a significant preexisting condition to his right hand,
17 rendering his right hand useless for any fine dexterity.

18 Your Honor, the single commissioner heard the case,
19 and the order was affirmed by the full commission, he found
20 that the injury to the back also affected the right leg, and
21 actually made the finding of fact that the purpose of the
22 affect to the leg was to take him out of the limitations of
23 the Singleton case, the wigfall case which would limit the
24 recovery to a single member injury.

25 Your Honor, I can give you cites from those cases if

1 needed.

2 Your Honor, our position was that the only
3 vocational evidence in the record was provided by us and
4 that was the report from the vocational expert by the name
5 of Jean Hutchinson. Ms. Hutchinson's report came in without
6 objection. Her deposition was not taken and her report
7 stands as being the only vocational evidence in the record,
8 and she found that the claimant could not return to work as
9 a crane operator, he could not do any of his past
10 employment, he was not able to transfer to any other skill
11 levels, perform work in his functional capacity, and that
12 his earning capacity would be up to about \$6.50 an hour.

13 Your Honor, we took a position at the hearing that
14 we would be entitled to proceed under 42-9-20 or 42-9-10
15 which are based upon an economic loss rather than a specific
16 loss to a body part.

17 Your Honor, I believe that the case law favors and
18 allows us to maximize our recovery, and favors a recovery
19 under those sections, that those sections are available.

20 Your Honor, in the definition under our code
21 42-11-20, disability is defined as incapacity because of
22 injury to earn the wages which the employee was receiving at
23 the time of the injury.

24 It was admitted at the hearing, Your Honor, that the
25 claimant's average weekly wage prior to this injury was

1 \$1,730 per week, about \$90,000 per year. Based upon the
2 vocational evidence in the record, Your Honor, his maximum
3 earning capacity is about \$260 a week which is a loss of
4 about \$1,400 per week. For us to maximize that recovery we
5 argue wage loss theory argument under 42-9-20.

6 Your Honor, the case of Jewell versus R.B. Pond is a
7 1941 Supreme Court case, South Carolina, states that the
8 whole philosophy of our worker's compensation act is to
9 compensate for the loss or impairment of an employee's
10 capacity to earn an income, and not to indemnify for
11 physical ailment or specific injury unless provided for in
12 the act.

13 It would be our position, Your Honor, that 42-9-30
14 is a specific provision for an individual injury. Here,
15 because of the involvement of the back and the leg as set up
16 in the order, and the preexisting condition of the hand, we
17 would not be limited to 42-9-30.

18 Your Honor, the case of Lee versus Harborside Cafe,
19 a Court of Appeals case from 2002, states that the injured
20 worker may proceed under either section to maximize the
21 recovery. Your Honor, the most recent case of Wigfall
22 versus Tidewinds, Supreme Court case from 2003,
23 distinguishes between the economic loss argument and the
24 medical model argument and notes that the economic model is
25 based on loss of earning capacity.

1 Your Honor, to maximize the claimant's recovery
2 here, we think that the commission should have ruled and
3 then found under 42-9-20, or in the alternative if they were
4 to find he was totally disabled 42-9-10, and it was an error
5 of law to make a finding under 42-9-30 when there were
6 multiple body parts involved. We have proven loss of
7 capacity or loss of earning capacity.

8 As I read the case law, Your Honor, we would
9 maximize our recovery it favors a finding that looks to loss
10 of earning capacity rather than individual body part.
11 Therefore, we would ask that the order of the full
12 commission be reversed either in full, and make findings
13 consistent with the only vocational evidence that's in the
14 record, or in the alternative to remand the case to the
15 commission for findings under 42-9-20 as to the actual
16 earning capacity of the claimant.

17 Thank you, Your Honor.

18 THE COURT: You're welcome. Ms. Urbanic.

19 MS. URBANIC: Thank you, Your Honor. Your Honor, as
20 you know the standard at the circuit court level is a little
21 different than the full commission, the issue is whether
22 there is substantial evidence to support the finding of the
23 full commission.

24 Mr. White's argument is essentially that there
25 should have been a ruling, the case should have been ruled

1 under 42-9-20, I'd argue to you, Your Honor, that there is
2 substantial evidence to support the order of the full
3 commission.

4 Mr. White has said that the only vocational evidence
5 was from Jean Hutchinson. I would assert that's a little
6 bit erroneous. The claimant actually testified that he had
7 planned to open a restaurant, he was questioned extensively
8 at the hearing about his ability to run a restaurant. And
9 therefore, based on that the single commissioner, and
10 subsequently the full commission, found that he failed to
11 prove a loss of earning capacity according to 42-9-20 and
12 made a ruling under 42-9-30.

13 Therefore, I assert to you that there may be
14 differences of evidence in the record, and there is the
15 possibility of drawing two inconsistent conclusions from the
16 evidence, does not prevent the commission's finding from
17 being supported by substantial evidence. Therefore, there
18 is substantial evidence in the record for the Court to
19 support the commission's findings and the 42-9-30.

20 This claimant had a 10 percent impairment from the
21 treating physician, Dr. Stovall. The commission awarded him
22 a 30 percent permanent, partial disability award to his
23 back. I'd argue there is evidence in the record to support
24 that, it's the correct statute to make a ruling under.

25 If you look through what Dr. Stovall found in the

1 record as far as his treatment, there was no surgery in this
2 case, his was primarily that of physical therapy. This
3 claimant has not received any treatment since June of 2005.

4 I realize it's not your job to reweigh the evidence,
5 I'm just trying to point out to the Court that there is
6 evidence throughout to record to support this award, and
7 therefore this award should be affirmed. Thank you.

8 THE COURT: You're welcome. Anything further, Mr.
9 White?

10 MR. WHITE: Just briefly, Your Honor. . Again in my
11 comments as to the only vocational evidence in the record,
12 there is only one vocational evidence from a vocational
13 expert and that was Ms. Hutchinson.

14 THE COURT: They're not necessarily required to
15 accept that, are they?

16 MR. WHITE: No.

17 THE COURT: I mean am I required -- even if I
18 disagree with what they have done, the law does not allow me
19 to substitute my judgment for their's, does it?

20 MR. WHITE: I don't think it allows you to
21 substitute it, Your Honor, but I do believe there has to be
22 evidence to support it. If you read the order of the single
23 commissioner the evidence they used to support it was my
24 client's comments that he would like to maybe one day run a
25 restaurant.

1 The evidence in the record, which wasn't questioned,
2 is that he had never been involved in a restaurant or worked
3 in a restaurant, never had any involvement in purchasing one
4 or investing in one. He simply said if he got a lump sum of
5 money he would like to see if he could invest in a
6 restaurant and thought maybe he could work in one.

7 The actual single commissioner, Your Honor, I'm
8 reading from the order itself, says that the claimant was
9 given an opportunity during my question to moderate his
10 testimony concerning his ability to run a restaurant.
11 Frankly, his confidence runs contrary to the greater weight
12 of the evidence and but for him saying that I would have
13 found him permanently, totally disabled.

14 Again I think, Your Honor, the question of the
15 restaurant, there is no evidence in the record to support
16 that he could do that, he simply was testifying if he got a
17 lump sum his plans for the future is that's what he would
18 try to do.

19 And again, Your Honor, as far as an evidentiary
20 matter goes, I do not believe that finding that running a
21 restaurant, even if he were to run a restaurant, there is
22 nothing in the record showing what his earnings would be,
23 what kind of money he would make. Even if he could run a
24 restaurant and earn \$50,000 a year, he still suffered a wage
25 loss under 42-9-20, and we believe that should be the

1 correct statute that could be looked at.

2 If you are going to penalize him saying he could run
3 a restaurant, it would have to be, in my opinion, it would
4 have to be a finding as to what he could make if he did
5 that. The record is completely void of that.

6 THE COURT: I'm going to take the matter under
7 advisement. I need you both to submit a proposed order to
8 me within ten days, citing any statutes, case law or other
9 supporting support for your position in your orders. They
10 should be submitted to djeffersonsc@sccourts.org in word
11 format..

12 Have a good day.

13 MR. WHITE: Thank you, Your Honor.

14 (Whereupon, the proceedings in this matter before
15 the Court were adjourned.)

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C E R T I F I C A T E

BOULEY , ANNE the undersignedI,
Ninth Reporter for the Court Official MEYER,
Carolina, South State of Circuit of the Judicial
do hereby certify that the foregoing is a true,
accurate, and complete transcript of record of all
the proceedings had and evidence introduced in the
trial of the captioned case, relative to appeal,
South County, Court for CharlestonCircuit in the
Carolina, on the 11th day of March, 2008.
I am I do further certify that
neither of kin, counsel, nor interest to any party
hereto.

-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

A.P.A. SUBMISSIONS

1. Concentra Medical Centers		Records, 10/26/04-11/9/04	Pages 1-7;
2. Dr. Don O. Stovall, Jr.	Lowcountry Orthopaedics and Sports Medicine	Records, 12/2/04-6/27/05	Pages 8-32;
3. HealthSouth Surgery Center		Records, 1/5/05	Pages 33;
4. Lowcountry Surgery Center		Records, 4/4/05	Pages 34;
5. University Family Medicine		Records, 10/25/04;	Pages 35-36;
6. Trident Regional Medical Center		Records, 6/22/05	Pages 37-40;
7. Dr. Don Johnson	Southeastern Spine Institute	Records, 9/20/05	Pages 41-42;

8. Exhibits #1		Ltr from Pinson to Claimant dtd 1/5/05; ltr to Pinson from White dtd 1/11/05; ltr from Pinson to Claimant dtd 1/18/05; ltr to Pinson from White dtd 3/2/05; ltr from Pinson to Claimant dtd 3/14/05; ;ltr from Steinberg to Pinson dtd 3/18/05; ltr to Claimant from Pinson dtd 3/21/05; ltr from White to Pinson dtd 4/4/05	
Exhibit #2		Various parts of Claimant's personnel file;	Pages 43-50;
Exhibit #3		Jean Hutchinson evaluation	Pages 51-154;
			154 (a-h).
9. Dr. Jeffrey Faaberg	Crowfield Pain Center	Report, 8/23/05	Pages 155-160

Physician Activity Status Report

Patient: Hutson, Franklin W.

SSN:

Address:

Employer Location: SC State Ports Authority

Contact: Misty Walker

Address: PO Box 22287

Role:

Home: (843) 536-4145

CHARLESTON, SC 29413

Phone: (843) 577-8167 Ext.:

Work: (843) 577-8750 Ext.:

Auth. by: Peggy

Fax: (843) 577-8128

This Visit: Time In: 10:54 am

Time Out: 12:44 pm

Recordable: Yes

Visit Type: New

Treating Provider: Marc H. Kolender, MD

Medications:

Diagnosis: 846.0 Lumbosacral Strain

☐ Dispensed Prescription Medication to Patient

☐ Dispensed Over-The-Counter Prescription

☐ Written Prescription given to Patient

Patient Status:

No Activity - Returning for follow-up visit

Remarks:

Employer Notice: The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

Anticipated Date of Maximum Medical Improvement: 11/16/2004 Actual Date of Maximum Medical Improvement:

Next Visit(s): Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Thursday October 28, 2004 11:30 am

Provider/Facility: Marc H. Kolender, MD

8:15 AM Follow up

8/27

8:15 AM Physical Therapy

Patient: Hutson, Franklin W.

SSN:

Address:

Employer Location: SC State Ports Authority

Contact: Misty Walker

Address:

PO Box 22287

Role:

Home: (843) 336-4145

CHARLESTON, SC 29413

Phone: (843) 577-8167 Ext.:

Work: (843) 577-8750 Ext.:

Auth. by:

Peggy

Fax: (843) 577-8128

This Visit: Time In: 08:03 am

Time Out: 09:56 am

Recordable: Yes

Visit Type: Recheck

Treating Provider: Chris Studebaker, PT

Diagnosis: 846.0 Lumbosacral Strain

Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Thursday October 28, 2004 8:15 am

Provider/Facility: Marc H. Kolender, MD

Visit Date: Friday October 29, 2004 11:00 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Monday November 1, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

Physician Activity Status Report

Patient: Hulson, Franklin W.

SSN: _____

Address: _____

Employer Location: SC State Ports Authority

Address: PO Box 22287

Contact: Misty Walker

Role: _____

Home: (843) 336-4145

CHARLESTON, SC 29413

Phone: (843) 577-8167 Ext.:

Work: (843) 577-8750 Ext.:

Auth. by: Peggy

Fax: (843) 577-8128

This Visit: Time In: 08:03 am

Time Out: 08:27 am

Recordable: Yes

Visit Type: Recheck

Treating Provider: Marc H. Kolender, MD

Medications:

Diagnosis: 846.0 Lumbosacral Strain

☐ Dispensed Prescription Medication to Patient

☐ Dispensed Over-The-Counter Prescription

☐ Written Prescription given to Patient

Patient Status:

Modified Activity - Returning for follow-up visit

Restricted Activity (In effect until next physician visit):

Return to work on 10/28/2004 with the following restrictions

No repetitive lifting over 10 lbs.

No bending greater than 0 times per hour

No pushing and/or pulling over 10 lbs. of force

No squatting and/or kneeling

Remarks: alternate sitting and standing every 10-15 min.

Employer Notice: The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

Anticipated Date of Maximum Medical Improvement: 11/25/2004 **Actual Date of Maximum Medical Improvement:** _____

Next Visit(s): Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Friday October 29, 2004 11:00 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Monday November 1, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Tuesday November 2, 2004 8:15 am

Provider/Facility: Marc H. Kolender, MD

See Tom White Tues 8:00

3

Patient: W.

SSN:

Address:

Employer Location: SC State Ports Authority

Address: PO Box 22287

Contact: Misty Walker

Role:

Home: (843) 336-4145

CHARLESTON, SC 29413

Phone: (843) 577-8167 Ext.:

Work: (843) 577-8750 Ext.:

Auth. by: Peggy

Fax: (843) 577-8128

This Visit: Time In: 10:54 am

Time Out: 12:14 pm

Recordable: Yes

Visit Type: Recheck

Treating Provider: Chris Studebaker, PT

Diagnosis: 846.0 Lumbosacral Strain

Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Monday November 1, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Tuesday November 2, 2004 8:15 am

Provider/Facility: Marc H. Kolender, MD

Patient: Hutson, Franklin W.

SSN:

Address

Employer Location: SC State Ports Authority

Contact: Misty Walker

Address: PO Box 22287

Role:

Home: (843) 338-4145

CHARLESTON, SC 29413

Phone: (843) 577-8167 Ext:

Work: (843) 577-8750 Ext:

Auth. by: Peggy

Fax: (843) 577-8128

This Visit: Time In: 10:29 am

Time Out: 11:55 am

Recordable: Yes

Visit Type: Recheck

Treating Provider: Chris Studebaker, PT

Diagnosis: 846.0 Lumbosacral Strain

Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Tuesday November 2, 2004 10:15 am

Provider/Facility: Marc H. Kolender, MD

Visit Date: Wednesday November 3, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Thursday November 4, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

5

Patient: Hutson, Franklin W.

SSN:

Address:

Employer Location: SC State Ports Authority

Address: , PO Box 22287

CHARLESTON, SC 29413

Contact: Misty Walker

Role:

Home: (843) 336-4145

Work: (843) 577-8750 Ext:

Auth. by: Peggy

Phone: (843) 577-8167 Ext:

Fax: (843) 577-8128

This Visit: Time In: 10:00 am

Time Out: 10:41 am

Recordable: Yes

Visit Type: Recheck

Treating Provider: Marc H. Kolender, MD

Diagnosis: 846.0 Lumbosacral Strain

Medications:

- ☐ Dispensed Prescription Medication to Patient
- ☐ Dispensed Over-The-Counter Prescription
- ☐ Written Prescription given to Patient

Patient Status:

Modified Activity - Returning for follow-up visit

Restricted Activity (In effect until next physician visit):

Return to work on 11/02/2004 with the following restrictions

No repetitive lifting over 15 lbs.

No bending greater than 0 times per hour

No pushing and/or pulling over 15 lbs. of force

5
15
min
sitting
standing

Remarks: alternate sitting & standing every 15 min.

Employer Notice:

The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

Anticipated Date of Maximum Medical Improvement: 11/30/2004 Actual Date of Maximum Medical Improvement:

Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Wednesday November 3, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Thursday November 4, 2004 10:30 am

Provider/Facility: Chris Studebaker, PT

Visit Date: Tuesday November 9, 2004 10:30 am

Provider/Facility: Marc H. Kolender, MD

6

Physician Activity Status Report

Patient: Hutson Franklin W.

SSN:

Address

Employer Location: SC State Ports Authority

Address: PO Box 22287

CHARLESTON, SC 29413

Contact: Misty Walker

Role:

Phone: (843) 577-8167 Ext.:

Fax: (843) 577-8128

Home: (843) 336-4145

Work: (843) 577-8750 Ext.:

Auth. by: Peggy

This Visit: Time In: 10:30 am

Time Out: 11:22 am

Recordable: Yes

Visit Type: Recheck

Treating Provider: Marc H. Kolender, MD

Diagnosis: 846.0 Lumbosacral Strain

Medications:

- ☐ Dispensed Prescription Medication to Patient
- ☐ Dispensed Over-The-Counter Prescription
- ☐ Written Prescription given to Patient

Patient Status:

Modified Activity - Returning for follow-up visit

Restricted Activity (In effect until next physician visit):

Return to work on 11/09/2004 with the following restrictions

No repetitive lifting over 15 lbs.

No bending greater than 4 times per hour

No pushing and/or pulling over 15 lbs. of force

Remarks: alternate sitting and standing every 30 min.

Employer Notice: The prescribed activity recommendations are suggested guidelines to assist in the patient's treatment and rehabilitation. Your employee has been informed that the activity prescription is expected to be followed at work and away from work.

Anticipated Date of Maximum Medical Improvement: 11/23/2004 **Actual Date of Maximum Medical Improvement:**

Next Visit(s):

Patient Notice: It is essential to your recovery that you keep your scheduled appointments, but should you need to reschedule or cancel your appointment, please contact the clinic. Thank you for your cooperation.

Visit Date: Tuesday November 16, 2004 11:30 am

Provider/Facility: Marc H. Kolender, MD

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: One

12/02/04: Referring Physician: Mark Kolender, M.D.
Workers' Compensation. Date of injury: 10/21/04

CHIEF COMPLAINT:

1. Lower back pain.
2. Right leg pain.

HISTORY OF PRESENT ILLNESS: The patient is a 42-year-old white male who works as a container crane operator. He was jarred by the crane on the date of injury. He complains of a moderate aching pain in the lower lumbar spine. This pain will radiate into the right thigh and calf. He will feel some numbness and tingling in his right foot. The pain is worse with sitting and aggravated by activity. It is somewhat relieved with rest. He denies any bowel or bladder dysfunction. He denies any left lower extremity symptoms.

REVIEW OF SYSTEMS/PAST MEDICAL HISTORY/FAMILY HISTORY/SOCIAL HISTORY: Documented, reviewed, and signed in the chart.

PHYSICAL EXAMINATION:

Vital Signs: Ht: 5'9" Wt: 210 lbs. P: 88.

General: Well-nourished white male in no apparent distress. Alert and oriented x 3. Cooperative with the exam.

Cervical Spine: Inspection shows normal cervical lordosis without deformity. Skin shows no changes, masses, or swelling. Palpation reveals no tenderness in the midline or paraspinal muscles. ROM is full without pain, limitation, or crepitation. There is no evidence of instability on flexion and extension. Muscle strength and tone are normal. Negative Spurling's maneuver, negative L'hermitte's sign.

Thoracolumbar Exam: Reveals normal thoracic kyphosis and lumbar lordosis. No midline scars or masses. He has some tenderness over the lumbosacral junction region. He has limited flexibility. Pelvis is stable to anterior and lateral compression.

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**LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE**
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Two

12/02/04: (Continued):

Right Lower Extremity Exam: Inspection reveals no edema, atrophy, deformity, or skin changes. Palpation reveals no tenderness or masses. ROM of the hip, knee, and ankle is good without pain or crepitation. Stability examination reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the right lower extremity.

Left Lower Extremity Exam: Inspection reveals no edema, atrophy, deformity, or skin changes. Palpation reveals no tenderness or masses. ROM of the hip, knee, and ankle is good without pain or crepitation. Stability examination reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the left lower extremity.

Neurologic: (lower extremity) Reflexes are 1+ and symmetric at the knee and ankle. Sensation is intact distally. There is some decreased sensation over the lateral aspects of the right leg compared to the left. Positive straight leg raise on the right mainly for lower back, hip, and thigh pain; negative on the left. The patient ambulates with nonmyelopathic gait and has good balance and coordination.

Vascular: (lower extremity) Dorsalis pedis and posterior tibial pulses are 2+ and symmetric. Good capillary refill distally.

RADIOGRAPHIC REVIEW: MRI scan of the lumbar spine reveals a disc bulge at the L2-3 level. This is on the left, the asymptomatic side. At L5-S1 there is a spondylolysis at L5 with no evidence of spondylolisthesis. Disc space height is well maintained. There is no evidence of herniated disc or spinal canal stenosis at this level.

ASSESSMENT:

1. L2-3 disc bulge.
2. L5 spondylolysis.

PLAN: Discussed the diagnosis with the patient. His L2-3 disc bulge is not correlated with his right-sided symptoms; therefore, I feel his symptoms are probably coming from the spondylolysis. We will have the patient undergo an epidural injection at L5-S1 on the right. We will see him back after the injection is performed. He is to remain out of work until that time. DOS/ETS:lw (12/08) 1207-013



Lowcountry Orthopaedics & Sports Medicine

JOEL R. COX, JR., MD
JAMES J. MCCOY, JR., MD
JAMES D. SPEARMAN, MD
DON O. STOVALL, JR., MD
RICHARD H. ZIMLICH, MD
GEORGE P. WARREN, MD
DAVID H. JASKWHICH, MD
TIMOTHY C. ALLEN, MD
CYNTHIA HOOD, RN, MSN, CFNP
JASON TRIGIANI, PA-C
TIFFANY THOMPSON, PA-C
PATRICIA L. SANDGREN, PA-C

December 02, 2004

Marc Kolender, M.D.
8780 Rivers Avenue
Suite 200-B
North Charleston, SC 29406

RE: Franklin Hutson
Our Chart No:100714
DOB: 05/14/62

EFFECTIVE, COMPREHENSIVE CARE FOR:

- Back & neck pain
- Arthritic conditions
- Foot & ankle pain
- Knee, shoulder & hip pain
- Joint replacement
- Sports injuries
- Work injuries
- Elbow & hand conditions
- Adult & pediatric spinal disorders
- Fractures

FOR YOUR CONVENIENCE:

- Emergencies seen immediately
- Board-certified Physician's Assistants
- Full-service physical therapy facilities
- Thorough evaluations & on-site X-rays
- Insurance billing assistance
- Evening hours

ON STAFF AT:

- Trident Medical Center
- Summerville Medical Center
- Trident Surgery Center
- Roper CareAlliance
- Roper Berkeley Center
- Bon Secour-St. Francis Xavier Hospital
- Healthsouth Rehabilitation Hospital
- Healthsouth Surgery Center

Dear Dr. Kolender:

Thank you for your request for a consultation on Franklin Hutson. Enclosed is a copy of my notes from his recent office visit.

If you have any questions or if I can be of any further assistance, please do not hesitate to contact my office.

Sincerely,

Don O. Stovall, Jr., M.D.

DOSjr/ETS:lw
Enclosure

COPY

(843) 797-5050



2880 Tricorn Street • N. Charleston, SC 29406
Other convenient locations in Moncks Corner & West Ashley
Internet address: www.lowcountryortho.com Fax 843-797-3633

Name Franklin W. Hutson Jr.

Date 11/2/04

MR# _____

Date of Birth 5/14/62

Chief Complaint

Why are you seeing the doctor today? Referral From Concentra

Is this a work-related injury? Yes

Review of Systems - mark yes or no and explain "yes" answers.

General	YES	NO	Respiratory	YES	NO	Gastrointestinal	YES	NO	Neurological	YES	NO
Weight change		✓	Wheezing		✓	Nausea		✓	Seizures		✓
Fever		✓	Cough		✓	Vomiting		✓	Paralysis		✓
Weakness	✓		Bloody sputum		✓	Vomiting blood		✓	Tremors		✓
Chills		✓	Asthma		✓	Rectal bleeding		✓	Endocrine		
Sweats	✓		Bronchitis		✓	Diarrhea		✓	Goiter		✓
Integumentary			Emphysema		✓	Constipation		✓	Thyroid problems		✓
Skin		✓	Pneumonia		✓	Jaundice		✓	Diabetes		✓
Rash		✓	Tuberculosis		✓	Hepatitis		✓	Hematologic/Lymphatic		
Hair/nail changes		✓	Cardiovascular			Ulcers		✓	Swollen glands		✓
HEENT			Rheumatic fever		✓	Urinary			Bleeding disorder		✓
Headaches			High blood pressure		✓	Frequent urination		✓	Easy bruising		✓
Glasses		✓	Stroke		✓	Painful urination		✓	Easy bleeding		✓
Contact lenses		✓	Chest pain		✓	Bloody urine		✓	Sickle cell		✓
Visual changes		✓	High cholesterol		✓	Incontinence		✓	Anemia		✓
Glaucoma		✓	Varicose veins		✓	Urinary infections		✓	Past transfusions		✓
Cataracts		✓	Blood clots		✓	Musculoskeletal			Psychiatric		
Ringling in ears		✓	Heart murmur		✓	Joint stiffness	✓		Depression	✓	
Hearing Loss		✓	Palpitations		✓	Arthritis		✓	Insomnia	✓	
Dizziness		✓	Sleep apnea		✓	Gout		✓	Other illnesses		✓
Sinus pain		✓	Ankle swelling		✓	Joint swelling		✓	Allergic/Immunologic		
Hoarseness		✓				Lupus		✓	Cancer		✓
Difficulty swallowing		✓				Osteoporosis		✓	Enzyme deficiency		✓
									Immune disorder		✓

Explanations:

Weakness in Rt leg & Lower back, Sweats at Night when sleeping
Depressed & Sleep alot.

OVER→

for which blood relatives have been treated

Bleeding problems _____
Osteoporosis _____
Rheumatoid arthritis _____
Lupus _____
Heart Disease ☒ _____
Stroke ☒ _____
High Blood Pressure _____
Cancer _____
Diabetes _____

Marital status Divorced
Occupation Crane Operator
Tobacco use Cigarettes 1 1/2 pkts per day
Alcohol use Beer
Special Diet No

Past Medical History

Medical Problems/Illnesses

Medications

List all medications and doses

DAVACET 1 At Night For Pain
Sometimes during the day
when Back hurts
Celebrex 1 At Night

Past Surgical History

Surgery

Date

Gunshot Wound to RT 11/20/77
ARM

Allergies and Type of Reaction

NKDA

Are you allergic to latex? No

If yes, what type of reaction? _____

Reviewed by J. J. [Signature] MD

Date 12/2/04

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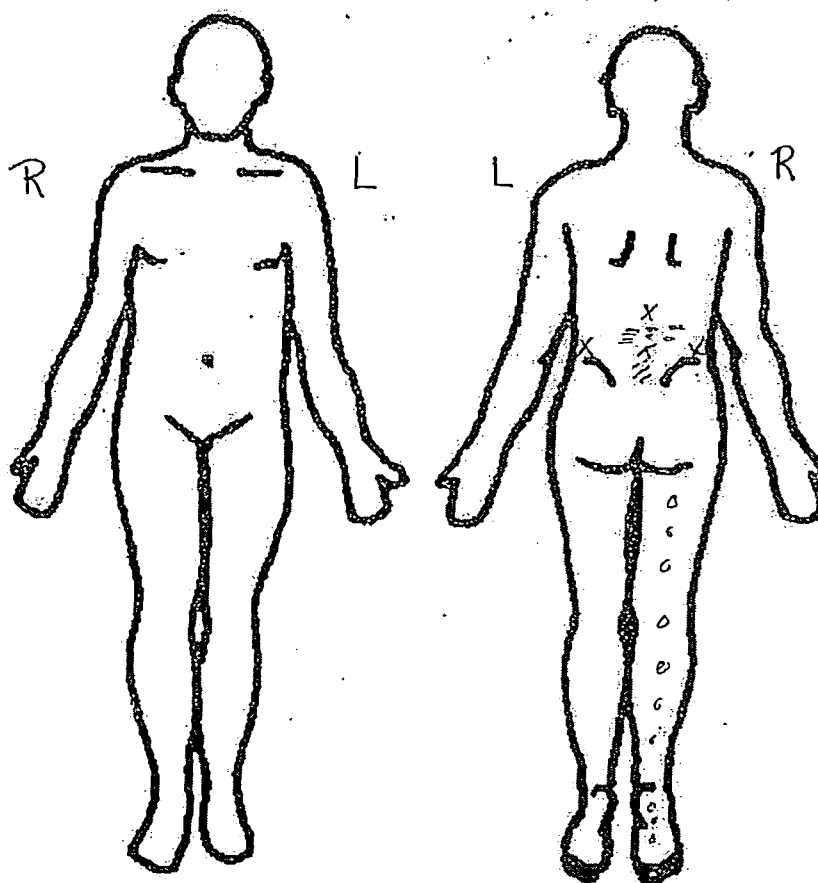
(Make an x along the Scale)

Severe [—X—] None

Pain Drawing:

FRONT

BACK



Instructions: Show areas of pain in or around the body using the following symbols.

Type of Pain:

Aching	xxxxx
Burning	lllll
Stabbing	===
Numbing	ooooo
Pins and Needles	////////

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Fax: _____

Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

#100714

Employee: FRANK HUTSON SSN#: _____

Injury Date: _____ Next Appointment: _____

_____ Initial Treatment ✓ Work Related _____ Diagnosis: _____

_____ Follow up visit _____ Not work related _____

Treatments

_____ Wound Care

_____ Suture Removal

_____ X-rays

_____ Lab Work

_____ Meds. Prescribed

_____ Other _____

Work Status

_____ Return to regular duty on:
date _____

_____ Return to modified duty on:
date _____

✓ _____ Unable to work until:
date 1 month

_____ Discharged from current care on:
date _____

_____ Return for follow-up with
Dr. _____

Physical Ability

_____ Restricted standing, walking

_____ Restricted climbing, bending,
stooping

_____ Limited use of _____ R _____ L
hand/arm

_____ No working around moving
machinery

_____ Driving _____ yes _____ no

_____ Alternate position (sit, stand,
walk)

_____ Weight lifting restriction

R _____ O# _____ 1-15# _____ 16-3:

L _____ O# _____ 1-15# _____ 16-3:

_____ No overhead work

_____ Keep dressing clean & dry

_____ Other _____

Instructions, Limitations, Recommendations: _____

Patients _____ has ✓ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 12/2/04

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 14 Date _____

CHECK NAME OF DOCTOR YOU
ARE SCHEDULED TO SEE

PATIENT INFORMATION FORM

- ☐ Joel R. Cox, MD
☐ James J. McCoy, MD
☐ James D. Spearman, MD
☒ Don O. Stovall, Jr., MD

DATE 12/2/04

- ☐ Richard H. Zimlich, MD
☐ George F. Warren, MD
☐ David H. Jaskwich, MD
☐ Timothy G. Allen, MD

Pt. Full Name: Franklin Wilson Hutson Jr. Marital Status Deceased Age 42 Date of Birth 5/14/62 ☒ M ☐ F

Mailing Address 121 DANIELS WAY City Huger State SC Zip 29450

Street Address _____ City _____ State _____ Zip _____

Home Phone Number 336-4145 Business Phone # 571 8750 Occupation Crane Operator

Employed By South Carolina State Ports Authority SS# 2247-43-5884

Name of Spouse (if appl.) _____ Date of Birth _____ SS# _____

Employed By _____ Employer Phone # _____

Whom may we thank for this referral? Concentra / Joe Kallender Family Doctor Dr. Sack

IF THE PATIENT IS A CHILD OR FULL TIME STUDENT, PLEASE COMPLETE THIS SECTION:

Mothers Name _____ SS# _____ Date of Birth _____

Employed By _____ Phone # _____

Fathers Name _____ SS# _____ Date of Birth _____

Employed By _____ Phone # _____

MEDICAL INFORMATION

Complaint or Symptoms: stabbing pain in lower back, numbness or tingling in Rt leg

Were you injured at ☐ school ☒ work ☐ auto accident ☐ other _____

If injury was work related was a report filed ☒ yes ☐ no

Date of onset/injury 10/2/04 How injury occurred Tarred By Crane

Have X-Rays been taken for this problem? yes Where? Concentra

BILLING INFORMATION

Name of person responsible for this patient's bill _____
(NOTE: this must be self, mother, father or spouse)

Attorney Involved? yes If yes, Name: Thomas White

In case of emergency, person to contact Buddy Hutson 270-7321 Phone # _____

INSURANCE INFORMATION

Primary Insurance Company _____

Secondary Insurance Company _____

FINANCIAL POLICY

I, the undersigned patient or guarantor, hereby authorize my physician and whomever he/she may designate as his/her assistant to render medical treatment to me.
I, the undersigned patient or guarantor, hereby authorize my physician and whomever he/she may designate as his/her assistant to release any medical information accumulated in the course of my examination and treatment to any other doctor, hospital, or other party assisting in my medical care.
I, the undersigned patient or guarantor, hereby request payment of benefits to this physician's practice when this practice accepts assignment.
I authorize use of Photostat copies of this assignment in lieu of the original when necessary.
I understand that I am responsible for any amount not covered by insurance/ deductible/ co-payment. Regardless of insurance coverage, insurance claims, which are not paid in full within thirty (30) days, will be my personal obligation.

Patient/Parent, Guardian Signature Franklin Hutson ¹⁵ Date 12/2/04

PLEASE PROVIDE INSURANCE CARD AND PICTURE IDENTIFICATION

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Three

12/15/04: Medical records prepared to be sent to Atty Thomas White. jag

1/26/05: Worker's Compensation - DOI: 10/21/04.

DIAGNOSIS:

- 1) L2-3 disc bulge
- 2) L5 spondylolysis

The pt returns today for f/u. He is having continued pain in his back. He had some limited relief with the epidural injection. No other changes in history.

PHYSICAL EXAMINATION:

He has some tenderness in the lower lumbar spine. SLR causes increased back pain. No particular leg pain.

Vascular: (Lower extremity) Dorsalis pedis and posterior tibial pulses are 2+ and symmetric. Good capillary refill distally.

Neuro, sensation is intact in both lower extremities.

ASSESSMENT: Low back injury.

PLAN: We'll set the pt up for a second epidural injection. I'll see him back in three weeks for f/u. DOSjr/la (1/28)

2/15/05: Medical records prepared to be sent to Attorney Thomas White. TH/tg (2/25).

2/25/05: Worker's Compensation - DOI: 10/21/04

DIAGNOSIS: L2-3 disc bulge, L5 spondylolysis

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Fax: _____

Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

100714

Employee: FRANK HUTSON SSN#: _____

Injury Date: _____ Next Appointment: _____

☐ Initial Treatment ☒ Work Related ☐ Diagnosis: _____

☒ Follow up visit ☐ Not work related _____

Treatments

☐ Wound Care

☐ Suture Removal

☐ X-rays

☐ Lab Work

☐ Meds. Prescribed

☐ Other _____

Work Status

☐ Return to regular duty on:
date _____

☐ Return to modified duty on:
date _____

☒ Unable to work until:
date 3 weeks

☐ Discharged from current care on:
date _____

☐ Return for follow-up with
Dr. _____

Physical Abili

☐ Restricted standing, walking

☐ Restricted climbing, bending;
stooping

☐ Limited use of ☐ R ☐ L
hand/arm

☐ No working around moving
machinery

☐ Driving ☐ yes ☐ no

☐ Alternate position (sit, stand,
walk)

☐ Weight lifting restrictions

R ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-50#

L ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-50#

☐ No overhead work

☐ Keep dressing clean & dry

☐ Other _____

Instructions, Limitations, Recommendations: LEST

Patients ☐ has ☒ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 1-26-05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 17 Date _____

Fax: _____

Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: FRANKLIN HUTSON SSN#: _____

Injury Date: _____ Next Appointment: _____

☒ Initial Treatment ☒ Work Related ☐ Diagnosis: LBP
☒ Follow up visit ☐ Not work related _____

Treatments

☐ Wound Care
☐ Suture Removal
☐ X-rays
☐ Lab Work
☐ Meds. Prescribed
☐ Other _____

Work Status

☐ Return to regular duty on:
date _____
☐ Return to modified duty on:
date _____
☒ Unable to work until:
date 3-2-05
☐ Discharged from current care on:
date _____
☐ Return for follow-up with
Dr. _____

Physical Ability

☐ Restricted standing, walking
☐ Restricted climbing, bending,
stooping
☐ Limited use of R
hand/arm
☐ No working around moving
machinery
☐ Driving yes no
☐ Alternate position (sit, stand,
walk)
☐ Weight lifting restrictions
R O# 1-15# 16-35# 36-
L O# 1-15# 16-35# 36-
☐ No overhead work
☐ Keep dressing clean & dry
☐ Other _____

Instructions, Limitations, Recommendations: Braz

Patients has ☒ has not reached MMI Expected MMI date 2-3 months

Physicians Signature [Signature] Date 2/25/05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 18 Date _____

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Four

2/25/05 (Continued):

The patient comes in today for follow up. He had a second epidural injection. He has had some mild relief of his symptoms with this injection. He still has some pain and is pointing to the upper mid lumbar region. The patient is still limited in his activity level. There are no other changes in history.

ASSESSMENT: Lower back injury

PLAN: We will set the patient up for another lumbar epidural steroid injection; this will be his third. We will perform this at L2-3. We will also see about getting him the brace. He did go to the brace shop, but cannot say why he did not get the brace. We will also set him up for some physical therapy evaluation. I gave him a prescription for Sinequan to take at night. I also gave him a prescription for Vicoprofen. I will see the patient back again in three weeks for follow up. DOSjr/tg (2/28)

3/14/05 - LEFT message - to R/S Appt. Spoke c P

Date: _____

SPORTS MEDICINE

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS # 100914

Employee: Franklin Hutson SSN#: _____

Injury Date: _____ Next Appointment: _____

☐ Initial Treatment ☒ Work Related Diagnosis: LBP

☒ Follow-up visit ☐ Not work related

Treatments

Work Status

Physical Ability

☐ Wound Care

☐ Return to regular duty on:
date _____

☐ Restricted standing, walking

☐ Suture Removal

☐ Return to modified duty on:
date _____

☐ Restricted climbing, bending,
stooping

☐ X-rays

☒ Unable to work until:
date 3 weeks

☐ Limited use of ☐ R ☐ L
hand/arm

☐ Lab Work

☐ Discharged from current care on:
date _____

☐ No working around moving
machinery

☐ Meds. Prescribed

☐ Return for follow-up with
Dr. _____

☐ Driving ☐ yes ☐ no

☐ Other _____

☐ Alternate position (sit, stand,
walk)

☐ Weight lifting restrictions

R ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-5

L ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-5

☐ No overhead work

☐ Keep dressing clean & dry

☐ Other _____

Instructions, Limitations, Recommendations: Braz

Patients ☐ has ☒ has not reached MMI Expected MMI date 2-3 months

Physicians Signature [Signature] Date 2/25/05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: [Signature] Date _____

POST OPERATIVE INSTRUCTIONS

Please read and follow these post-op instructions provided by Dr. Warren carefully. If you should experience difficulty breathing, excessive bleeding, fever greater than 101° or continued nausea and vomiting, contact your physician at 797-5050. If you need immediate attention please go to the nearest emergency room.

Follow only the marked instructions:

- ☒ Keep the operative area elevated for the next 48 to 72 hours.
- ☒ Apply ice to operative area as directed.
- ☒ Keep dressing clean and dry.
- ☐ Do not remove dressing until seen by physician.
- ☒ You may remove your dressing in 10 hours.
- ☒ Do not use heating pads.
- ☒ Avoid stress to stitches such as pushing, pulling, or heavy lifting.
- ☒ Do not use aspirin products.
- ☒ Drink plenty of fluids. You may resume a normal diet. If feeling nauseated, start with liquids and gradually increase to solid food.
- ☒ Observe the operative site for signs of excessive bleeding (saturation of dressing). Should this occur apply pressure, elevate, (if possible) and contact the physician.
- ☒ Observe the affected extremity for circulation problems such as change in color, coldness, numbness, tingling or increased pain. If any of these signs or symptoms are present contact your physician at once.
- ☒ Observe operative site for signs of infection such as increased pain, swelling, redness, foul odor or elevated temperature greater than 101°. These signs or symptoms usually appear within 36 to 48 hours. If symptoms occur, contact your physician.
- ☒ Check with your physician about resuming previous medication.
- ☐ You may take your pain medication at _____.
- ☐ See Dr. _____'s additional instruction sheet.
- ☒ You may shower in 24 hours, otherwise keep area dry.
- ☐ Addition instructions: _____

☒ Your scheduled post-op visit:

Dr. Stovall

Date: 4-27-05 Time: already set up

Location: Main office

☒ Post-op prescriptions:

Toradol 35mg #30

IF YOU HAD GENERAL ANESTHESIA OR SEDATION, FOR THE NEXT 24 HOURS:

DO NOT DRIVE OR OPERATE ANY TYPE OF MACHINERY.
DO NOT DRINK ANY TYPE OF ALCOHOLIC BEVERAGES.
DO NOT SIGN ANY TYPE OF LEGAL DOCUMENT.
DO NOT STAY ALONE. YOU MAY EXPERIENCE DIZZINESS.
REST AND LIMIT YOUR ACTIVITY.

I accept, understand, and can verbalize these instructions:

Patient or Guardian: _____

Witness: Shawna S Blanton

Relationship: Frank Wilson

Date: 4-4-05

HUTSON, FRANKLIN WILSON M
1233 05/14/62 42 yrs.
249-43-5884 (843) 336-4145
Warren MD, George F 04/04/05

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LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
George F. Warren, M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Five

4/4/05: Block: Noted low tolerance to Xylocaine. Also five weeks from schedule request to block. GFW/tg (5/3)

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LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Six

4/27/05: Worker's Compensation - DOI: 10/27/04

DIAGNOSIS: L2-3 disc bulge, L5 spondylosis

The patient returns today for follow up. He was last seen on 2/25/05 by Dr. Stovall and epidural was ordered. He did not have epidural completed until 4/4/05, an L2-3 LESI on the right. Previous epidurals were completed on 2/4/05 and 1/5/05 at L5-S1, LESI on the right. The patient reports overall he has seen very minimal benefit with his epidural injections. He continues to report pain to his low back which radiates into his right lower extremity. Overall, he rates his pain as a 9 on the pain scale. He has been taking Lortab and at times he reports he takes four at a time. He does report some numbness into his right lower extremity. He reports his back pain is greater than his leg pain. He denies any pain into his left lower extremity. He is wearing a brace at today's visit, which gives him no benefit. He has been seen by Gretchen at RCC. He has only had two visits with her. He denies any bowel or bladder dysfunction or other changes in history.

PHYSICAL EXAMINATION:

General: He is a well developed, well nourished male sitting upon the examination table. He is alert and oriented x3, cooperative with the exam.

Thoracolumbar exam: Inspection reveals normal thoracic kyphosis and lumbar lordosis without misalignment or asymmetry. Skin inspection reveals no skin changes, hairy patches or nevi in the lumbar region. Palpation reveals some diffuse tenderness in the lower lumbar region. ROM produces pain on forward flexion and extension. Pelvis is stable to anterior and lateral compression. Muscle strength and tone are normal without atrophy or abnormal movements.

Left lower extremity: Inspection reveals no edema, atrophy, deformity or skin changes. Palpation reveals no tenderness or masses. ROM of the hip produces back pain. ROM of the knee and ankle is good without pain or crepitation. Stability exam reveals no laxity or subluxation. Muscle strength and tone are normal in the muscle groups of the left lower extremity.

Right lower extremity: Inspection reveals no edema, atrophy or bony deformity to the hip, knee or ankle. Knee and ankle are nontender to palpation. There is adequate ROM

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Seven

4/27/05 (Continued):

of the knee and ankle without any pain or crepitation. ROM of the hip produces some back pain. Stability exam reveals no laxity or subluxation. Muscle strength and tone are normal without atrophy or abnormal movements.

Neurologic: (Lower extremity) The patient ambulates with a slow gait, but nonantalgic. Negative sitting root test on the right and left. SLR produces back pain. Reflexes are 1+ and symmetric. Sensation is intact.

Vascular: (Lower extremity) Dorsalis pedis and posterior tibial pulses are 2+ and symmetric. Good capillary refill distally.

ASSESSMENT:

- 1) L2-3 disc bulge
- 2) Lumbar spondylosis

PLAN: I discussed this with the patient. At this time, I discussed his Lortab use with him. He will be started on some Voltaren 50 mg one po b.i.d. with meals and was given Lortab #30 to take every 12 hours. He needs to take this as prescribed. We will get the patient into a work conditioning and hardening program. We will see him back in one month. Work note was given to the patient. CH/tg (5/3)

5/26/05: Worker's Compensation - DOI: 10/27/04

DIAGNOSIS: L2-3 disc bulge, lumbar spondylolysis

The patient comes in today for follow up. He has been going through physical therapy. Overall, he notes no significant improvement after his sessions of physical therapy. He continues to have lower back pain and right leg pain. There is no significant numbness, no left leg pain, bowel or bladder dysfunction. There are no other changes in history.

PHYSICAL EXAMINATION: He has some tenderness in the lower lumbar region with some limited flexibility. He has negative SLR bilaterally. Feet are neurovascularly intact.

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SPINE CENTER
2880 TRICOM STREET
N. CHARLESTON, SC 29406
(843) 797-5050

PHYSICAL THERAPY REFERRAL

NAME Fredrick Wilson FILE# _____ DATE 11/1/05

DIAGNOSIS Thrombolytic therapy for acute MI. Left leg numbness

INITIAL TREATMENT DATE _____

TREATMENT SCHEDULE _____

PROCEDURES:

MODALITIES _____

HOT PACKS _____

ICE _____

ULTRASOUND _____

PHONOPHORESIS _____

ELECTRICAL STIM _____

DEEP TISSUE MASSAGE _____

ADL'S: WORK _____

HOME _____

SI JOINT _____

CERVICAL _____

THORACIC _____

LUMBAR _____

_____ ROM, MOBILIZATION

_____ ISOMETRICS

_____ MANUAL TX

_____ TRACTION

_____ STABILIZATION

_____ EXTENSION EXERCISES

_____ FLEXION EXERCISES

_____ STRETCHING

PROTOCOLS

_____ CERVICAL FUSION

_____ LUMBAR FUSION

_____ LUMBAR DISCECTOMY

_____ IDET PROCEDURE

_____ SACRAL

EQUIPMENT

_____ HOME CERVICAL TRACTION UNIT

_____ TENS UNIT

_____ CERVICAL PILLOW

_____ LUMBAR SUPPORT

_____ WALKER

_____ CRUTCHES

_____ CANE

PHYSICIAN'S SIGNATURE: [Signature]

COMMENTS: _____

Fax: _____

Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

100714

RETURN TO WORK RECOMMENDATIONS

Employee: FRANKLIN HUTSON SSN#: _____

Injury Date: _____ Next Appointment: _____

_____ Initial Treatment ☒ Work Related _____ Diagnosis: _____

_____ Follow up visit _____ Not work related _____

Treatments

_____ Wound Care

_____ Suture Removal

_____ X-rays

_____ Lab Work

_____ Meds. Prescribed

_____ Other _____

Work Status

_____ Return to regular duty on:

_____ date _____

☒ Return to modified duty on:

_____ date 5/2/05

_____ Unable to work until:

_____ date _____

_____ Discharged from current care on:

_____ date _____

_____ Return for follow-up with

Dr. _____

Physical Ability

_____ Restricted standing, walking

☒ Restricted climbing, bending, stooping

_____ Limited use of _____ R _____ hand/arm

_____ No working around moving machinery

_____ Driving ☐ yes ☐ no

_____ Alternate position (sit, stand, walk)

☒ Weight lifting restrictions

R _____ O# ☒ 1-15# _____ 16-35# _____ 36-5

L _____ O# ☒ 1-15# _____ 16-35# _____ 36-5

☒ No overhead work

_____ Keep dressing clean & dry

_____ Other _____

Instructions, Limitations, Recommendations: Work Hardening / Conditioning

Patients _____ has ☒ has not reached MMI Expected MMI date _____

Physicians Signature _____ Date 4/27/05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 26 Date _____

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Eight

5/26/05 (Continued):

ASSESSMENT: Lumbar spondylolysis, right leg pain

PLAN: I discussed the diagnosis with the patient. He has been through fairly extensive conservative treatment and continues to have symptoms. I have recommended a CT myelogram of his lumbar spine to rule out spinal stenosis and any instability of the spondylolisthesis level. I will see him back again after the study is performed and we will consider further treatment options. DOSjr/tg (6/1)

6/2/05: Medical records prepared to be sent to EMSI. BC/tg (6/30)

6/13/05: Medical records prepared to be sent to Attorney Tom White. BC/tg (6/30)

6/27/05: Worker's Compensation - DOI: 10/27/04

DIAGNOSIS: Lumbar spondylolysis

The patient comes in today for follow up. He had a CT myelogram performed. He continues to have lower back pain. We talked to him about brace wear and he states that a brace aggravates his back when he wears it. He does not wear it very often. He does wear it when he is driving a car. There are no other changes in history.

RADIOGRAPHIC REVIEW: CT myelogram reveals spondylolysis at L5 with no evidence of spondylolisthesis. There is no evidence of significant spinal stenosis through the lumbar spine. There is mild neural foraminal narrowing at L2-3 on the left, asymptomatic side.

ASSESSMENT:

- 1) Lumbar spondylolysis
- 2) No evidence of spondylolisthesis or spinal stenosis

Fax: _____

Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: Franklin Hutson SSN#: _____

Injury Date: _____ Next Appointment: _____

_____ Initial Treatment ☒ Work Related _____ Diagnosis: _____

☒ Follow up visit _____ Not work related _____

Treatments

_____ Wound Care

_____ Suture Removal

_____ X-rays

_____ Lab Work

_____ Meds. Prescribed

_____ Other _____

Work Status

_____ Return to regular duty on:

_____ date _____

☒ Return to modified duty on:

_____ date 5/26/05

_____ Unable to work until:

_____ date _____

_____ Discharged from current care on:

_____ date _____

_____ Return for follow-up with

Dr. _____

Physical Ability

_____ Restricted standing, walking

☒ Restricted climbing, bending,
stooping

_____ Limited use of _____ R _____ L
hand/arm

_____ No working around moving
machinery

_____ Driving _____ yes _____ no

_____ Alternate position (sit, stand,
walk)

☒ Weight lifting restrictions

R _____ O# ☒ 1-15# _____ 16-35# _____ 36-50#

L _____ O# ☒ 1-15# _____ 16-35# _____ 36-50#

_____ No overhead work

_____ Keep dressing clean & dry

_____ Other _____

Instructions, Limitations, Recommendations: CT, myelogram

Patients _____ has ☒ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 5/26/05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 28 Date _____

LOWCOUNTRY ORTHOPAEDICS
AND SPORTS MEDICINE
Don O. Stovall, Jr., M.D.

PATIENT: Franklin Hutson
CHART NO: 100714
DOB: 05/14/62

PAGE: Nine

6/27/05 (Continued):

RECOMMENDATIONS: It is my opinion to a reasonable degree of medical certainty that the patient has reached MMI at this time. I do not feel that surgical intervention would benefit this patient. The patient would have a 10% impairment of the whole person for the injury sustained. He would be a candidate for the 2nd injury fund as the diagnosis is developmental and degenerative. The patient's permanent work restrictions would include lifting no more than 35 lbs on an occasional basis and no more than 25 lbs on a frequent basis. Otherwise, he should be able to carry on a moderate level of activity at the medium work capacity. The patient is currently being discharged from care. DOSjr/tg (6/30)

Fax: _____

Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: FRANKLIN HUTSON SSN#: _____

Injury Date: _____ Next Appointment: _____

☒ Initial Treatment ☒ Work Related ☐ Not work related
☒ Follow up visit ☐ Not work related

Diagnosis: Lumbar Spinalgia

Treatments

☐ Wound Care
☐ Suture Removal
☐ X-rays
☐ Lab Work
☐ Meds. Prescribed
☐ Other _____

Work Status

☐ Return to regular duty on:
date _____
☐ Return to modified duty on:
date _____
☐ Unable to work until:
date _____
☒ Discharged from current care on:
date 6/27/05
☐ Return for follow-up with
Dr. _____

Physical Ability

☐ Restricted standing, walking
☐ Restricted climbing, bending, stooping
☐ Limited use of ☐ R ☐ L hand/arm
☐ No working around moving machinery
☐ Driving ☐ yes ☐ no
☐ Alternate position (sit, stand, walk)
☐ Weight lifting restrictions
R ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-50
L ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-50
☐ No overhead work
☐ Keep dressing clean & dry
☐ Other _____

Instructions, Limitations, Recommendations: _____

Patients ☒ has ☐ has not reached MMI Expected MMI date _____

Physicians Signature: [Signature] Date 6/27/05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 30 Date _____

Fax: _____

Date: _____

Lowcountry Orthopaedics and Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

100714

Employee: FRANKLIN Hutson SSN#: _____

Injury Date: _____ Next Appointment: _____

☐ Initial Treatment ☒ Work Related Diagnosis: Lumbar Sp. dys/lysis

☒ Follow up visit ☐ Not work related _____

Treatments

Work Status

Physical Ability

☐ Wound Care

☐ Return to regular duty on:
date _____

☐ Restricted standing, walking

☐ Suture Removal

☐ Return to modified duty on:
date _____

☐ Restricted climbing, bending,
stooping

☐ X-rays

☐ Unable to work until:
date _____

☐ Limited use of ☐ R ☐ L
hand/arm

☐ Lab Work

☒ Discharged from current care on:
date 6/27/05

☐ No working around moving
machinery

☐ Meds. Prescribed

☐ Return for follow-up with
Dr. _____

☐ Driving ☐ yes ☐ no

☐ Other _____

☐ Alternate position (sit, stand,
walk)

☐ Weight lifting restrictions

R ☐ O# ☐ -15# ☐ 16-35# ☐ 36-50

L ☐ O# ☐ -15# ☐ 16-35# ☐ 36-50

☐ No overhead work

☐ Keep dressing clean & dry

☐ Other _____

Instructions, Limitations, Recommendations: _____

Patients ☒ has ☐ has not reached MMI Expected MMI date _____

Physicians Signature [Signature] Date 6/27/05

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 31 Date _____

Fax: _____
Date: _____

Sports Medicine

Phone (843) 797-5050 Fax (843) 797-3633

RETURN TO WORK RECOMMENDATIONS

Employee: FRANKLIN HUTSON SSN#: _____

Injury Date: _____ Next Appointment: _____

☐ Initial Treatment ☒ Work Related ☐ Not work related
☒ Follow up visit ☐ Not work related

Diagnosis: L-5-S-1

Treatments

☐ Wound Care
☐ Suture Removal
☐ X-rays
☐ Lab Work
☐ Meds. Prescribed
☐ Other _____

Work Status

☐ Return to regular duty on:
date _____
☐ Return to modified duty on:
date _____
☐ Unable to work until:
date _____
☒ Discharged from current care on:
date 12/1/01
☐ Return for follow-up with
Dr. _____

Physical Ability

☐ Restricted standing, walking
☐ Restricted climbing, bending,
stooping
☐ Limited use of ☐ R ☐ L
hand/arm
☐ No working around moving
machinery
☐ Driving ☐ yes ☐ no
☐ Alternate position (sit, stand,
walk)
☐ Weight lifting restrictions
R ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-5
L ☐ O# ☐ 1-15# ☐ 16-35# ☐ 36-5
☐ No overhead work
☐ Keep dressing clean & dry
☐ Other _____

Instructions, Limitations, Recommendations: _____

Patients ☒ has ☐ has not reached MMI Expected MMI date _____

Physicians Signature _____ Date 12/1/01

I hereby authorize the attending physician to release any information or copies thereof acquired in the course of my examination or treatment for the injury identified above to my employer or his representative. I understand that return to work recommendations are made on medical issues concerning this injury only.

Employee Signature: 32 Date _____

100714-1

HEALTHSOUTH SURGERY CENTER OF CHARLESTON
OPERATIVE REPORT

PATIENT: HUTSON JR., FRANKLIN
MR#: 14135
DATE: 01/05/2005

SURGEON: GEORGE F. WARREN, M.D.
ANESTHESIA: IV SEDATION.
PREOPERATIVE DIAGNOSIS: RIGHT SCIATICA.
POSTOPERATIVE DIAGNOSIS: RIGHT SCIATICA.
OPERATION: LUMBAR EPIDURAL STEROID INJECTION,
L5-S1. RIGHT.

DESCRIPTION OF PROCEDURE: The patient was placed prone on the imaging table. He was given 2 mg of IV Versed for conscious sedation. The L5-S1 interlaminar space was identified and marked correspondingly on the skin. After prep and drape, an 18-gauge Crawford needle was placed down to the ligament. Using loss-of-resistance technique, the epidural space was entered. Aspiration was negative. Injection of contrast showed epidural flow. To this site was injected 4 cc of normal saline and 160 mg of Depo-Medrol. The needle was withdrawn.

The patient was discharged to the recovery area for observation.

GEORGE F. WARREN, M.D.

284/OTI:CHA/100/212589
D: 01/10/2005 0628
T: 01/10/2005 1219

PATIENT: HUTSON, FRANKLIN
MEDICAL RECORD #: 1233
DATE OF SURGERY: 04/04/05
SURGEON: George Warren, M.D.
PREOPERATIVE DIAGNOSIS: Discogenic low back pain with right leg pain.
POSTOPERATIVE DIAGNOSIS: Discogenic low back pain with right leg pain.
OPERATION: Lumbar epidural steroid injection, L2-3, right.

PROCEDURE: The patient was placed prone on the imaging table and given 3 mg of IV Versed for conscious sedation. The L2-3 interlaminar space on the right was identified and marked correspondingly on the skin. After prep and drape an 18 gauge Crawford needle was placed down to the ligament. Using loss of resistance technique the epidural space was entered. Aspiration was negative. Injection of contrast showed epidural flow. Into this site was injected 4 cc of 1% Xylocaine and 120 mg of Depo-Medrol. The needle was withdrawn.

The patient was discharged to the recovery area for observation.

GEORGE WARREN, M.D.

DD: 04/04/05
DT: 04/04/05
GW\ETS:bkf 0404-010

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Lowcountry Outpatient Surgery Center
OPERATIVE REPORT

Page 1 of 1

Name: FRANK HUTSON

Date printed: 10/25/04
ID: 958804 SEX: M AGE: 42

10/25/04
CONSULT/REFERRAL

Referring CLinic: University Family Medicine
9298 Medical Plaza Drive
Charleston SC, 29406
Tel: 843 572-8277
Fax: 843 569-2243

REFERRING PROVIDER: Ann Rodden, DO *Ann Rodden*

ATTENDING PHYSICIAN: Barry Hainer, MD

CONSULTING PHYSICIAN/SERVICE: PT

SPECIALITY: PT

PATIENT'S ADDRESS:
PO BOX 60391
CHARLESTON, SC 29419

Insurance: BCBS

This 42 Year male is referred for: *back pain*

Other medical problems: PAST MEDICAL PROBLEMS/MAJOR ILLNESSES:
none

HOSPITALIZATIONS: none

SURGERIES: gun shot wound at 12yo

Allergy:

NKDA

CURRENT MEDICATIONS:

Rx: NAPROSYN 500MG 1 TAB BID - days, 60, Ref: 3

Rx: SKELAXIN 400mg 1-2 tid - days, 30, Ref: 0

Priority: routine

Evaluate and treat

Appointment Date: *11-1-04* Appointment Time: *9:30 AM*

Authorization #: # of visits authorized:

Ph# 797-8887

Physical Therapy
9313 Medical Plaza Dr. Ste 103
Appointment With:

Medical Arts Bldg

SIGNED BY ANN RODDEN, DO (R63)

10/25/04

35

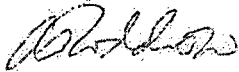
University Family Medicine
9298 Medical Plaza Drive
Charleston SC, 29406
Tel: 843 572-8277
Fax: 843 569-2243

10/25/04

To Whom it May Concern,

Frank will need to be doing desk work until his back pain improves. Please find him work to do in this area where he can sit for short periods of time and take breaks about every 20-30 minutes.

Sincerely,



Ann Rodden, DO

36

9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-797-4900
FAX #: 843-797-4563

DON O. STOVALL
2880 TRICOM ST
CHARLESTON, SC 29406

Phys: STOVALL, DON O.
DOB: 05/14/1962 Age: 43 Sex: M
Acct: D00020291990 Loc: D.TOPRAD
Exam Date: 06/22/2005 Status: REG SDC
Radiology No:
Unit No: D000342125

100714

EXAMS:

001401879 MYELOGRAM, LUMBAR

LUMBAR MYELOGRAM: 06/22/05

DIAGNOSIS: Pain and spondylolisthesis.

PROCEDURE: Risks and benefits of the procedure discussed with the patient. Using standard sterile technique and local anesthesia, the needle was introduced into the L2/3 level where contrast is instilled. Needle is removed. Dr. Stovall's protocol of upright, flexion, and extension films were performed.

FINDINGS:

T12/L1, L1/L2: Unremarkable.

L2/L3: There is mild impression on the anterior thecal sac and mild underfilling of the exiting nerve root sleeves bilaterally, left greater than right.

L3/L4, L4/L5 and L5/S1: Unremarkable.

FLEXION AND EXTENSION VIEWS: The impression of anterior thecal sac at L2/L3 appears slightly exaggerated on the extension view and slightly less prominent on the flexion views.

IMPRESSION:

1. MODERATE IMPRESSION AT L2/L3 WITH MILD UNDERFILLING OF THE EXITING NERVE SLEEVES, LEFT GREATER THAN RIGHT, AS DESCRIBED.
2. NO COMPLICATION.
3. PLEASE SEE CT SCAN FOR FURTHER CORRELATION.
4. DR. STOVALL'S PROTOCOL WAS FOLLOWED.

POS
2/20/05

PAGE 1

DON O. STOVALL

(CONTINUED)

37

NOV 24 2005

9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-797-4900
FAX #: 843-797-4563

Phys: STOVALL, DON O.
DOB: 05/14/1962 Age: 43 Sex: M
Acct: D00020291990 Loc: D.TOPRAD
Exam Date: 06/22/2005 Status: REG SDC
Radiology No:
Unit No: D000342125

EXAMS:

001401879 MYELOGRAM, LUMBAR
<Continued>

** Electronically Signed by II M.D. W. Eugene Phillips **
** on 06/23/2005 at 1226 **
Reported and signed by: W. Eugene Phillips, II M.D.

CC: DON O. STOVALL

Dictated Date/Time: 06/22/2005 (1517)
Technologist: TIM CROWLEY, RT
Transcribed Date/Time: 06/22/2005 (1832)
Transcriptionist: DHIM.MTC/PHY.PHIWI
Electronic Signature Date/Time: 06/23/2005 (1226)
Orig Print D/T: S: 06/23/2005 (1226)

BATCH NO: N/A

PAGE 2

DON O. STOVALL

38

11 2 2005

9330 MEDICAL PLAZA DRIVE
CHARLESTON, SC 29406

PHONE #: 843-797-4900
FAX #: 843-797-4563

Phys: STOVALL, DON O.
DOB: 05/14/1962 Age: 43 Sex: M
Acct: D00020291990 Loc: D.TOPRAD
Exam Date: 06/22/2005 Status: REG SDC
Radiology No:
Unit No: D000342125

DON O. STOVALL
2880 TRICOM ST
CHARLESTON, SC 29406

100714

EXAMS:

001401878 CT LUMBAR SPINE W/O CONTRAST

CT OF LUMBAR SPINE WITH MYELOGRAPHIC CONTRAST: 06/22/05

DIAGNOSIS: Spondylolisthesis and pain.

TECHNIQUE: Axial CT images of the lumbar spine were obtained with myelographic contrast.

FINDINGS:

T12/L1, L1/L2: Unremarkable. Spinal canal widely patent measuring 16 mm. Neural foramina are not compromised.

L2/3: There is moderate diffuse disc bulging with mild encroachment on the left neural foramen. The spinal canal is narrowed to 11 mm.

L3/4 and L4/5: Unremarkable. No disc protrusion or herniation seen.

L5/S1: Minimal diffuse disc bulging. No herniation or neural foraminal compromise.

IMPRESSION:

1. MODERATE DIFFUSE DISC BULGING AT L2/3 WITH MILD NEURAL FORAMINAL COMPROMISE ON THE LEFT AND SOME DEGREE OF SPINAL CANAL STENOSIS.
2. MINIMAL DIFFUSE DISC BULGE AT L5/S1.

** Electronically Signed by II M.D. W. Eugene Phillips **
** on 06/23/2005 at 1226 **
Reported and signed by: W. Eugene Phillips, II M.D.

PAGE 1

DON O. STOVALL

(CONTINUED)

39

JUN 24 2005

1000 MEDICAL CENTER DRIVE
CHARLESTON, SC 29406

PHONE #: 843-797-4900
FAX #: 843-797-4563

Phys: STOVALL, DON O.
DOB: 05/14/1962 Age: 43 Sex: M
Acct: D00020291990 Loc: D.TOPRAD
Exam Date: 06/22/2005 Status: REG SDC
Radiology No:
Unit No: D000342125

EXAMS:

001401878 CT LUMBAR SPINE W/O CONTRAST
<Continued>

CC: DON O. STOVALL

Dictated Date/Time: 06/22/2005 (1517)
Technologist: STACEY L MOODY, RT
Transcribed Date/Time: 06/22/2005 (1816)
Transcriptionist: DHIM.MTC/PHY.PHIWI/DHIM.MTC
Electronic Signature Date/Time: 06/23/2005 (1226)
Orig Print D/T: S: 06/23/2005 (1226)

BATCH NO: N/A

PAGE 2

DON O. STOVALL

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JUN 24 2005

HUTSON, FRANKLIN

Patient # 116142

September 20, 2005

CHIEF COMPLAINT: Low back, bilateral leg pain.

HISTORY OF PRESENT ILLNESS: This patient is a 43-year old. He is referred by his attorney for an independent medical evaluation. He is S/P a work injury of 10/21/04. At that time, while working as a crane operator, he developed low back pain which occurred after sudden jarring "up and down as the crane locked onto its brakes". The patient has worked as a crane operator for many years. He has worked with the State Ports Authority for the last 10. He has worked as a crane operator since 1978.

He has been seen by Dr. Stovall for surgical opinion and Dr. George Warren who gave him two injections. Most recently he has been seen by Dr. Jeff Faaberg, a pain management physician. He has complaints of predominately back pain with a pain ratio of 75% back, 25% leg. He has radiation down both legs particularly on the right being worse than the left. He is accompanied by a lumbar MRI as well as CT myelogram. I have reviewed these studies. These show a disc protrusion at 2-3 which is left sided, as well as a spondylolysis at L-5. He has no gross stenosis or herniation at the lower levels.

He is taking Lortab 4-6 per day. His pain is aggravated by most all activity. He has had with Dr. Warren, a series of three injections. These helped only very temporarily. He has also tried a back brace and been through extensive physical therapy.

His past back history prior to this episode was essentially negative.

SOCIAL HISTORY: He smokes 1/2 pack of cigarettes per day, drinks 3-5 alcoholic beverages per day.

ALLERGIES: NKDA. No chronic medical illnesses.

He has not worked since 10/25/04.

He is accompanied by past medical records that I have reviewed. I have reviewed Dr. Don Stovall's note. He notes also the patient has a disc at 2-3 which is predominately left sided, the side opposite the patient's predominate leg pain and also an L-5 spondylolysis.

He felt for this reason that surgical intervention, particularly a fusion at L-5 would not be particularly helpful.

The patient's history is also significant for the fact that he has a gunshot wound to his left upper extremity and has some contracture and loss of use of the right hand. This is obviously significant in regards to re-employment possibilities.

4/

HUTSON, FRANKLIN

Patient # 116142

September 20, 2005

Page two

Dr. Stovall's most recent note from 6/27/05 is reviewed. He did not feel that surgery would help the patient. He felt he would be a candidate for the Second Injury Fund. Permanent work restrictions were given at no more than 25-pounds on a frequent basis, but he should be able to work in a medium work category. He did not address sitting.

PHYSICAL EXAMINATION: This patient is diffusely tender particularly in the area of L5-S1. He is nontender in either sciatic notch. Straight leg raising is not particularly provocative. He is 5'9", 195 pounds. He is grossly neurologically intact. His range of motion is limited. He has pain with forward flexion of 30 degrees, extension of 20 degrees in rotation.

IMPRESSION:

1. Low back pain.
2. Spondylolysis L-5 vertebral body.
3. Disc protrusion L2-L3 left.

RECOMMENDATIONS: I agree with Dr. Stovall, this patient is not likely to improve with surgical intervention. His spondylolysis indeed does make him a candidate for the Second Injury Fund and he has experienced an aggravation of a pre-existing condition. Unfortunately he has a vocation which requires sitting and sitting particularly in a crane subjects him to vibration and repeated jarring. I don't think he will be able to return to this type of work. From a vocational rehab standpoint because he has lost the use of his right hand he would not be retrainable for computer or a type of job requiring manual dexterity. He does feel, and I agree, that he could return to the workplace on light duty. I would probably place him in a light to medium work category, but stress that he needs to avoid heavy impacts in a sitting position over prolonged periods of time.

Using the AMA Guides Fifth Edition, page 384, table 15-3, he would fall into DRE lumbar category III. He continues to be symptomatic and I would assign him a thirteen percent, (13%) impairment to the whole person. In this instance because of his upper extremity situation and his work vocation required sitting, I am sure that his disability is far greater than his impairment. I will leave this certainly to the workers' comp commissioners to decide.

Donald R. Johnson II, M.D.
DRJ/dam

Cc: Tom White, Esquire

Dictated but not read.
T-9/23/05

42

January 5, 2005

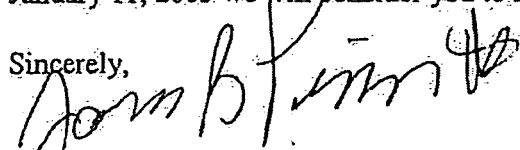
Frank Hutson
121 Daniel's Way
Huger, SC 29450

Dear Mr. Hutson;

You have been out of work since October 23, 2004. We have not received any physician notes from you regarding the reason for your absence since November 24, 2004. You have not contacted your supervisor or department head during this time as you were instructed to do by Mr. Campbell.

If you do not provide written documentation to Mr. Lempesis, justifying your previous absence as well as when you expect to return to work, by Tuesday, January 11, 2005 we will consider you to have abandoned your job.

Sincerely,


James B. Pinson
Manager Human Resources

/sc

Exhibit #1

43

January 11, 2005

Jim Pinson
State Ports Authority
Manager Human Resources
Fax # 577-8128, 577-8191

Re: Franklin Hutson
DOB: 5/14/62

Dear Jim:

Pursuant to your request enclosed please find medicals on Franklin Hutson. This should update you on his current status. If any questions arise please do not hesitate to contact me.

Yours very truly,

Thomas M. White

TMW/bwa

Enclosure

cc: client

44

January 18, 2005

P.O. Box 22287

CHARLESTON, S.C. 29413-2287 USA

(843) 723-8651

FAX: (843) 577-8191

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Franklin Hutson
121 Daniel's Way
Huger, SC 29450

Dear Mr. Hutson:

According to our records, you have been absent for over 30 working days within the last 12 months, due to qualifying family/medical reasons. As an eligible employee you are entitled to 12 weeks (480 hours) of FMLA Leave. Effective 01/18/05, in accordance with the Family Medical Leave Act (FMLA), and the Authority Employee Handbook, 6-02, this is notification that any qualifying absence on or after this date will be designated as FMLA Leave.

- 1) If you are out for a continuous period of time, you will be required to furnish your manager with periodic reports every 2 weeks of your status and intent to return to work. Also, if you are able to return to work before the 12 week period ends, you are required to notify your manager at least 2 work days prior to the date you intend to report to work.
- 2) If you are out for medical reasons, upon your return to work, you will be required to present a fitness-for-duty certificate from your health care provider.
- 3) If you cannot return to work at the end of the 12 week period, or have exhausted a total of 480 hours of qualified intermittent FMLA Leave absences you will no longer have FMLA protections of leave or job restoration.
- 4) While on FMLA Leave without pay, you must continue paying your share of all insurance premiums. Please contact Eunice White at (843) 577-8171 regarding your payroll deductions.

It is important for you to understand that failure to return to work at the end of the 12 week period or exhausting a total of 480 hours of intermittent FMLA Leave hours within the next 12 months may result in termination of employment. If you have any questions, I may be contacted at (843) 577-8126.

Sincerely,



James B. Pinson, III
Manager Human Resources

JBP/cd

cc: Billy Lempesis

45

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL H. MURPHY, III
KEVIN B. SMITH

CHARLES S. GOLDBERG, LLC, OF COUNSEL

HUGO M. SPITZ (RETIRED)
IRVING STEINBERG (1902-1980)



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DOWNTOWN ANNEX
111 CHURCH ST.
P.O. BOX 9
CHARLESTON, SC 29402-0009
TELEPHONE (843) 720-2800
DIRECT DIAL (843) 266-1701
FAX (843) 266-1700

March 2, 2005

Mr. Jim Pinson
State Ports Authority
Manager Human Resources
Fax # 577-8128, 577-8191

Re: Franklin Hutson
DOB: 5/14/62

Dear Jim:

Franklin tells me that you have continued to ask for documentation of his medical status. We have recently received updated transcribed notes from Dr. Stovall. You will find enclosed Dr. Stovall's notes of January 26, 2005, along with an attachment showing an injection that occurred on January 5, 2005. As you can see, Dr. Stovall has scheduled a second injection and wants to see him back in three weeks for follow-up. He also wrote him out of work at that time for another three weeks. These are the last records that we have received. We have requested records from the February visit but are still waiting to receive those. I understand that Franklin has provided to you the out of work slip that he was given when he last saw Dr. Stovall in February.

Please contact me should you have any questions.

Yours very truly,

Thomas M. White

TMW/sdg

Enclosure

cc: client

46

South Carolina State **PORTS AUTHORITY**

P.O. Box 22287

CHARLESTON, S.C. 29413-2287 USA

(843) 723-8651

FAX: (843) 577-8191

March 14, 2005

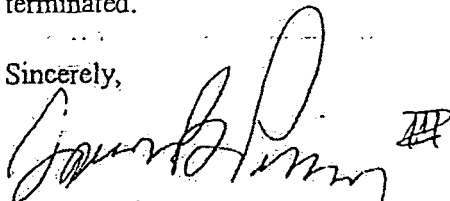
Mr. Frank Hutson
121 Daniel's Way
Huger, South Carolina 29450

Dear Mr. Hutson:

It has been over two weeks since your last Doctor's visit. Your Manager, Mr. Lempesis, requested specific information regarding your ability to work/work restrictions prior to your last visit. You told him you would provide that information to him. I sent a letter to you on February 28 (attached hereto) confirming Mr. Lempesis' request with the specifics of his request and providing both a telephone number and a Fax number for you to have your Doctor send the information to Mr. Lempesis. To date, you have failed to respond to Mr. Lempesis' information request. As I have stated before, it is your responsibility to keep your Manager current regarding your ability to work and failure to do so could result in termination.

If Mr. Lempesis does not have the specific and complete requested information in hand by Friday, March 18, 2005, your employment with the South Carolina State Ports Authority will be terminated.

Sincerely,



James B. Pinson
Manager, Human Resources

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
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CHARLESTON, SC 29402-0009
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FAX (843) 266-1700

Via Fax

March 18, 2005

Jim Pinson
State Ports Authority
Manager Human Resources
Fax # 577-8128, 577-8191

Re: Franklin Hutson
DOB: 5/14/62

Dear Jim:

Pursuant to your request enclosed please find a complete copy of the medicals we have on Franklin Hutson. This should update you on his current status. If any questions arise please do not hesitate to contact me.

Yours very truly,

Samantha Creech
Assistant to Thomas M. White

/smc

Enclosures

cc: client

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March 21, 2005

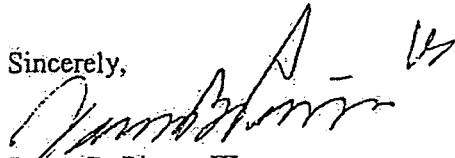
Mr. Frank Hutson
121 Daniel's Way
Huger, SC 29450

Dear Mr. Hutson;

We still have no medical documentation regarding your work status after your January 26, 2005 Doctor's appointment. This has been requested of you verbally on several occasions, your Manager, Mr. Lempesis, scheduled a meeting with you on February 24, 2005 which you failed to attend, and I personally have written you 2 letters requesting this information, specifying exactly what we needed. You have failed to produce any medical documentation supporting your continued absence. In my last letter I explained that your failure to produce proper documentation by Friday March 18, 2005 would result in your termination. Neither Mr. Lempesis nor I have received the documentation.

Your failure to respond to these legitimate requests, leaves me no recourse but to terminate your employment here as of March 20, 2005.

Sincerely,



James B. Pinson III
Manager, Human Resources

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
DALE E. VAN SLAMBROOK
MALCOLM M. CROSLAND, JR.
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FAX (843) 266-1700

April 4, 2005

Jim Pinson
State Ports Authority
Manager Human Resources
Fax # 577-8128, 577-8191

Re: Franklin Hutson
DOB: 5/14/62

Dear Jim:

I last wrote you on March 18, 2005, sending the medicals that we had to you in reference to Franklin Hutson. I received updated medicals from Dr. Stovall. You will find enclosed the records up through February 25, 2005. Note on that date, he takes him out of work for another three weeks. These are the most current records. Please contact me should you have any questions.

Yours very truly,

Thomas M. White

TWM/sdg

cc: client

50

Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Thursday, March 10, 2005 4:45 PM
To: Danko, Cindy; Julie Whittington (F-mail)
Subject: Hutson, Frank DOI-10/21/04 State Port Auth

Update.

CM called Cindy @ LowCountry 843-797-5050 auth 10030546461005 for LESI #2 to be done by Dr. Warren/Cindy to call with procedure date & RTC after procedure scheduled. All parties updated. pss

*****CONFIDENTIALITY NOTE*****

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Exhibit #2

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1

REPORT FOR: Frank Hutson

Treatment date:	2/24/2005	Authorizing case manager	Kellie Casper
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #:	(843) 336-4145 DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	23020566536449		
Work Status	Anticipated return to work date: //		
Diagnosis			
Medication			

52

Nurses Notes	Confirmed 2/24/05 appt, Per Jennifer, do not see follow up scheduled for IW, notes are still in dictation,rtw; not available.All parties notified.lfs		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

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REPORT FOR: Frank Hutson

Treatment date:	2/25/2005.	Authorizing case manager	Kellie Casper
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy Diagnostic Test Provider: No Diagnostic Tests Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	23020566536449		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

54

Nurses Notes	Confirmed 2/25/05 appt with Cindy @ Low Country Orthopedics 843-797-5050 /RTW & notes still in dictation/will send notes when dictation complete for ESI auth/not able to give verbal report as notes in dictation. RTC pending ESI. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

55

Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Friday, February 18, 2005 9:38 AM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

CM placed call to IW to f/u status. IW states ESI initially helped but now is having trouble sleeping again at night/plans to contact doctor if difficulty sleeping persists. IW will contact CM after 2/24 RTC @ LowCountry 843-797-5050. All parties updated. pss

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56

1

REPORT FOR: Frank Hutson

Treatment date:	3/18/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	10030546467531		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

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Nurses Notes	Per Jennifer, IW last seen on 2/25/05, f/u; 4/4/05 @ 1:10pm, rtw; not available. All parties notified. lfs		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

~~Danko, Cindy~~

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Tuesday, March 22, 2005 9:50 AM
To: Danko, Cindy; Julie Whittington (E-mail)
Subject: Hutson, Frank 1 DOI 10/21/04 State Port Auth

Update.

CM left voice mail msg for Dawn @ LowCountry 843-797-5050 for procedure date & RTC after procedure of LESI #2 to be done by Dr Warren. All parties updated. pss

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59

Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Monday, March 28, 2005 10:02 AM
To: Julie Whittington (E-mail)
Cc: Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

CM placed call to IW to f/u status. Answering machine msg left on IW home answering machine req IW to call CM to update medical & work status/advise any WC medical need. All parties updated. pss

Update.

CM left second voice mail msg for Dawn @ LowCountry 843-797-5050 for procedure date & RTC after procedure of LESI #2 to be done by Dr Warren. All parties updated. pss

*****CONFIDENTIALITY NOTE*****

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60

1

Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Monday, March 28, 2005 10:26 AM
To: Julie Whittington (E-mail)
Cc: Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Call from Dawn @ LowCountry 843-797-5050 stating have left 4 msg for IW to call & schedule LESI #2 procedure date & RTC after procedure/msg not returned. CM gave Dawn work & IW supervisor name/number. Dawn states will advise CM when LESI scheduled. All parties updated. pss

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61

1

Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Tuesday, March 29, 2005 3:27 PM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Call from IW stating RTC 4/4/05 @ 0910 for ESI #3 with Dr Warren/ RTC 4/27/05 with Dr Stovall. IW states previous ESI provide temporary relief. All parties updated. pss

*****CONFIDENTIALITY NOTE*****

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62

1

Nurses Notes	Per Jennifer, IW 4/4/05 appointment was rescheduled for 4/27/05. All parties notified.lfs		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

63

REPORT FOR: Frank Hutson

Treatment date:	4/4/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy Diagnostic Test Provider: No Diagnostic Tests Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	10030546467531		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Nurses Notes	CM s/w Peggy @ LowCountry who states IW did show for his 4/4 injection. RTC 4/27. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

65

REPORT FOR: Frank Hutson

Treatment date:	4/4/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
I/W name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Corn St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy Diagnostic Test Provider: No Diagnostic Tests Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	05040546469141		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

66

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Wednesday, April 06, 2005 4:44 PM
To: Danko, Cindy; Julie Whittington (E-mail)
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Msg from IW 843 336 4145 or 843 696 6187 stating had ESI 4/4/05 /very sore, just laying around the house. CM called IW. IW states sore at injection site of ESI and back is sore. CM advised if no improvement noted by tomorrow to advise doctor. All parties updated. pss

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67

STATE ACCIDENT FUND

Harry B. Gregory, Jr.
Director

April 13, 2005

Peggy Urbanic, Esquire
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-7595

RE: Franklin Hutson vs Ports Auth.
WCC File No. 0418244
SAF File No. 2004-5801

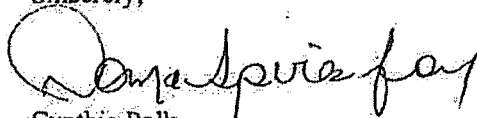
Dear Peggy:

Enclosed is a copy of the file in the above matter for you to attend the deposition of the employer representative scheduled by the claimant's attorney.

The adjuster handling the case is Julie Whittington and can be reached at 896-5909 should you have any questions regarding the claim.

Thank you for your assistance in this matter.

Sincerely,



Cynthia Polk
Chief Counsel

CBP/ds
Enclosure

cc: James Pinson, Emp. Rep.
Thomas White, Esquire

68

Nurses Notes	4/4/05 Operative note from Lowcountry Outpatient Surgery Center received and FILED per air. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A	Right Hand Use	Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

69

REPORT FOR: Frank Hutson

Treatment date:	4/4/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	05040546469141		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

70

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Tuesday, December 14, 2004 10:13 AM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Fax sent to LowCountry 843-764-2308) for 12/2/04 notes. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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71

1

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Monday, December 20, 2004 9:37 AM
To: Danko, Cindy; Julie Whittington (E-mail)
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

CM left voice mail msg for Theta @ LowCountry 843 797 5050 auth LESI # 1 with auth# 20120446461001/req call back with date & place of injection as well as RTC. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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December 15, 2004

JAMES PINSON III
P. O. Box 22287
Charleston, SC 29413

Dear JAMES PINSON III:

These are your claims which we either decided or received on December 13, 2004.

The letter D in the left column means the claim is DENIED. The letter A means ACCEPTED. The letter R means RECORDED. If blank, we only acknowledge receipt of the ACORD Form. LT in the right column means the case involves some lost time. 12A and 12M mean a course of medical treatment is involved. If you see errors or have questions, please call Julie Whittington at 803-896-5909.

ACCEPTED means only that State Fund has accepted the case as a compensable accident and injury within the meaning of the workers' compensation law. Medical expenses for approved treatment of the injury described in the ACORD form will be paid when submitted in the proper amount with proper documentation.

DENIED means State Fund had decided the claim is NOT compensable so that no compensation, medical bill or other expense, should be paid. All such denials are, of course, subject to reversal. Should a DENIAL decision be changed it will be listed in a subsequent letter like this one as an ACCEPTED claim.

RECORDED means we received the ACORD Form and closed the file because no medical treatment was required. If medical treatment should be required within the statutory period the case will be reopened and a compensability decision made.

Dec.	Employee	Claim Number	Date Injury	Date Reported	Claim Type
A	JARMAN, BENNY	2004-006595	11/24/2004	12/08/2004	12M
R	HUTSON JR, FRANKLIN W	2004-006198	10/21/2004	11/17/2004	12A

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Page 1 of 1

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Monday, December 20, 2004 1:56 PM
To: Danko, Cindy; Julie Whittington (E-mail)
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Call from Cindy @ LowCountry 843 797 5050 stating LESI#1 scheduled for 1/5/05 @ Health South Surgery Center with RTC 1/26/05. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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Nurses Notes	Confirmed 1/5/05 appt, f/u 1/26/05, notes are in dictation,rtw; not available.All parties notified.lfs		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

15

REPORT FOR: Frank Hutson			
Treatment date:	1/5/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	06120446461523		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Wednesday, January 12, 2005 10:16 AM
To: Danko, Cindy; Julie Whittington (E-mail)
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Fax sent to LowCountry 843-764-2308) for LESI#1 1/5/05 note. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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WORKERS' COMPENSATION OPTION FORM

Section 8-11-145 of the S.C. Code of laws provides that, in the event of an accidental injury arising out of and in the course of employment with the State, a disabled employee shall make an election to receive compensation under one of the following options:

A. To be placed on paid leave status, using sick and/or annual leave.

When such leave credits are exhausted before the employee can return to work, the employee shall be entitled to Workers Compensation disability benefits at the time the specific amount of leave is exhausted.

B. To use Workers' Compensation benefits awarded in accordance with Title 42 of the 1976 Code. *Under this method, the employee would receive the disability benefits equal to 66 2/3% of the employee's gross weekly pay, not to exceed the current rate of \$577.73 per week.*

Regardless of which method of disability compensation an employee elects, he or she would continue to be eligible for payment of medical costs provided by Workers' Compensation.

I have read the above and understand my options regarding Workers' Compensation. I choose Option A _____, B ✓.

The effective date of the election is 11/01/2004

<u>Franklin W. Hutton Jr</u>	_____	_____	_____
Employee Signature	Date	Signature of Witness	Date

Social Security #

State Accident Fund Claim #2004-005801
Date of Injury 10/21/2004

PO BOX 22287
CHARLESTON SC 29413-2287
PHONE: (800) - 845-7106, EXTENSION 8132
(843) - 577-8132
FAX: (843) - 577-8128

SOUTH CAROLINA STATE
PORTS AUTHORITY

To: Julie Whittington From: Cindy D. Danko
Fax: 803-612-2709 Pages: 2, including cover
Phone: Date: November 9, 2004
Re: Hutson, Franklin
DOI: 10/21/2004
Claim #2004-005801

Option Form

If you need anything else, you know where to reach me.

Thanks!

CINDY N. DANKO
SCSPA Human Resources
Senior HR Technician

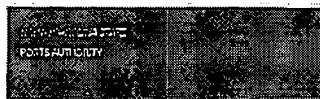
Transmission Report

Date/Time
Local ID
Local Name
Company Logo

11- 9-04; 1:05PM
8435778128
HUMAN RESOURCES
S. C. STATE PORTS AUTHORITY

This document was confirmed.
(reduced sample and details below)
Document Size Letter-S

PD BOX 22287
CHARLESTON, SC 29413-2287
PHONE: (803) 843-5100, EXTENSION 8432
(843) 577-8128
FAX: (843) 577-8128



To: Julie Whittington From: Cindy D. Danko
Fax: 803-612-2709 Pages: 2, including cover
Phone: Date: November 9, 2004
Re: Hulaon, Franklin
Date: 10/21/2004
Claim #2004-005801

Option Form

If you need anything else, you know where to reach me.

Thanks!

CINDY N. DANKO
SCSPA Human Resources
Senior HR Technician

Total Pages Scanned : 2 Total Pages Confirmed : 2

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
1	479	912036122709	11- 9-04; 1:04PM	56"	2/ 2	G3		CP 14.4

Notes :

EC: Error Correct
BC: Broadcast Send
CP: Completed
HS: Host Scan
HF: Host Fax

RE: Resend
MP: Multi-Poll
RM: Receive to Memory
HP: Host Print
HR: Host Receive

PD: Polled by Remote
PS: Polling & Remote
DR: Document Removed
FC: Forced Output
FM: Forward Mailbox Doc.
MS: Receive to Mailbox
PI: Power Interruption
TM: Terminated by user
WT: Waiting Transfer
WS: Waiting Send

WORKERS' COMPENSATION OPTION FORM

Section 8-11-145 of the S.C. Code of laws provides that, in the event of an accidental injury arising out of and in the course of employment with the State, a disabled employee shall make an election to receive compensation under one of the following options:

A. To be placed on paid leave status, using sick and/or annual leave.
When such leave credits are exhausted before the employee can return to work, the employee shall be entitled to Workers Compensation disability benefits at the time the specific amount of leave is exhausted:

B. To use Workers' Compensation benefits awarded in accordance with Title 42 of the 1976 Code. *Under this method, the employee would receive the disability benefits equal to 66 2/3% of the employee's gross weekly pay, not to exceed the current rate of \$577.73 per week.*

Regardless of which method of disability compensation an employee elects, he or she would continue to be eligible for payment of medical costs provided by Workers' Compensation.

I have read the above and understand my options regarding Workers' Compensation. I choose Option A _____, B ☒.

The effective date of the election is 11/01/2004

Franklin W. Hiltz

Employee Signature

Date

Signature of Witness

Date

Social Security #

State Accident Fund Claim #2004-005801

Date of Injury

10/21/2004

REPORT FOR: Frank Hutson			
Treatment date:	1/26/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
W name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	20120446462484		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Nurses Notes		Call from Cindy @ LowCountry 843 797 5050 req auth for LESI#2 to be done 2/4/05 by Dr Warren/Cindy states per Dr Stoval IW rec at least 20% relief from LESI#1 but is not at MMI. RTC 2/24. RTW: unable to work x 3 wks due to pain. CM auth for LESI#2 26010546461007. All parties updated pss	
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
Sit		In an Hour day, the IW can:	
Walk		Stand	
Cary		Drive	
		Lift	
		0-10 lb. : N/A	0-10 lb. : N/A
		11-24 lb. : N/A	11-24 lb. : N/A
		25-50 lb. : N/A	25-50 lb. : N/A
		51-100 lb. : N/A	51-100 lb. : N/A
		100+ lb. : N/A	100+ lb. : N/A
Left Hand use		Grasp: N/A Push: N/A Manipulation: N/A	Grasp: N/A Push: N/A Manipulation: N/A
Right Foot Use		N/A	N/A
Balance		No Limitations	No Limitations
Climb		No Limitations	No Limitations
Kneel		No Limitations	No Limitations
Reach		No Limitations	No Limitations
Squat		No Limitations	No Limitations
Other Limitations			

935pm view 11:40am
home
BROOK

764-0992
2690 Lake Park Drive
NC SC 29406
OAKBROOK

9/8/1
mealcom st
NC SC
29406

Conform
upset
wet site

Concord - Thursday
call to
Conform - 2/2/01

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Wednesday, January 19, 2005 10:23 AM
To: Danko, Cindy, Joy Wildin (E-mail)
Subject: Hutson, Frank | DOI 10/21/04 State Port Auth

Update.

CM placed call to IW to f/u care status. IW states rec approx 20% pain relief from LESI# 1/has no current needs. CM reminded IW next RTC 1/26/05. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Wednesday, January 26, 2005 2:30 PM
To: Danko, Cindy; Julie Whittington (E-mail)
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Call from Cindy @ LowCountry 843 797 5050 req auth for LESI#2 to be done 2/4/05 by Dr Warren/Cindy states per Dr Stoval IW rec at least 20% relief from LESI#1 but is not at MMI. RTC 2/24. RTW: unable to work x 3 wks due to pain. CM auth for LESI#2 26010546461007. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Wednesday, January 19, 2005 10:19 AM
To: Julie Whittington (E-mail): Danko, Cindy
Subject: FW: Franklin Hutson Jr. State Port Authority 10-21-2004

Update.

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

-----Original Message-----

From: Linda Sanders
Sent: Tuesday, January 18, 2005 4:24 PM
To: Peggie Stoneking
Subject: Franklin Hutson Jr. State Port Authority 10-21-2004

Healthsouth Surgery Center Of Charleston-Lowcountry Orthopedics

Dos: 1/5/05

OPERATIVE REPORT

DESCRIPTION OF PROCEDURE: The patient was placed prone on the imaging table. He was given 2 IV Versed for conscious sedation. The L5-S1 interlaminar space was identified and marked correspondingly on the skin. After prep and drape, an 18-gauge Crawford needle was placed down to the ligament. Using loss-of-resistance technique, the epidural space was entered. Aspiration was negative. Injection of contrast showed epidural flow. To this site was injected 4 cc of normal saline and 160 mg of Depo-Medrol. The needle was withdrawn. The patient was discharged to the recovery area for observation.

Dr. George Warren, MD

*****CONFIDENTIALITY NOTE*****

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Nurses Notes	2/4/05 Operative report from Lowcountry Outpatient Surgery Center received and FILED per air. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Carry	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand Use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

REPORT FOR: Frank Hutson			
Treatment date:	2/24/2005	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address: 2880 Tri Com St.	
	City: N. Charleston	State: S.C.	Zip: 29406
	Phone # 843-797-5050	Fax # 843-764-2308	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	26010546464655		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Friday, December 17, 2004 4:30 PM
To: Julie Whittington (E-mail: Danko, Cindy)
Subject: FW: Franklin Hutsor State Port Authority 10-21-2004

Update.

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

Lowcountry Orthopedics And Sports Medicine

Dos: 12/2/04

Assessment: L2-3 disc bulge, L5 spondylolysis

Plan: Discussed the diagnosis with the patient. His L2-3 disc bulge is not correlated with his right-sided symptoms; therefore, I feel his symptoms are probably coming from the spondylolysis. We will have the patient undergo an epidural injection at L5-S1 on the right. We will see him back after the injection is performed. He is to remain out of work until that time.

Dr. Don Stovall, MD

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Nurses Notes	Dx: lumbar radiculopathy/lumbar strain/ spondylolisthesis. Tx: exam. MRI shows mild central canal stenosis, mild rt neural foraminal stenosis, mild to mod lt neural foraminal stenosis @ L2-3 secondary to broad-based lt central intraforaminal protrusion/bilateral spondylosis L5 with Gr 1 ant spondylolisthesis but no significant stenosis. Rx: Cont naproxen, cyclobenzaprine, acetaminophen with propoxyphen. Plan: Home exercises as tol. RTW: no activity/medically unable to work. Refer to orthopedic surgeon ASAP. Dr Marc Kolender. Note: CM made referral with Joan for Dr Stoval @ LowCountry for 12/2 @ 1215/auth 23110446461008. Medicals faxed to Joan @ 843 764 2308. Msg left on IW home answering machine advising of appt/need to take MRI to appt. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Carry	0-10 lb. : N/A 11-24 lb. : N/A 25-50 lb. : N/A 51-100 lb. : N/A 100+ lb. : N/A	Lift	0-10 lb. : N/A 11-24 lb. : N/A 25-50 lb. : N/A 51-100 lb. : N/A 100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Manipulation: N/A	Right Hand Use	Grasp: N/A Push: N/A Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

REPORT FOR: Frank Hutsor			
Treatment date:	11/22/2004	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	17110446469479		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Friday, March 04, 2005 3:04 PM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: FW: Frank Hutson DOA: 10/21/04 State Port

Update.

CM sent email to adjuster advising auth of brace as discussed in 2/25/05 MER. All parties updated. pss

Update.

Msg to call Leslie @ RCC 843-797-8627 stating has Dr Stoval has req IW to have outpatient PT at RCC. File review: 2/25/05 order for PT for Diagnosis: L2-3 disc bulge, L5 spondylolysis. CM s/w Leslie giving auth# 04030546461006 to 6 PT visits dos 3/3/05-3/24/05. All parties updated. pss

-----Original Message-----

From: Reitz, Allison
Sent: Tuesday, March 01, 2005 3:17 PM
To: Stoneking, Peggie
Subject: Frank Hutson DOA: 10/21/04 State Port

Lowcountry Ortho and Sports Med dated 2/25/05:

Diagnosis: L2-3 disc bulge, L5 spondylolysis.

Assessment: Lower back injury.

Plan: We will set the patient up for another lumbar epidural steroid injection; this will be his third. We will perform this at L2-3. We will also see about getting him the brace. He did go to the brace shop, but cannot say why he did not get the brace. We will also see him up for some physical therapy evaluation. I gave him a prescription for Sinequan to take at night. I also gave him a prescription for Vicoprofen. I will see the patient back again in three weeks for follow up. Don O. Stovall, Jr., MD

Allison Reitz
CompEndium Services, Inc.
Administrative Specialist
Phone: 877-709-2667
Direct Fax: 866-265-4863

No virus found in this outgoing message.

Checked by AVG Anti-Virus.

Version: 7.0.300 / Virus Database: 266.5.5 - Release Date: 3/1/2005

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Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Wednesday, March 02, 2005 2:04 PM
To: Julie Whittington (E-mail)
Cc: Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

Call from Cindy Danko/file reviewed. CM advised Cindy have stressed many times to IW importance of informing emp of RTW. Cindy states emp has also made req & IW not reporting as agreed. All parties updated. pss

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Danko, Cindy

From: Stoneking, Peggie [pstoneking@compendiumusa.net]
Sent: Friday, March 04, 2005 3:04 PM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: FW: Frank Hutson DOA: 10/21/04 State Port

Update.

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-----Original Message-----

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Sent: Tuesday, March 01, 2005 3:17 PM
To: Stoneking, Peggie
Subject: Frank Hutson DOA: 10/21/04 State Port

Lowcountry Ortho and Sports Med dated 2/25/05:

Diagnosis: L2-3 disc bulge, L5 spondylolysis.

Assessment: Lower back injury.

Plan: We will set the patient up for another lumbar epidural steroid injection; this will be his third. We will perform this at L2-3. We will also see about getting him the brace. He did go to the brace shop, but cannot say why he did not get the brace. We will also set him up for some physical therapy evaluation. I gave him a prescription for Sinequan to take at night. I also gave him a prescription for Vicoprofen. I will see the patient back again in three weeks for follow up. Don O. Stovall, Jr., MD

Alison Reitz
CompEndium Services, Inc.
Administrative Specialist
Phone: 877-709-2667
Direct Fax: 866-265-4863

--
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Checked by AVG Anti-Virus.
Version: 7.0.300 / Virus Database: 266.5.5 - Release Date: 3/1/2005

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Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Tuesday, November 02, 2004 4:20 PM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: FW: Frank Hutsoi Company Name: State Port Authority DOA:10/21/2004

Update.

Concentra Medical Centers dated 11/02/04

DOS 11/02/04

Assessment: Lumbosacral strain

Plan: Discontinue flexeril; Celebrex 200 mg and Skelaxin 400 mg given; Continue with previous therapy schedule.

Work Status: Pt may RTW 11/02, but may not lift over 15 lbs, bend, push or pull.

Next Appt: 11/09

Marc H. Kolender, MD

Shanna Rogers
Compendium Services, Inc.
www.compendiumusa.net
Main Phone: 1-877-709-2667
Main Fax: 1-877-710-2667
Direct Fax: 1-866-231-5146

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South Carolina State Ports Authority
EMPLOYEE INCIDENT REPORT

04-040

Incident No. 04-040

For any injury requiring medical attention, call 1-877-709-2667 and notify Human Resources!

Complete within 24 hours on any Operations Incident and send the report to Operations Safety Manager

GENERAL INFORMATION

Type of Incident: ☐ Near Miss ☐ Accident ☒ Injury ☐ Property Damage ☐ Equipment Damage ☐ Vehicle Damage
Type of Injury: ☐ None ☐ First Aid ☐ Restricted Duty ☒ OSHA Recordable
Injury Category: ☒ Absorption ☐ Fall/Different Level ☐ Laceration/Cut/Tear/Puncture ☐ Struck By
☐ Body Mechanics ☐ Fall/Same Level ☐ Overexertion ☐ Struck Against
☐ Caught-In-Between ☐ Hearing ☐ Repetitive Motion ☐ Temp. Extreme
☐ Electrical ☐ Ingestion ☐ Radiation
☐ Vision ☐ Inhalation ☐ Slip/Twist (No Fall)

EMPLOYEE INFORMATION

FRANK HUTSON CRANE OPERATOR 4814
Name Job Title Badge Number
10-21-04 12 NCT LOWER BACK
Date of Incident Home Department No. Terminal Section of Body Injured
Ambulance Used: ☐ Yes ☒ No Employee Seen by Health Care Provider: ☐ Yes ☒ No
Taken By: N/A Date & Time Employee began shift: Date: 10-21-04 Time: 6:30 PM
Name of Health Care Provider: Dr. NONE YET Hospital: N/A
Name of Supervisor Notified: ELLIS Date: 10-23-04 Time: 5:30 PM

INCIDENT DESCRIPTION

Location: Terminal: NCT Building #: BERTH #2 Equipment #: 39-011 Equipment Type: CONTAINER CRANE
Vehicle #: Date of Incident: 10-21-04 Time of Incident: 11:15 PM
Task or Activity: LOADING EVERGREEN SHIP

Incident Description:

MR. HUTSON REPORTED TO ME TODAY THAT HE INJURED HIS BACK THIS PAST THURSDAY NIGHT WHILE OPERATING SAID CRANE. BOOM JOINT IS ROUGH AND WHILE PLACING CONTAINER THE BOX DROPPED AND JERKED THE CRANE-CAB. THIS RESULTED IN JERKING HIS BACK AND IT IS GETTING WORSE. MR HUTSON SAID THAT IF HIS BACK IS NOT BETTER ON MONDAY HE WILL GO TO A DOCTOR. THIS WAS JUST REPORTED TO ME THIS EVENING.

Witnesses:

NONE

How could this Incident have been prevented:

NOT SURE

Immediate corrective measures taken:

DID NOT WORK MR. HUTSON TOMORROW (SUNDAY)

Continuing Incident Analysis in progress: ☒ Yes ☐ No

Type of PPE Required: HARD HAT, SAFETY SHOES & VEST

PPE worn? ☒ Yes ☐ No

Supervisor's Signature: ELLIS

Badge #: 4796

Date: 10-22-04

Operations Safety Manager: 223

Date: 4814/1

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Tuesday, November 02, 2004 4:18 PM
To: Julie Whittington (E-mail); Danko, Cindy
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

Update.

CM called Mel @ Concentra 843 572 0810 for file review. Mel states IW was at provider today/next RTC 11/9 / 6 PT visits have been auth to date of which 3 visits have been rec. Mel instructed to call when additional PT auth needed. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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WORKERS' COMPENSATION OPTION FORM

Section 8-11-145 of the S.C. Code of laws provides that, in the event of an accidental injury arising out of and in the course of employment with the State, a disabled employee shall make an election to receive compensation under one of the following options:

A. To be placed on paid leave status, using sick and/or annual leave.
When such leave credits are exhausted before the employee can return to work, the employee shall be entitled to Workers Compensation disability benefits at the time the specific amount of leave is exhausted.

B. To use Workers' Compensation benefits awarded in accordance with Title 42 of the 1976 Code. *Under this method, the employee would receive the disability benefits equal to 66 2/3% of the employee's gross weekly pay, not to exceed the current rate of \$577.73 per week.*

Regardless of which method of disability compensation an employee elects, he or she would continue to be eligible for payment of medical costs provided by Workers' Compensation.

I have read the above and understand my option regarding Workers' Compensation. I choose Option A _____, B _____

The effective date of the election is 11/01/20

Employee Signature

Date

Date

Social Security #

State Accident Fund Claim #2004-

Date of Injury

10/21/2004

11/03/04 8:53 EMPLOYEE TIME DETAIL TEOI020
 BADGE--> 4814 PERIOD BEGIN: 10 21 2004 PERIOD END: 11 03 2004
 HUTSON, FRANKLIN W

DATE	DAY	O/T HOURS	HOURS WORKED	OTHER HR HOURS CD	DEPT	N S	APPR	C D
10 21 2004	THU		5.50		12	Y	0234	A
10 21 2004	THU			2.50 J	12	N	0234	A
10 22 2004	FRI		13.50		12	R	0234	A
10 23 2004	SAT		10.50		12	N	0234	A
10 25 2004	MON			8.00 J	12	N	0234	A
10 26 2004	TUE			8.00 B	12	N	0234	A
10 27 2004	WED			8.00 B	12	N	0234	A
10 28 2004	THU			8.00 B	12	N	0234	A
10 29 2004	FRI			8.00 B	12	N	0234	A
11 01 2004	MON			8.00 B	12	N		

PF01-Help! PF07-Backward PF10-Top PF12-MENU
 PF06-Refresh PF08-Forward PF11-Bottom CLR-SIGNOFF

4-0 1 Sess-1 10.99.3.60 3/14

Frank Lin W
Hutson 4814/12

Danko, Cindy

From: Julie Whittington [jwhittington@saf.state.sc.us]
Sent: Tuesday, November 02, 2004 11:02 AM
To: Danko, Cindy
Subject: FRANK HUTSON 2004-5801

I need the following information on this claimant. Click "reply" before attempting to answer the questions. When completed click "send".

Date of accident 10-21-2004:

Date Disability Began: 10/26/04

Claimant being paid admin, S/A, or LWOP?: Paid S/L

Return to work date: HAS NOT returned

Please have claimant fill out election form (unless using administrative leave).

Wages paid quarter ending 9-2004: 26,264.33
Wages paid quarter ending 6-2004: 21,356.67
Wages paid quarter ending 3-2004: 23,475.00
Wages paid quarter ending 12-2003: 18,999.17

If wages paid during four quarters does not equal 52 weeks, or if you do not have enough information to complete all four quarters, please indicate number of weeks paid:

PLEASE LET ME KNOW BY EMAIL OR PHONE CALL
IMMEDIATELY UPON RETURN TO WORK BY CLAIMANT.

Thank you.

Julie H. Whittington, AIC
State Accident Fund
803-896-5909

***** CONFIDENTIALITY NOTE *****

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10274863

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040149264

SERVICE DATE:
11/03/2004

PATIENT:
HUTSON, FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 10:15 AM
CHECK IN: 10:17 AM
CHECK OUT: 11:51 AM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
CHRIS STUDEBAKER, PT

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

NEXT VISIT(S):

VISIT DATE: THURSDAY - NOVEMBER 04, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: TUESDAY - NOVEMBER 09, 2004 @ 10:30 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

+----- PATIENT NOTICE -----+
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED !
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR !
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !
+-----+

10294094

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040149445

SERVICE DATE:
11/04/2004

PATIENT:
HUTSON FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 10:19 AM
CHECK IN: 10:20 AM
CHECK OUT: 11:34 AM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
CHRIS STUDEBAKER, PT

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

NEXT VISIT(S):

VISIT DATE: TUESDAY - NOVEMBER 09, 2004 @ 10:30 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

----- PATIENT NOTICE -----
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !

Thank you.

Julie H. Whittington, AIC
State Accident Fund
803-896-5909

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Danko, Cindy

From: Danko, Cindy
Sent: Wednesday, November 03, 2004 9:52 AM
To: 'Julie Whittington'
Subject: RE: FRANK HUTSON 2004-5801

-----Original Message-----

From: Julie Whittington [mailto:jwhittington@saf.state.sc.us]
Sent: Tuesday, November 02, 2004 11:02 AM
To: Danko, Cindy
Subject: FRANK HUTSON 2004-5801

I need the following information on this claimant. Click "reply" before attempting to answer the questions. When completed click "send".

Date of accident 10-21-2004:
Date Disability Began: 10-26-2004
Claimant being paid admin, S/A, or LWOP?: Paid sick leave
Return to work date: has not returned

Please have claimant fill out election form (unless using administrative leave).

Wages paid quarter ending 9-2004: 26,264.33
Wages paid quarter ending 6-2004: 21,356.67
Wages paid quarter ending 3-2004: 23,475.00
Wages paid quarter ending 12-2003: 18,999.17

If wages paid during four quarters does not equal 52 weeks, or if you do not have enough information to complete all four quarters, please indicate number of weeks paid:

PLEASE LET ME KNOW BY EMAIL OR PHONE CALL
IMMEDIATELY UPON RETURN TO WORK BY CLAIMANT.

104

Nurses Notes	Confirmed 11/9/04 appt, medical notes received, fu 11/16/04 @ 11:30, rtw:modified duty. no repetitive lifting over 15lbs, no bending > 4 times hr, no pushing/pulling ove 15lbs of force, alternate sitting/standing every 30 minutes. All parties notified. lfs.		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

REPORT FOR: Frank Hutso			
Treatment date:	11/9/2004	Authorizing case manager	Kellie Casper
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	02110466538417		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Nurses Notes	Assessment: Lumbar Strain Meds: Ibuprofen and Cyclobenzaprine. Tx: Need to schedule MRI/ordered by Dr Dee Dibona. RTW with restrictions. No repetitive lifting over 15lbs. No bending more than 4 times per hour. No pushing/pulling over 15lbs or force. Alternate sitting and standing every 30 min. Next appt: 11/16/04 Note: CM scheduled MRI with Ishsa @ Occupational Solutions/auth 12110446461007. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Carry	0-10 lb. : N/A 11-24 lb. : N/A 25-50 lb. : N/A 51-100 lb. : N/A 100+ lb. : N/A	Lift	0-10 lb. : N/A 11-24 lb. : N/A 25-50 lb. : N/A 51-100 lb. : N/A 100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use Manipulation: N/A		Grasp: N/A Push: N/A Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

REPORT FOR: Frank Hutson			
Treatment date:	11/9/2004	Authorizing case manager	Kellie Casper
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #:	(843) 336-4145 DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	02110466538417		
Work Status	Anticipated return to work date: //		
Diagnosis			
Medication			

108

Report for Frank Hutso.

REPORT FOR: Frank Hutso.			
Treatment date:	11/9/2004	Authorizing case manager	KE
Employer	State Port Authority	Work site	DE
Job description	Crane Operator II		DE
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DC
Address:			
Job title			
How long with employer	Years	How long in position	YE
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Su	
	City: Charleston	State: SC	Zip
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerk"		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23 =
Date Reported	10/23/2004	Time Reported	17 =
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	02110466538417		
Work Status		Anticipated return to work date =	
Diagnosis			
Medication			

Nurses Notes	Received note from Concentra Medical Centers for 11/16 appt. Pt did attend. Pt may RTW 11/16, but may not lift over 15 lbs, bend, push or pull. Next appt is 11/22. All parties notified. asr		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A	Right Hand Use	Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

REPORT FOR: Frank Hutso.			
Treatment date:	11/16/2004	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy Diagnostic Test Provider: No Diagnostic Tests Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	10110446469089		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

10476341

----- EMPLOYER NOTICE -----
! THE PRESCRIBED ACTIVITY RECOMMENDATIONS ARE SUGGESTED GUIDELINES TO !
! ASSIST IN THE PATIENT'S TREATMENT AND REHABILITATION. YOUR EMPLOYEE !
! HAS BEEN INFORMED THAT THE ACTIVITY PRESCRIPTION IS EXPECTED TO BE !
! FOLLOWED AT WORK AND AWAY FROM WORK. !
!

ANTICIPATED DATE OF MAXIMUM MEDICAL IMPROVEMENT:
11/30/2004

ACTUAL DATE OF MAXIMUM MEDICAL IMPROVEMENT:
(NONE SPECIFIED)

NEXT VISIT(S):

VISIT DATE: MONDAY - NOVEMBER 22, 2004 @ 8:30 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

VISIT DATE: TUESDAY - NOVEMBER 30, 2004 @ 10:30 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

----- PATIENT NOTICE -----
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED !
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR !
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !
!

10476341

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040150797

SERVICE DATE:
11/16/2004

PATIENT:
HUTSON, FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 11:33 AM
CHECK IN: 11:33 AM
CHECK OUT: 12:24 PM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
MARC H. KOLENDER, MD

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

MEDICATIONS:
(NONE)

PATIENT STATUS:

MODIFIED ACTIVITY - RETURNING FOR FOLLOW-UP VISIT

RESTRICTED ACTIVITY:
RETURN TO WORK ON 11/16/2004 WITH THE FOLLOWING RESTRICTIONS
NO REPETITIVE LIFTING OVER 15 LBS.
NO BENDING GREATER THAN 4 TIMES PER HOUR
NO PUSHING AND/OR PULLING OVER 15 LBS. OF FORCE

REMARKS:
ALTERNATE SITTING AND STANDING EVERY 30 MINUTES.

Page 1

PO BOX 22287
CHARLESTON SC 29413-2287
PHONE: (800) - 845-7106, EXTENSION 8132
(843) - 577-8132
FAX: (843) - 577-8128

SOUTH CAROLINA STATE
PORTS AUTHORITY

To: Elaine Burton

From: Cindy D. Danko

Fax: 803-896-5801

Pages: 2, including cover

Phone:

Date: November 17, 2004

Re: Hutson, Franklin

DOI: 10/21/2004

Claim #2004-005801

Elaine,

The Social Security # on the Form 50 is not correct.

Thanks!

CINDY N. DANKO
SCSPA Human Resources
Senior HR Technician

State of South Carolina

2004-6198

1512 Marion Street
P.O. Box 1715
Columbia, S.C. 29202-1715



TEL: (803) 737-5700
FAX: (803) 737-5768

Workers' Compensation Commission

TO: CARRIER CODE NO. 00500
STATE ACCIDENT FUND
P O BOX 102100
COLUMBIA, SC 29221

FROM: BARBARA JAMES, ACCIDENT REPORTING SUPERVISOR
(803) 737-5722

DATE: 11/10/04

RE: W.C.C. FILE NO. 0417736
SSN: DATE OF INJURY: 10/21/04
HUTSON FRANKLIN W JR VS. SC STATE PORTS AUTHORITY

THE ABOVE CLAIM HAS BEEN FILED ACCORDING TO R.67-206. OUR FILE DOES NOT CONTAIN A FIRST REPORT OF INJURY. ACCORDING TO OUR RECORDS, YOU WERE THE INSURANCE CARRIER FOR THIS EMPLOYER ON THE DATE OF INJURY. PLEASE SUBMIT A FIRST REPORT OF INJURY WITHIN TEN DAYS OF THE DATE OF THIS MEMORANDUM.

A COPY OF THE FORM 50, THE FORM 52, OR THE LETTER OF REPRESENTATION IS ENCLOSED FOR YOUR INFORMATION.

ENCLOSURE: FORM 50, FORM 52 OR
LETTER OF REPRESENTATION

SCWCC Coverage Coding Sheet for AttorneysToday's Date: 11/4/04Claimant: Franklin Wilson Hutson, Jr.D/A: 10/21/04Employer: SC State Ports AuthorityCarrier Information (name, address, phone):

State Accident Fund
P.O. Box 102100
Columbia, SC 29221

Policy Number: 00476044		Policy Name: (if different from employer)	
FEIN: 576000923	Carrier Code # 500	Policy Eff Date: 1/1/47 & Cont.	Researched by: Julie

Attach a copy of this sheet to Letters of Reps and/or Form 50/52
to the Commission & Carrier until a WCC# is established

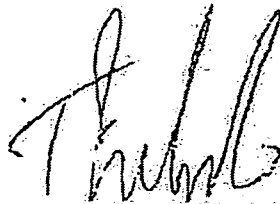
☐ Check here if no coverage found

Insurance coverage can be obtained by calling the Commission's Coverage Division at (803) 737-5708.

RECEIVED

NOV 05 2004
Division of Claims
Claims Administrator
S.C. Workers' Comp. Comm.

I certify that I have served this document pursuant to R.67-210/211 by delivering a copy to
State Accident Fund, P.O. Box 102100, Columbia, SC 29221 on the 4 day of November, 2004
by first-class mail.



THOMAS M. WHITE, Attorney for Claimant

RECEIVED

NOV 05 2004

Division of Claims
Claims Administration
S.C. Workers' Comp. Comm

30-00
11-08-04

REC

South Carolina Workers' Compensation Commission
P.O. Box 1715 # 1612 Marion Street
Columbia, South Carolina 29202-1715

WCC File #

Carrier File #

Carrier Code #

Employer FEIN

500

576000923

FRANKLIN W. HUTTON, JR.

Claimant's Name

SSN

SC STATE PORTS AUTHORITY

Employer's Name

Address

City

State

Zip

Concord St., Charleston, SC

Address

City

State

Zip

(843) 336-4145

Home Phone #

Work Phone #

State Accident Fund

Insurance Carrier

THOMAS M. WHITE, ESQUIRE

Preparer's Name

(843) 572-0700

Phone #

Complete each information blank. To request a hearing, check box 13. b., indicate the kinds of benefits claimed by checking the box(es) at lines 6, 7, and 8 and file this form in duplicate.

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

- [X] 1. a. The claimant sustained an accidental injury to back and right leg on 10/21/04 in Charleston County, State of SC.
- [X] 1. b. Describe briefly how the accident occurred injured when jacked by crane.
- [X] 2. Both the employee and the employer were subject to the South Carolina Workers' Compensation Act at the time of the injury.
- [X] 3. The relationship of employer and employee existed at the time of the injury.
- [X] 4. At the time of the injury the employee was performing services arising out of and in the course of employment.
- [X] 5. Notice of the accidental injury was given to the employer on 10/21/04 in the following manner: Supervisor was aware of the injury.
- [X] 6. Due to injury, the claimant is in need of (check one):
[] (a) medical examination and treatment for
[X] (b) additional medical examination and treatment for back and right leg.
- [X] 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of: 10/23/04 to date and continuing.
- [X] 8. Due to the injury, the claimant has permanent disability of the following nature and extent: (check one)
[X] (1) General Disability: [X] Total [] (2) Specific Disability: [] Total [] Partial
Body part(s) affected are: back and right leg.
- [] 9. Due to the injury, the claimant has a serious body disfigurement consisting of None.
- [X] 10. a. At the time of the injury, the claimant was paid weekly wages of \$ 1730.00 and demands accounting of days worked and wages earned as provided by law.
- [X] 10. b. Give names and addresses of all employers for whom the claimant has worked since the date of the accident. Claimant has not been able to return to work.
- [X] 11. a. Further grounds of claim: All allowable.
- [X] 11. b. List names and addresses of all physicians or other medical specialists who have seen or treated the claimant as a result of the accident: Concentra, Dr. Rodden - Charleston, SC.
- [X] 11. c. To the best of your knowledge, did you have any prior permanent disability? NO
If yes, describe:
- [X] 12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- [X] 13. a. I am filing a claim. I am not requesting a hearing at this time.
- [] 13. b. I am requesting a hearing.

RECEIVED

Signature of Claimant/Representative

November 4, 2004

Date

Refer to R. 67-205, R. 67-206, R. 67-207, and R. 67-601 through R. 67-615. Questions about the use of this form may be directed to the Commission's Judicial Department.

WCC Form # 50. Rev. Date 9/90
S.C. Workers' Comp. Comm. Employee's Notice of Claim and/or Request for Hearing.

STATE ACCIDENT FUND

Harry B Gregory, Jr.
Director

VIA TELEFAX 843-577-8128
November 17, 2004

CINDY N DANKO
STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON SC 29413-2286

RE: Franklin W Hutson JR vs.
STATE PORTS AUTHORITY
SF# 2004-6198
WCC# 0417736

Dear Ms. Danko:

A cover letter, Form 50 and/or letter of representation are enclosed in reference to the above captioned matter. We have researched our records and found we do not have a completed First Report of Injury on file.

Therefore, I am requesting processing, together with an

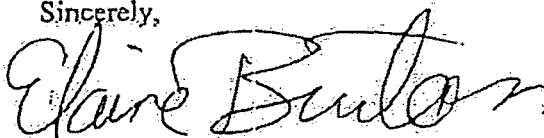
IF YOU HAVE NO D
REQUESTING YOU PLI
"ALLEGED".

PLEASE FAX COMPLE

11/17/04
Cindy Danko
SPA AWARE OF
OUR REP
ING THE ACCIDENT, WE ARE
PLETED FIRST REPORT MARKED
INJURY TO 1-803-896-5801.

Thank you in advance for your prompt attention to this matter.

Sincerely,



Elaine Burton
Claims Initiation

Enclosures

Transmission Report

Date/Time
Local ID
Local Name
Company Logo

11-17-04;10:42AM
8435778128
HUMAN RESOURCES
S. C. STATE PORTS AUTHORITY

This document was confirmed.
(reduced sample and details below)
Document Size Letter-S

PO BOX 22287
CHARLESTON SC 29412-2287
PHONE: (803) 845-1100, EXTENSION #112
(803) 879-8132
FAX: (803) 877-9128



To: Elaine Burton From: Cindy D. Danko
Fax: 803-898-6801 Pages: 2, including cover
Phone: Date: November 17, 2004
Re: Hutson, Frank
Date: 10/21/2004
Claim #2004-605901

Elaine,
The Social Security # on the Form 50 is not correct.

Thanked

CINDY M. DANKO
SCSPA Human Resources
Senior HR Technician

Total Pages Scanned : 2 Total Pages Confirmed : 2

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
1	648	918036955801	11-17-04;10:39AM	2'21"	2 / 2	G3		CP 14.4

Notes :

EC: Error Correct
BC: Broadcast Send
CP: Completed
HS: Host Scan
HF: Host Fax

RE: Resend
MP: Multi-Poll
RM: Receive to Memory
HP: Host Print
HR: Host Receive

PD: Polled by Remote
PG: Polling & Remote
DR: Document Removed
FO: Forced Output
FM: Forward Mailbox Doc.
MB: Receive to Mailbox
PI: Power Interruption
TM: Terminated by user
WT: Waiting Transfer
WS: Waiting Send

SC WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS											
EMPLOYER (NAME & ADDRESS INCL ZIP) State Port Authority Department 12-Crane Department PO Box 22287 Charleston SC 29143				CARRIER/CLAIMS ADMINISTRATION CLAIM NUMBER		REPORT PURPOSE CODE					
				JURISDICTION		JURISDICTION CLAIM NUMBER					
				INSURED REPORT NUMBER							
SIC CODE		EMPLOYER FEIN		EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT)				LOCATION #			
								PHONE #			
CARRIER/CLAIMS ADMINISTRATOR											
CARRIER (NAME, ADDRESS, & PHONE NO) State Accident Fund of South Carolina P.O. Box 102100 Columbia, SC 29221-5000 800-521-6576				POLICY PERIOD TO		CLAIMS ADMINISTRATOR (NAME, ADDRESS, & PHONE NO)					
				CHECK IF APPROPRIATE ☐ SELF INSURANCE							
CARRIER FEIN		POLICY/SELF INSURED NUMBER				ADMINISTRATOR FEIN					
AGENT NAME & CODE NUMBER											
EMPLOYEE/WAGE											
NAME (LAST, FIRST, MIDDLE) Hutson, Frank -			DATE OF BIRTH 5-14-1962		MEMBER		DATE HIRED 5-1-2000		STATE OF HIRE SC		
ADDRESS (LAST, FIRST, MIDDLE) 1			SEX ☒ MALE ☐ FEMALE ☐ UNKNOWN		MARITAL STATUS ☒ UNMARRIED (SINGL/DIV) ☐ MARRIED ☐ SEPARATED ☐ UNKNOWN		OCCUPATION/JOB TITLE Crane Operator II		EMPLOYMENT STATUS Regular Employment		
							NCC CLASS CODE				
PHONE (843) 336-4145			# OF DEPENDENTS 0								
RATE \$23.35/hr		PER: DAY WEEK		MONTH OTHER		# DAYS WORKED/WEEK 5		FULL PAY FOR DAY OF INJURY? ☒ YES ☐ NO		DID SALARY CONTINUE? ☒ YES ☐ NO	
OCCURRENCE/TREATMENT											
TIME EMPLOYEE BEGAN WORK 06:30		AM ☒ PM		DATE OF INJURY/ILLNESS 10/21/2004		TIME OF OCCURRENCE 11:15		AM ☒ PM		LAST WORK DATE 10-21-2004	
										DATE EMPLOYER NOTIFIED 10/23/2004	
										DATE DISABILITY BEGAN	
CONTACT NAME/PHONE NUMBER Michael Campbell/supervisor/843 577 8154				TYPE OF INJURY/ILLNESS Sprain				PART OF BODY AFFECTED back			
DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES? ☒ YES ☐ NO				TYPE OF INJURY/ILLNESS CODE				PART OF BODY AFFECTED CODE			
DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED crane # 39-011 @ N Charleston terminal						ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED crane					
SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED Operating crane						WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED Operating crane					
HOW INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY INJURED THE EMPLOYEE OR MADE THE EMPLOYEE ILL. Operating crane/boom joint rough/back (?location) "jerked".										CAUSE OF INJURY CODE	
DATE RETURNED TO WORK		IF FATAL, GIVE DATE OF DEATH		WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? WERE THEY USED?				YES ☒ NO ☐ YES ☒ NO ☐			
PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) Concentra Medical Center - SC 8780 Rivers Ave., Suite 200B Charleston, SC 29406				HOSPITAL (NAME & ADDRESS)				INITIAL TREATMENT ☐ NO MEDICAL TREATMENT ☐ ADVISORY BY EMPLOYER ☒ ADVISORY CLINIC/HOSP ☐ EMERGENCY CARE ☐ HOSPITALIZED > 24 HRS ☐ PATIENTS MAJOR MEDICAL COSTS ANTICIPATED			
WITNESSES (NAME & PHONE #) denies; n/a										128	
DATE ADMINISTRATOR NOTIFIED 10-26-2004		DATE PREPARED 10-27-2004		PREPARER'S NAME & TITLE Cindy Danko				PHONE NUMBER 843-577-8132			
SEE BACK FOR IMPORTANT STATE INFORMATION/SIGNATURE											

10575060

! FOLLOWED AT WORK AND AWAY FROM WORK.

-----+
ANTICIPATED DATE OF MAXIMUM MEDICAL IMPROVEMENT:

12/27/2004

ACTUAL DATE OF MAXIMUM MEDICAL IMPROVEMENT:

(NONE SPECIFIED)

NEXT VISIT(S):

VISIT DATE: TUESDAY - NOVEMBER 30, 2004 @ 10:30 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

-----+ PATIENT NOTICE -----+
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED !
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR !
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !
-----+

10575060

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040151396

SERVICE DATE:
11/22/2004

PATIENT:
HUTSON, FRANKLIN W.

H-PHONE: 577-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 9:55 AM
CHECK IN: 9:55 AM
CHECK OUT: 10:56 AM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
MARC H. KOLENDER, MD

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

MEDICATIONS:
(NONE)

PATIENT STATUS:

NO ACTIVITY - RETURNING FOR FOLLOW-UP VISIT

REMARKS:

----- EMPLOYER NOTICE -----
! THE PRESCRIBED ACTIVITY RECOMMENDATIONS ARE SUGGESTED GUIDELINES TO !
! ASSIST IN THE PATIENT'S TREATMENT AND REHABILITATION. YOUR EMPLOYEE !
! HAS BEEN INFORMED THAT THE ACTIVITY PRESCRIPTION IS EXPECTED TO BE !

Page 1

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Nurses Notes	Confirmed 12/2/04 appt, f/u unable to work until date 1 month, IW has not reached MMI expected, work status received. All parties notified. lfs		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Carry	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

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REPORT FOR: Frank Hutson			
Treatment date:	12/2/2004	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN	477	Home #:	(843) 336-4145 DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Low Country Orthopedics		
Physician	Low Country Orthopedics	Address:	2880 Tri Com St.
	City: N. Charleston	State:	S.C. Zip: 29406
	Phone # 843-797-5050	Fax #	843-764-2308
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	23110446469892		
Work Status		Anticipated return to work date:	//
Diagnosis			
Medication			

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Wednesday, December 08, 2004 4:18 PM
To: Julie Whittington (E-mail: Danko, Cindy)
Subject: FW: Frank Hutson State Port Authority 10-21-2004

Update.

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

Tricounty Radiology Associated

Dos: 11/17/04

Impression: Mild central canal stenosis, mild right neural foraminal stenosis and mild to moderate left neural foraminal stenosis at L2-3 secondary to a broad-based left central/intraforaminal protrusion.

Bilateral spondylolysis of L5 with a grade I anterior spondylolisthesis, but no significant stenosis.

Dr. Paul Aitchison, MD

*****CONFIDENTIALITY NOTE*****

Please be advised that this transmission and any accompanying documents may contain information that is confidential or that is legally privileged. This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited and may be illegal under federal or state law. If you have received this information in error, please notify the sender immediately and arrange for the return or destruction of these documents. Thank you.

10121056

! FOLLOWED AT WORK AND AWAY FROM WORK.

-----+
ANTICIPATED DATE OF MAXIMUM MEDICAL IMPROVEMENT:

11/16/2004

ACTUAL DATE OF MAXIMUM MEDICAL IMPROVEMENT:

(NONE SPECIFIED)

NEXT VISIT(S):

VISIT DATE: THURSDAY - OCTOBER 28, 2004 @ 11:30 AM

PROVIDER/FACILITY: MARC H. KOLENDER, MD

-----+ PATIENT NOTICE -----+
|

! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. |
-----+
|

10121056

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040148364

SERVICE DATE:
10/26/2004

PATIENT:
HUTSON FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 10:54 AM
CHECK IN: 10:54 AM
CHECK OUT: 12:44 PM
RECORDABLE: YES
VISIT TYPE: NEW

TREATING PROVIDER:
MARC H. KOLENDER, MD

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

MEDICATIONS:
(NONE)

PATIENT STATUS:

NO ACTIVITY - RETURNING FOR FOLLOW-UP VISIT

REMARKS:

----- EMPLOYER NOTICE -----
! THE PRESCRIBED ACTIVITY RECOMMENDATIONS ARE SUGGESTED GUIDELINES TO !
! ASSIST IN THE PATIENT'S TREATMENT AND REHABILITATION. YOUR EMPLOYEE !
! HAS BEEN INFORMED THAT THE ACTIVITY PRESCRIPTION IS EXPECTED TO BE !

Page 1

Nurses Notes	Confirmed appt key @ Concentra Medical Center 843-572-0810 dx lumbar sacral strain /placed OOW until 10/28 /RTC 10/28 /rx anti-inflammatories & muscle relaxers/6 PT vists ordered. PT auth# 26100446461005 given to Mel @ provider/PT to begin 10/27 & end 11/12 /Mel to contact IW. All parties updated. pss		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

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REPORT FOR: Frank Hutson			
Treatment date:	10/26/2004	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN		Home #:	(843) 336-4145 DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Initial Treatment		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	26100446467914		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

Concentra Medical Centers (SC)
8780 Rivers Ave Ste 200-B North Charleston, SC 29405
Phone: (843) 572-0810 Fax: (843) 572-0817

Transcription

Patient:	Unlabeled - Clin W.	Service Date:	10/26/2004
Soc. Sec. #:		Injury Date:	10/21/2004
Date of Birth:	5/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston	Dictated By:	Marc H Kolender, MD
Service ID #:	1040148364	Diagnosis:	846.0 Lumbosacral Strain

Notes: Of note, pt expresses some discontent w/ work.

PLAN:

MEDICATIONS:

Celebrex 200 mg bid and Cyclobenzaprine 10 mg qhs

PHYSICAL THERAPY:

Schedule for therapy, evaluate and treat for injury care.

ACTIVITY STATUS:

No activity. He is medically unable to work.

RETURN FOR EVALUATION: Thursday

Return if symptoms worsen, if you develop any new symptoms and if pain increases.

The patients company was contacted today.

Diagnosis, treatment plan and expectations were discussed with the patient. Advised of medication usage and side effects. The patient was instructed to return to the clinic as needed.

Dictated But Not Read
Dictated On: 10/26/2004 12:39 PM

Dictated By: Marc H Kolender, MD

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259 Last Update: 10/26/2004 12:39:02

Last Updated By: Kolendermh

Transcription Printed Date: 10/26/2004

r_transcription Page 2 of 2

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Form Revision Date: 09/12/2002

Concentra Medical Centers (SC)
 5780 Rivers Ave Ste 200-B North Charleston, SC 29406
 Phone: (843) 572-0810 Fax: (843) 572-0817

Transcription

Patient:	Hudson, Franklin W.	Service Date:	10/26/2004
Soc. Sec. #:		Injury Date:	10/21/2004
Date of Birth:	5/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston	Dictated By:	Marc H Kolender, MD
Service ID #:	1040148364	Diagnosis:	846.0 Lumbosacral Strain

Notes:

CHIEF COMPLAINT:

Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:

Patient states "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

HISTORY OF PRESENT ILLNESS:

States on 10/21/04, while operating crane, he was jarred and/or jerked on two separate occasions. No immediate pain until the following AM. Pain became severe. Has not RTW due to pain. Notes occ parasthesias into bilateral lateral legs, and brief numbness in bilateral feet. No radiation. Saw PMD on 10/25, who did not Tx due to work related nature of injury. No meds taken. Pain originally 10/10, today 4-5/10. Last 2 days, he has just laid in bed or on couch. Used heat. No hx of prior back injury. Asks for MRI. The pain is located on bilateral lumbosacral region. The symptoms are exacerbated by Activity, flexion, sitting or standing. Denies urinary incontinence and fecal incontinence. Job/Title/Position: Crane operator.

PAST MEDICAL, SOCIAL, FAMILY HISTORY: Noncontributory based upon review of comprehensive questionnaire.

ROS: Noncontributory based upon review of comprehensive questionnaire.

PE:

MUSCULOSKELETAL:

Lumbar:

- Pt. is in moderate distress
- Gross exam of the spine reveals no swelling, ecchymosis, changes in spinal curvature, or other abnormalities and guarding in right sidebending
- Reflex testing is normal and equal bilaterally to Achilles and Patellar.
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Normal strength to dorsi/plantar flexion of great toe.
- Lumbar ROM is decreased to all planes mildly to moderately with pain, flex and ext are worst.
- Sensation is noted to be within normal limits
- palpation is positive for pain at L3 L4 L5 mildly.
- Negative tissue texture change palpated

- noted with flexed posture

- Circulatory exam is normal with equal pulses bilaterally.

X-RAY / LAB REPORT:

Lumbar series:

LS-spine x-ray: Patient advised that the x-ray reading was preliminary. Negative.

ASSESSMENT:

1. Lumbosacral strain. 846.0. Moderate to severe
- Of note, pt expresses some discontent w/ work.

Dictated But Not Read

Dictated On: 10/26/2004 12:39 PM

Dictated By: Marc H Kolender, MD

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10-20-04 12:14 PM HUGER, FRANKLIN W. 18435120811
Service ID: 1040140012
X-ray Number: 435884

Concentra Medical Centers (SC)
8780 Rivers Ave Ste 200-B, North Charleston, SC 29405
Phone: (843) 572-0810 Fax: (843) 572-0817

T-bb7 P02/02 U-397
Service Date: 10/26/2004
Case Date: 10/21/2004

INJURY RECHECK ENCOUNTER

Patient: Hutson, Franklin W. Address: 121 Daniels Way Employer: SC State Ports Authority Contact: Misty Walker
SSN: Address: PO Box 22287 Phone: (843) 577-8167
DOB: 05/14/1962 Age: 42 HUGER, SC 29450 Ext.:
Gender: M Phone: (843) 336-4145 CHARLESTON, SC 29413 Fax: (843) 577-8128

Previous Services:	Date / Time	Service	Activity Status	Provider	Center
	10/28/2004 8:15 am	Rescheduled Appointment		Marc H. Kolender, MD	CMC - Charleston
	10/27/2004 8:04 am	Recheck		Chris Studebaker, PT	CMC - Charleston
	10/26/2004 10:54 am	New	No Activity	Marc H. Kolender, MD	CMC - Charleston

Chief Complaint Review:

10/26 PT = 7.

Sore thigh (R) & L hip area.

- Celebrex
- Flexeril

Not working

Expresses desire to transfer

Interim History:

+ started work positive after
to improve family injury
"to avoid further"

Physical Examination (Positive and Significant Negatives)

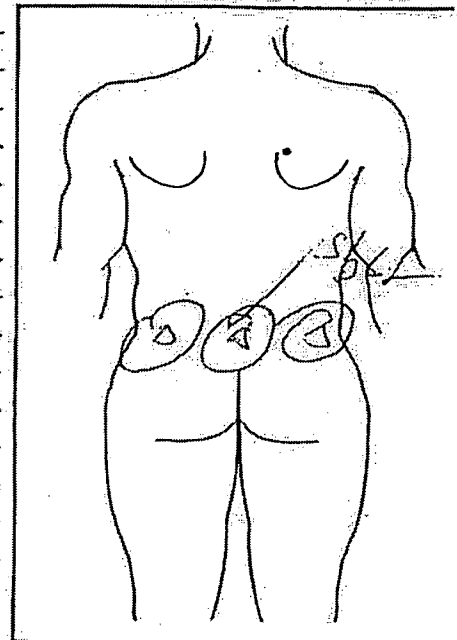
✓

Swollen L hip → CBP.

S. flexed posture

not working

L hip & Flex & Lg
all pain



Back

Lab/X-ray

Assessment/Analysis:

Diagnosis:

Treatment Plan

PI - Celebrex
PI - Flexeril
rest / ice

10/10 / physical & strength

- Alternate sitting / standing 9/10-15 minutes

Physician's Signature:

Dictated:

Date:

By:

Spoke with

at Company regarding status.

Date:



**Concentra Medical Center
Charleston North #4211**

8780 Rivers Ave. Ste. 200 Bld. B
North Charleston, South Carolina 29408
Phone: (843) 572-0810
Fax: (843) 572-0817

Fax

To: <u>Cindy Danko</u>	From: <u>Cheryl</u>
Co. Name: <u>S.C. Parts</u>	Date: _____
Fax: <u>572-8128</u>	Pages: _____
Phone: _____	CC: _____
Re: <u>Hutson</u>	
☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply	
Comments: _____	

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10167996
ALTERNATE SITTING AND STANDING EVERY 10-15 MIN.

+----- EMPLOYER NOTICE -----+
! THE PRESCRIBED ACTIVITY RECOMMENDATIONS ARE SUGGESTED GUIDELINES TO !
! ASSIST IN THE PATIENT'S TREATMENT AND REHABILITATION. YOUR EMPLOYEE !
! HAS BEEN INFORMED THAT THE ACTIVITY PRESCRIPTION IS EXPECTED TO BE !
! FOLLOWED AT WORK AND AWAY FROM WORK. !
! !
+-----+
!

ANTICIPATED DATE OF MAXIMUM MEDICAL IMPROVEMENT:
11/25/2004
ACTUAL DATE OF MAXIMUM MEDICAL IMPROVEMENT:
(NONE SPECIFIED)

NEXT VISIT(S):

VISIT DATE: FRIDAY - OCTOBER 29, 2004 @ 11:00 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: MONDAY - NOVEMBER 01, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: TUESDAY - NOVEMBER 02, 2004 @ 8:15 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

+----- PATIENT NOTICE -----+
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED !
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR !
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !
+-----+
!

10167996

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040148612

SERVICE DATE:
10/28/2004

PATIENT:
HUTSON, FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 8:03 AM
CHECK IN: 8:03 AM
CHECK OUT: 8:27 AM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
MARC H. KOLENDER, MD

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

MEDICATIONS:
(NONE)

PATIENT STATUS:

MODIFIED ACTIVITY - RETURNING FOR FOLLOW-UP VISIT

RESTRICTED ACTIVITY:
RETURN TO WORK ON 10/28/2004 WITH THE FOLLOWING RESTRICTIONS
NO REPETITIVE LIFTING OVER 10 LBS.
NO BENDING GREATER THAN 0 TIMES PER HOUR
NO PUSHING AND/OR PULLING OVER 10 LBS. OF FORCE
NO SQUATTING AND/OR KNEELING

REMARKS:

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Page 1

Nurses Notes	Appt.confirmed, medical notes received,f/y 11/2/04 @ 8:15am,rtw: modified duty. no repetitive lifting over 10lbs,no bending no more than 0 times per hour, no pushing over 10lbs of force,no squatting / kneeling, alternate sitting/standing every 10-15 minutes		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A		Right Hand Use
	Manipulation: N/A		Grasp: N/A Push: N/A
Right Foot Use	N/A	Left Foot Use	Manipulation: N/A
Balance	No Limitations	Bend at waist	N/A
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

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REPORT FOR: Frank Hutson			
Treatment date:	10/28/2004	Authorizing case manager	Peggie Stoneking
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN	→	Home #: (843) 336-4145	DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	26100446467952		
Work Status		Anticipated return to work date: //	
Diagnosis			
Medication			

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10194550

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040148823

SERVICE DATE:
10/29/2004

PATIENT:
HUTSON FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 10:54 AM
CHECK IN: 10:54 AM
CHECK OUT: 12:14 PM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
CHRIS STUDEBAKER, PT

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

NEXT VISIT(S):

VISIT DATE: MONDAY - NOVEMBER 01, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: TUESDAY - NOVEMBER 02, 2004 @ 8:15 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

+----- PATIENT NOTICE -----+
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !
+-----+

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Page 1

10234552

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040148965

SERVICE DATE:
11/01/2004

PATIENT:
HUTSON FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 10:29 AM
CHECK IN: 10:30 AM
CHECK OUT: 11:55 AM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
CHRIS STUDEBAKER, PT

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

NEXT VISIT(S):

VISIT DATE: TUESDAY - NOVEMBER 02, 2004 @ 10:15 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

VISIT DATE: WEDNESDAY - NOVEMBER 03, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: THURSDAY - NOVEMBER 04, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

+----- PATIENT NOTICE -----+
! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED !
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR !
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION. !
+-----+

Danko, Cindy

From: Peggie Stoneking [pstoneking@compendiumusa.net]
Sent: Tuesday, October 26, 2004 8:50 AM
To: Julie Whittington (E-mail); Danko, Cindy; Kellie Casper
Subject: Frank - Hutson DOI 10/21/04 State Port Auth

New Injury.

Operating crane/boom joint rough/back (?location) "jerked". Caller states unknown if safety equipment used/has not missed work/no second employment. Caller states unsure why IW delayed in reporting injury/plans on counseling IW. IW cell number 843 696 6187. Carmen @ Concentra Medical Center states IW may come now for tx. Carmen advised drug screen needed/given auth# 26100446461001 for visit. Caller agrees to advise IW of appt/roles & responsibilities of WC/CM name Kellie Casper. File pending doh/salary. All parties updated. pss

Peggie Stoneking
Comp Endium Services, Inc.
Main Phone: 877-709-2667
Main Fax: 877-710-2667
Direct Fax: 866-231-5144

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Danko, Cindy

From: Kellie Casper [kcasper@compendiumusa.net]
Sent: Friday, October 29, 2004 9:59 AM
To: jwhittington@saf.state.sc.us
Cc: Danko, Cindy
Subject: Frank Hutson State Port Authority 10-21-2004

10/28/04

F/U: 11/2/04 @ 8:15am

DX: Lumbar Strain

Rtw: modified duty. no repetitive lifting over 10lbs, no bending no more than 0 times per hour, no pushing over 10lbs of force, no squatting / kneeling, alternate sitting/standing every 10-15 minutes.

Dr. Kolender <MD/all parties notified kbc

Kellie Casper, LPN
Medical Manager Nurse Consultant
CompEndium Services Inc
www.compendiumusa.net
Main Phone: 1-877-709-2667
Main Fax: 1-877-710-2667
Direct Fax: 1-866-526-4874

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Danko, Cindy

From: Kellie Casper [kcasper@compendiumusa.net]
Sent: Tuesday, November 02, 2004 11:02 AM
To: jwhittington@saf.state.sc.us
Cc: Danko, Cindy; Allison May
Subject: Hutson, Frank DOI 10/21/04 State Port Auth

IW OOW since 10/26/04. Call to Cindy Danko to verify - States has been OOW since 10/26/04. States IW told her in course of conversation that he had seen personal MD prior to seeing our MD. States that IW has already been paid until 10/29/04. States IW has to come in and sign TTD paperwork. Today is day 7 - remains OOW./all parties notified kbc

Alison, please re-assign.

Thanks

Kellie Casper, LPN
Medical Manager Nurse Consultant
CompEndium Services Inc
www.compendiumusa.net
Main Phone: 1-877-709-2667
Main Fax: 1-877-710-2667
Direct Fax: 1-866-526-4874

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10254351

----- EMPLOYER NOTICE -----

! THE PRESCRIBED ACTIVITY RECOMMENDATIONS ARE SUGGESTED GUIDELINES TO
! ASSIST IN THE PATIENT'S TREATMENT AND REHABILITATION. YOUR EMPLOYEE
! HAS BEEN INFORMED THAT THE ACTIVITY PRESCRIPTION IS EXPECTED TO BE
! FOLLOWED AT WORK AND AWAY FROM WORK.
!

ANTICIPATED DATE OF MAXIMUM MEDICAL IMPROVEMENT:
11/30/2004

ACTUAL DATE OF MAXIMUM MEDICAL IMPROVEMENT:
(NONE SPECIFIED)

NEXT VISIT(S):

VISIT DATE: WEDNESDAY - NOVEMBER 03, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: THURSDAY - NOVEMBER 04, 2004 @ 10:30 AM
PROVIDER/FACILITY: CHRIS STUDEBAKER, PT

VISIT DATE: TUESDAY - NOVEMBER 09, 2004 @ 10:30 AM
PROVIDER/FACILITY: MARC H. KOLENDER, MD

----- PATIENT NOTICE -----

! IT IS ESSENTIAL TO YOUR RECOVERY THAT YOU KEEP YOUR SCHEDULED
! APPOINTMENTS, BUT SHOULD YOU NEED TO RESCHEDULE OR CANCEL YOUR
! APPOINTMENT, PLEASE CONTACT THE CLINIC. THANK YOU FOR YOUR COOPERATION.
!

10254351

Injury Activity Status Report for Franklin Hutson

CONCENTRA MEDICAL CENTERS (SC)
8780 RIVERS AVE STE 200-B,
NORTH CHARLESTON, SC 29406
PHONE: (843) 572-0810
FAX: (843) 572-0817

CLAIM NUMBER:
(NONE)

CASE ID:
1040074774

CASE DATE:
10/21/2004

SERVICE ID:
1040149125

SERVICE DATE:
11/02/2004

PATIENT:
HUTSON, FRANKLIN W.

H-PHONE: (843) 336-4145
W-PHONE: (843) 577-8750

EMPLOYER:
SC STATE PORTS AUTHORITY
PO BOX 22287
CHARLESTON, SC 29413
AUTH BY: PEGGY

CONTACT:
MISTY WALKER
PHONE: (843) 577-8167
FAX: (843) 577-8128

THIS VISIT:
SIGN IN: 10:00 AM
CHECK IN: 10:01 AM
CHECK OUT: 10:41 AM
RECORDABLE: YES
VISIT TYPE: RECHECK

TREATING PROVIDER:
MARC H. KOLENDER, MD

DIAGNOSIS:
846.0 - LUMBOSACRAL STRAIN

MEDICATIONS:
(NONE)

PATIENT STATUS:

MODIFIED ACTIVITY - RETURNING FOR FOLLOW-UP VISIT

RESTRICTED ACTIVITY:
RETURN TO WORK ON 11/02/2004 WITH THE FOLLOWING RESTRICTIONS
NO REPETITIVE LIFTING OVER 15 LBS.
NO BENDING GREATER THAN 0 TIMES PER HOUR
NO PUSHING AND/OR PULLING OVER 15 LBS. OF FORCE

REMARKS:
ALTERNATE SITTING & STANDING EVERY 15 MIN.

Page 1

Transmission Report

Date/Time
Local ID
Local Name
Company Logo

11- 2-04; 1:38PM
8435778128
HUMAN RESOURCES
S. C. STATE PORTS AUTHORITY

This document was confirmed.
(reduced sample and details below)
Document Size Letter-S

Donors Medical Centers (SC)
4700 Highway 90, Suite 100, Charleston, SC 29405
Phone: (803) 733-0000 Fax: (803) 733-0000

Transcription

Patient: W. Service Date: 1/12/2004
Doc. Ref. #: Injury Date: 1/12/2004
Date of Birth: 01/12/1962 Age: 42 Employee: SC State Ports Authority
Service Location: CHC - Charleston Dictated By: Mary H. Kotlander, MD
Service ID #: 1040149126 Diagnostic: 846.0 Lumbosacral Strain

Notes:

CHIEF COMPLAINT:
Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:
Patient states "The crane lost control power and slammed on breaks and one time the container hung in the coil guide then dropped and jared me up and down hard."
Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:
He feels the pattern of symptoms is no better. Patient has not been working because no light duty available. Patient has been taking their medications and has noted improvement. Exo states Patient course remains. Patient has had physical therapy and feels better. The pain is located on lumbosacral region. Pain intensity Level: 8/10. The pain did not radiate. The symptoms are exacerbated by flexion or extension. Associated numbness of one into right foot. Denies posttraumatic urinary incontinence and fecal incontinence.

MUSCULOSKELETAL:
Lumbar: - Pt. is in mild distress
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Lumbar ROM is decreased to all planes moderately with pain
- Sensation is noted to be within normal limits
- ROM testing reveals some range in all planes as previous visit
- palpation is positive for pain in L3 L4 L5 bilaterally
- Waddells are positive for: And overreaction
Normal gait. Reflexes symmetric.

X-RAY / LAB REPORT:
Lumbar series:
LS-aptro x-ray: Mild lumbar spondylitis.

ASSESSMENT:
1. Lumbosacral strain, 846.0.

PLAN:
MEDICATIONS:
D/C Neurid
Celebrex 200 bid and Soma 400 1-2 qhs
Continue with the previous therapy schedule.

ACTIVITY STATUS:
Modified activity
- Upgrade Restrictions.
- No lifting over 15 lbs.
- No bending more than 0 times per hour.
- No pushing/pulling over 16 lbs. of force. Should alternate sitting and standing every 15 minutes.

RETURN FOR EVALUATION: in 1 week
Return if symptoms worsen, if you develop any new symptoms and if pain increases.
Diagnosis, treatment plan and expectations were discussed with the patient. Advised of medication usage and side effects. The patient was instructed to return to the clinic as needed.

Dictated But Not Read
Dictated On: 1/12/2004 10:44 AM

Dictated By: Mary H. Kotlander, MD

Last Updated: 1/12/2004 10:44:23
Last Updated By: LKotlander
Transcription Printed On: 1/12/2004
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Page 1 of 1
Page 1 of 1

Total Pages Scanned : 3 Total Pages Confirmed : 3

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
1	354	8711	11- 2-04; 1:37PM	56"	3/ 3	EC		CP 26.4

Notes:

EC: Error Correct
BC: Broadcast Send
CP: Completed
IS: Host Scan
IF: Host Fax

RE: Resend
MP: Multi-Poll
RM: Receive to Memory
HP: Host Print
HR: Host Receive

PD: Polled by Remote
PG: Polling a Remote
DR: Document Removed
FO: Forced Output
FM: Forward Mailbox Doc.

MB: Receive to Mailbox
PI: Power Interruption
TM: Terminated by user
WT: Waiting Transfer
WS: Waiting Send



CONCENTRA

**Concentra Medical Center
Charleston North #4211**

8780 Rivers Ave. Ste. 200 Bld. B
North Charleston, South Carolina 29408
Phone: (843) 572-0810
Fax: (843) 572-0817

Fax

ml

To: <i>Cindy</i>	From: <i>577-8128</i>		
Co. Name:	Date:		
Fax:	Pages:		
Phone:	CC:		
Re:			
☐ Urgent	☐ For Review	☐ Please Comment	☐ Please Reply

•Comments:

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"This communication is confidential and is intended only for the person named above. No one other than the named recipient is authorized to use the information contained herein in any manner. If you have received this communication in error, please call the sender (collect if necessary) to identify the error."

11-02-04 12.15 FROM CONCENTRA NORTH #4211 18435/20811
ServiceID: 1040149125
X-ray Number: 435884

Concentra Medical Centers (SC)
8780 Rivers Ave Ste 200-B North Charleston, SC 29405
Phone: (843) 572-0810 Fax: (843) 572-0817

T-786 P02/04 U-598
Service Date: 11/02/2004
Case Date: 10/21/2004

Recheck Injury Flow Sheet

Patient: Hufson Franklin W.

SSN: Age: 42

Address:

Program: Compendium

Employer Location: SC State Ports Authority

Address:

PO Box 22287

CHARLESTON, SC 29413

Contact: Misty Walker

Role:

Phone: (843) 577-8167 Ext.:

Fax: (843) 577-8128

Home: (843) 338-4145

Work: (843) 577-8750 Ext.:

Auth. by:

Peggy

Previous Services:	Date / Time	Service	Activity Status	Provider	Center
	11/02/2004 10:15 am	Rescheduled Appointment		Marc H. Kolender, MD	CMC - Charleston
	11/01/2004 10:30 am	Recheck		Chris Studebaker, PT	CMC - Charleston
	10/29/2004 10:54 am	Recheck		Chris Studebaker, PT	CMC - Charleston
	10/28/2004 8:15 am	Rescheduled Appointment		Marc H. Kolender, MD	CMC - Charleston
	10/28/2004 8:03 am	Recheck	Modified Activity	Marc H. Kolender, MD	CMC - Charleston
	10/27/2004 8:04 am	Recheck		Chris Studebaker, PT	CMC - Charleston
	10/26/2004 10:54 am	New	No Activity	Marc H. Kolender, MD	CMC - Charleston

Employer Notes:

Additional Contacts: John Skorupski 843-577-8780, Cindy Danko 517-8132, Lisa Grant handles pre physicals 577-8187, Denise Futrell 577-8129, & Daysha Alston Gordon 843-577-8129. Call Compendium for all WC Injury auth 877-709-2667 fax 877-710-2667. Fax over initial PT Eval, Limit PT to 6 visits per auth. Location Notes:

Protocol Notes

Call Compendium for specialty referrals. It is not necessary to call the co for approval. All results for treatment will go to Cindy Danko via email cdanko@scspsa.com

Program Notes :

- 1- All visits must be authorized
- 2- All authorization must come from CompEndium @ 877-709-2667
- 3- CompEndium has own RTW form. Please complete form each visit and fill in auth# @ bottom of form
- 4- FAX CompEndium form after EACH visit to 877-710-2667

Recheck Injury Flow

Sign-In 10:00 am
Admit 10:01 am
Check Out

Initials

[Handwritten initials]

Registration Completed
Treatment Initiated

Time

10:02

Initials

[Handwritten initials]

Diagnosis Information

922.3 Back Contusion
724.5 Back Pain
847.9 Back Strain

847.0 Cervical Strain
847.4 Coccyx Sprain
724.2 Lumbar Pain

847.2 Lumbar Strain
847.3 Sacrum Strain
840.9 Shoulder Strain L/R

724.1 Thoracic Spine Pain
847.1 Thoracic Strain

Treating Physician: *[Handwritten signature]*

Primary Diagnosis Severity: Severe Moderate Mild NOF

Other Diagnosis:

Activity Status for Back Injury

Restrictions of Primary Care Physician

Regular activity

Released from care

☒ Modified activity

Off work rest of shift with limited activity as follows:

- ☒ No repetitive lifting over 15 lbs
- ☒ No prolonged standing/walking longer than 15 min
- ☒ No bending > 2 times/hr
- ☒ No pushing/pulling over 15 lbs of force
- ☒ No reaching above shoulders
- ☒ No squatting/kneeling
- ☒ Keep wound clean and dry
- ☒ Should be sitting % of the time
- ☒ Unable to drive company vehicle
- ☒ Limited use of

No activity

Dates: Anticipated MMI

Actual MMI

Permanent & Stationary

Remarks:

Is this case recordable? Yes

Medications:

☐ Dispensed

☐ OTC

☒ Prescribed

Return for evaluation on: Mon Tue Wed Thu Fri Sat Sun

Date: 11/9 Time: 10:30 AM PM

Recheck level: 1 2 3 4 5 10:30

Schedule for therapy times per week for weeks

Patient is referred to:

Transferred Care

Released from medical list

Concentra Medical Centers (SC)8780 Rivers Ave Ste 200-B North Charleston, SC 29408
Phone: (843) 572-0810 Fax: (843) 572-0817**Transcription**

Patient:	Hutson, Franklin W.	Service Date:	11/2/2004
Soc. Sec. #:		Injury Date:	10/21/2004
Date of Birth:	5/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston	Dictated By:	Marc H Kolender, MD
Service ID #:	1040149125	Diagnosis:	846.0 Lumbosacral Strain

Notes:Dictated But Not Read
Dictated On: 11/2/2004 10:44 AMDictated By: Marc H Kolender, MD
1502747 Update: 11/02/2004 10:44:20
r_transcription Page 2 of 2Last Updated By: kolendmh
© 1998 - 2004 Concentra Health Services, Inc. All Rights Reserved.Transcription Printed Date: 11/02/2004
Form Revision Date: 00/12/2002

Concentra Medical Centers (SC)
 8780 Rivers Ave Ste 200-B North Charleston, SC 29405
 Phone: (843) 572-0810 Fax: (843) 572-0817

Transcription

Patient:	Unknown W.	Service Date:	11/2/2004
Soc. Sec. #:	-	Injury Date:	10/21/2004
Date of Birth:	5/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston	Dictated By:	Marc H Kolender, MD
Service ID #:	1040149125	Diagnosis:	846.0 Lumbosacral Strain

Notes:

CHIEF COMPLAINT:

Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:

Patient states: "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:

He feels the pattern of symptoms is no better. Patient has not been working because no light duty available. Patient has been taking their medications and has noted improvement. Ex: states Flexeril causes nausea. Patient has had physical therapy and feels better. The pain is located on lumbosacral region. Pain Intensity Level: 8/10. The pain did not radiate. The symptoms are exacerbated by flexion or extension. Associated numbness of occ into right foot. Denies paresthesias, urinary incontinence and fecal incontinence.

PE:

MUSCULOSKELETAL:

Lumbar: - Pt. is in mild distress

- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain

- Lumbar ROM is decreased to all planes moderately with pain

- Sensation is noted to be within normal limits

- ROM testing reveals same range in all planes as previous visit

- palpation is positive for pain at L3 L4 L5 bilaterally

- Waddells are positive for: And overreaction

Normal gait. Reflexes symmetric.

X-RAY / LAB REPORT:

Lumbar series:

LS-spine x-ray: Mild lumbar spondylosis

ASSESSMENT:

1. Lumbosacral strain. 846.0.

PLAN:

MEDICATIONS:

D/C flexeril

Celbrex 200 bid and Skelaxin 400 1-2 qhs

Continue with the previous therapy schedule.

ACTIVITY STATUS:

Modified activity

- Upgrade Restrictions.

- No lifting over 15 lbs.

- No bending more than 0 times per hour.

- No pushing/pulling over 15 lbs. of force. Should alternate sitting and standing every 15 minutes

RETURN FOR EVALUATION: In 1 week

Return if symptoms worsen, if you develop any new symptoms and if pain increases.

Diagnosis, treatment plan and expectations were discussed with the patient. Advised of medication usage and side effects. The patient was instructed to return to the clinic as needed.

Dictated But Not Read

Dictated On: 11/2/2004 10:44 AM

Dictated By: Marc H Kolender, MD

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Nurses Notes	Received note from Concentra Medical Centers for 11/02 appt. Pt did attend. Pt may RTW 11/02, but may not lift over 15 lbs, bend, push or pull. Next appt is 11/09. All parties notified. asr		
Projected Length Of Recovery (MMI)	null	PRI Rating, if applicable % to the	
Follow Up Care			
Referral Information			
	In an Hour day, the IW can:		
Sit		Stand	
Walk		Drive	
Cary	0-10 lb. : N/A	Lift	0-10 lb. : N/A
	11-24 lb. : N/A		11-24 lb. : N/A
	25-50 lb. : N/A		25-50 lb. : N/A
	51-100 lb. : N/A		51-100 lb. : N/A
	100+ lb. : N/A		100+ lb. : N/A
Left Hand use	Grasp: N/A Push: N/A Right Hand Use		Grasp: N/A Push: N/A
	Manipulation: N/A		Manipulation: N/A
Right Foot Use	N/A	Left Foot Use	N/A
Balance	No Limitations	Bend at waist	No Limitations
Climb	No Limitations	Crawl	No Limitations
Kneel	No Limitations	Lift Overhead	No Limitations
Reach	No Limitations	Reach Overhead	No Limitations
Squat	No Limitations	Twist	No Limitations
Other Limitations			

REPORT FOR: Frank Hutson			
Treatment date:	11/2/2004	Authorizing case manager	Kellie Casper
Employer	State Port Authority	Work site	Department 12-Crane Department
Job description	Crane Operator II		
IW name	Hutson, Frank		
SSN	-----004	Home #:	(843) 336-4145 DOB: 5-14-1962
Address:			
Job title			
How long with employer	Years	How long in position	Years
Medical Facility	Concentra Medical Center - SC		
Physician	Concentra Medical Center - SC	Address: 8780 Rivers Ave., Suite 200B	
	City: Charleston	State: SC	Zip: 29406
	Phone # 843-572-0810	Fax # 843-572-0817	
Type of Visit	Follow-Up Care/Recheck		
Description of Injury or Illness:	Operating crane/boom joint rough/back (?location) "jerked".		
Date of Occurrence:	10/21/2004	Time of Occurrence:	23:15
Date Reported	10/23/2004	Time Reported	17:30
Adjustor		Claim Number	
Treatment:	Physical Therapy Provider: No Therapy		
	Diagnostic Test Provider: No Diagnostic Tests		
	Procedure Provider: No Procedures		
Prognosis	Null	Work Relation	
Authorization Number	29100466538226		
Work Status	Anticipated return to work date: //		
Diagnosis			
Medication			

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October 29, 2004

JAMES PINSON III
P. O. Box 22287
Charleston, SC 29413

Dear JAMES PINSON III:

These are your claims which we either decided or received on October 27, 2004.

The letter D in the left column means the claim is DENIED. The letter A means ACCEPTED. The letter R means RECORDED. If blank, we only acknowledge receipt of the ACORD Form. LT in the right column means the case involves some lost time. 12A and 12M mean a course of medical treatment is involved. If you see errors or have questions, please call Joe IEI at 803-896-5800.

ACCEPTED means only that State Fund has accepted the case as a compensable accident and injury within the meaning of the workers' compensation law. Medical expenses for approved treatment of the injury described in the ACORD form will be paid when submitted in the proper amount with proper documentation.

DENIED means State Fund had decided the claim is NOT compensable so that no compensation, medical bill or other expense, should be paid. All such denials are, of course, subject to reversal. Should a DENIAL decision be changed it will be listed in a subsequent letter like this one as an ACCEPTED claim.

RECORDED means we received the ACORD Form and closed the file because no medical treatment was required. If medical treatment should be required within the statutory period the case will be reopened and a compensability decision made.

Dec.	Employee	Claim Number	Date Injury	Date Reported	Claim Type
	HUTSON, FRANK	2004-005801	10/21/2004	10/27/2004	12M

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JEAN R. HUTCHINSON, M.ED., CRC, CVE
Vocational Consultant

715 N. Godfrey Park Place
Charleston, S.C. 29407

(843) 766-1418
Fax (843) 763-0501

EMPLOYABILITY EVALUATION

PERSONAL DATA:

Name: Franklin Hutson
Date of Birth: May 14, 1962 (43 years of age)
Marital Status: Divorced, 1 child (age 17 years)
Height: 5'9"
Weight: 190 pounds
Date of Injury: October 21, 2004
Date Interviewed: September 13, 2005

EDUCATIONAL BACKGROUND:

Mr. Hutson stated that he graduated from high school and attended Trident Technical College for one year taking culinary arts courses. He did not serve in the military. Mr. Hutson has a current driver's license, but reported increased pain when riding or driving longer distances.

WORK HISTORY:

Mr. Hutson reported the following work experience: While in high school, he worked for his stepfather as a crane operator. Mr. Hutson then worked as a mobile and crawler crane operator at the Charleston Naval Shipyard for two years, as an overhead crane operator at General Dynamics for three years, and at the Charleston Naval Shipyard as a rigger for one year and a bridge crane operator for two and one-half years. He next worked for several bridge and road construction companies as a crawler and mobile crane operator for three years. Mr. Hutson last worked for the South Carolina State Ports Authority as a container crane operator and had worked in this capacity for approximately nine years when he was injured.

Hutson, Franklin
Employability Evaluation
Page Two

DESCRIPTION OF ACCIDENT/INJURY/CONDITION:

Mr. Hutson was injured on October 21, 2004, while employed as a container crane operator. He stated that as he was attempting to remove a container from a ship, the container became stuck. Mr. Hutson noted that the container suddenly dropped into place, jarring and bouncing the crane cab. He stated that he was thrown forward, felt sore, and thought he had pulled a muscle. Mr. Hutson noted that he began to experience significantly increasing pain and sought medical attention. He has since undergone physical therapy, lumbar epidural steroid injections, and use of a back brace. Mr. Hutson has diagnoses of disc bulge at L2-3, disc bulge at L5-S1, L5 spondylosis, and low back pain.

At the present time, Mr. Hutson states that he continues to have pain in his lower back that he described as "aching, stabbing, throbbing, and tingling"; in his right hip that he described as "sharp"; in both legs that he described as "shooting"; and in his left toes that he described as "sharp". He noted that his pain is constant though varying in intensity and is exacerbated by any increase in activity and by cold, damp weather. For limited and temporary relief of pain, Mr. Hutson stated that he takes pain medications that make him sleepy, uses a heating pad, takes hot showers, and must lie down.

With regard to functional activities, Mr. Hutson reported the following: He estimated that he can now walk for approximately ten minutes; but cannot negotiate rough or uneven terrain, run, jump, always maintain balance due to right leg weakness, climb stairs, climb a ladder, stand for extended periods of time, stoop on other than an occasional basis, bend from the waist, lean over without pain, or lift/carry more than approximately fifteen pounds for table/waist level. Mr. Hutson was observed to sit for approximately thirty minutes and then to alternately sit and stand throughout the Employability Evaluation interview.

With regard to activities of daily living, Mr. Hutson stated that he lives by himself and performs light household chores by working a little at a time and taking frequent rest breaks. He reported significant difficulty sleeping in that his pain often awakens him and he cannot achieve more than three to four hours of sleep per night. Mr. Hutson noted that he is now experiences daily fatigue and irritability. He reported that he continues to be independent in self-care tasks, but requires more time to perform them. Mr. Hutson stated that he now performs no yardwork or home maintenance tasks and can no longer enjoy his former hobby of fishing.

Hutson, Franklin
October 4, 2005
Page Three

DESCRIPTION OF USUAL OCCUPATIONS:

Most recently and for most of his work life, Mr. Hutson has worked as a crane operator. His recent work was with the South Carolina Ports Authority and he operated a large container crane. In this work, Mr. Hutson was required to climb numerous stairs and ladders to reach the crane cab. In the crane cab, he was required to operate joy sticks and levers and sit such that he was looking down between his legs. Mr. Hutson moved containers and break bulk cargo from the ship deck and hold to a tractor trailer trucks and from trucks to the ship. He was required to work very quickly and stated that his work was "demanding and stressful" and required him to be very focused. The 1991 Edition of the Dictionary of Occupational Titles defines this job as:

CONTAINER CRANE OPERATOR (921.683-018)

"Operates electrically powered crane equipped with cantilevers (structural steel framework which can be lowered to horizontal position and extended over deck or hold of vessel) on which hoisting gear is supported to load or unload container cargo from vessels: Moves controls or levers and presses pedals to activate electrical power, move tower in position alongside vessel, and lower cantilever over deck or hold of vessel. Moves controls to lower hoisting gear for attachment of sling to container, lift and move container along cantilever, and lower and position container on dock, or on vessel deck or hold. Raises cantilever to vertical position when positioning crane to avoid hitting superstructure of vessel. May follow hand signals of other workers. May operate cantilever crane equipped with clamshell to load or unload bulk materials."

Other significant work experience for Mr. Hutson has been as a crawler, mobile, and overhead crane operator and as a rigger. The 1991 Edition of the Dictionary of Occupational Titles describes these jobs as:

CRAWLER CRANE OPERATOR (921.663-058)

"Operates diesel, gasoline, or electric powered crane mounted on crawler treads to lift and move material and objects: Starts engine and drives crane to work site, steering crane by moving levers and pressing pedals that control motion of crawler treads. Pushes and pulls levers and presses pedals in response to hand signals to rotate crane on chassis and raise and lower crane boom and loadline. May lubricate motor and moving parts of crane. May be designated according to attachment..."

Hutson, Franklin
October 4, 2005
Page Four

MOBILE CRANE OPERATOR (921.663-062)

"Operates gasoline or diesel powered crane mounted on specially constructed truck chassis to lift and move materials and objects: Drives truck to work site and directs activities of LABORER, HOISTING in placing blocks and outriggers to prevent capsizing when lifting heavy loads. Starts crane engine. Moves levers and pedals to rotate crane on chassis, to raise and lower crane boom, and to raise and lower loadline. May operate crane according to signals from helper. May bolt boom section together to extend or modify boom for pile driving or high lifting. May be designated according to type of power used...or according to attachment..."

OVERHEAD CRANE OPERATOR (921.663-010)

"Operates traveling or stationary overhead crane (cab or ground controlled) to lift, move, and position loads, such as machinery, equipment, products, and solid or bulk materials: using hoisting attachments, such as hook, sling, electromagnet, or bucket: Observes load hookup and determine safety of load. Manipulates or depresses crane controls, such as pedals, levers, and buttons, to regulate speed and direction of crane and hoist movement according to written, verbal, or signal instructions. Cleans and maintains crane and hoisting mechanism. Inspect crane for defective parts and notifies supervisor of defects or malfunctions. May attach load to hook or other crane accessory prior to operating crane and be designated Crane Operator-Hooker or Crane Operator Hooktender. May be designated by type of crane operated or material handled..."

RIGGER (921.260-010)

"Assembles rigging to lift and move equipment or material in manufacturing plant, shipyard, or on construction project: Selects cables, ropes, pulleys, winches, blocks, and sheaves, according to weight and size of load to be moved. Attaches pulley and blocks to fixed overhead structures, such as beams, ceilings, and gin pole booms, with bolts and clamps. Attaches load with grappling devices, such as loops, wires, ropes, and chains, to crane hook. Gives directions to OVERHEAD CRANE OPERATOR or HOISTING ENGINEER engaged in hoisting and moving loads to ensure safety of workers and material handled, using hand signals, loudspeaker, or telephone. Sets up, braces, and rigs hoisting equipment, using handtools and power wrenches. Splices rope and wire cables to make or repair slings and tackle. May direct workers engaged in hoisting of machinery and equipment into ships and be designated Machinery Erector. When hoisting and moving construction machinery onto truck beds, may be designated Machine Mover."

Hutson, Franklin
October 4, 2005
Page Five

Mr. Hutson's past work experience is consistent with these definitions.

EVALUATION SUMMARY:

In determining employability, it is necessary to consider many factors. These factors include age, educational background, past work experience and transferable skills, and physical limitations and pain.

Mr. Hutson is forty-three years of age. As an individual in this age category, his age in itself should not affect his ability to adapt to a new work environment or to perform substantial work tasks.

Mr. Hutson graduated from high school. Education at this level refers to abilities in reasoning, arithmetic, and language skills that would enable the individual to perform the required job tasks of semi-skilled through skilled work.

Significant past work experience for Mr. Hutson has been as a container crane operator, crawler crane operator, mobile crane operator, overhead crane operator, and rigger. The 1991 Edition of the Dictionary of Occupational Titles further defines these jobs as follows:

Work as a container crane operator and as an overhead crane operator is defined as light, skilled work. Light work is defined as the ability to lift twenty pounds occasionally and up to ten pounds frequently. The abilities to walk and stand to a significant degree, to sit and push or pull arm or leg controls, or to work at a production rate are also required. Skilled work requires qualifications in which an individual uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustment to control or regulate the work. Dealing with people, facts, or figures or abstract ideas at a high level of complexity may be required as well.

Work as a crawler crane operator is defined as medium, semi-skilled work. Medium work requires the ability to lift fifty pounds and to frequently carry twenty-five pounds. Semi-skilled work is work which needs some skills, but does not require the more complex work

Hutson, Franklin
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duties. Semi-skilled work may require alertness and close attention to watching machine processes; inspecting, testing, or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage, or injury. Coordination and dexterity may be necessary in the performance of repetitive tasks as well.

Work as a mobile crane operator is defined as medium, skilled work. Medium work requires the ability to lift fifty pounds and to frequently carry twenty-five pounds. Skilled work requires qualifications in which an individual uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustment to control or regulate the work. Dealing with people, facts, or figures or abstract ideas at a high level of complexity may be required as well.

Work as a rigger is defined as heavy, skilled work. Heavy work involves lifting no more than one hundred pounds at a time with frequent lifting and carrying of objects weighing up to fifty pounds. Skilled work requires qualifications in which an individual uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustment to control or regulate the work. Dealing with people, facts, or figures or abstract ideas at a high level of complexity may be required as well.

Transferability of skills applies to work skills which a person has demonstrated in vocationally relevant past jobs that can be used to meet the requirements of other jobs. Transferability of skills is most probable and meaningful among jobs requiring similar skills, when similar tools and machines are utilized, and when similar processes and services are involved. Jobs of transferability for Mr. Hutson may include other work in machine or vehicle operation, material handling, or warehousing.

Mr. Hutson has significant physical limitations. In an Independent Medical Evaluation dated August 23, 2005, Dr. Jeffrey E. Faaberg indicates that Mr. Hutson has evidence of impairment of both lower extremities with weakness at the right knee in flexion and

Hutson, Franklin
October 4, 2005
Page Seven

extension and in the left knee in flexion, significant loss of lumbar spine range of motion with a moderate degree of pain behavior, and at least moderate depression. Dr. Faaberg further notes that Mr. Hutson has had significant impairment in his ability to tolerate activities of daily living with maximum sitting and standing capability at fifteen minutes and maximum lifting capability at twenty pounds. Dr. Faaberg places Mr. Hutson in the sedentary category with the need for frequent breaks in standing and sitting positions. Dr. Faaberg is of the opinion that Mr. Hutson is unable to return to work as a crane operator as this position requires significant periods of time in the sitting position. Dr. Faaberg also notes that Mr. Hutson appears to have depression of at least a moderate degree and recommends consultation with a behavioral medicine specialist and psychiatrist. Additionally, Dr. Faaberg recommends evaluation and treatment by a pain physician.

In an Independent Medical Evaluation dated September 20, 2005, Dr. Donald R. Johnson indicates that Mr. Hutson is not likely to improve with surgical intervention. Dr. Johnson is of the opinion that Mr. Hutson will not be able to return to his previous work as a crane operator due to the sitting required and the vibration and repeated jarring. Although Dr. Johnson places Mr. Hutson in the light to medium work category, he notes that Mr. Hutson needs to avoid heavy impacts in a sitting position over prolonged periods of time.

In considering these aforementioned factors, younger age, high school level of education with some course work at Trident Technical College, past work experience as a container crane operator, crawler crane operator, mobile crane operator, overhead crane operator, and rigger, and physical limitations and ongoing pain of nearly one year's duration, I am of the opinion that Mr. Hutson has suffered a very significant impairment to his employability. He is unable to perform the required job tasks of his former work as a crane operator, is unable to return to any past employment, and does not have transferable skills to perform other work that is within his residual functional capacity.

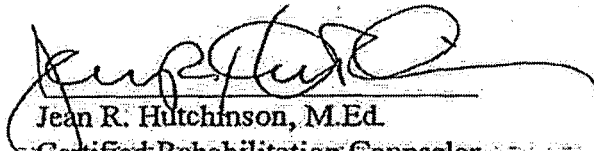
Mr. Hutson has been referred to the South Carolina Vocational Rehabilitation Department by this consultant. He will require a myriad of services to include career counseling to determine an occupational area that is consistent with his physical restrictions, occupational skill training in either a classroom or on-the-job setting, and selected job placement. Job site/task modification/accommodation may be required as well. Successful completion of these steps can reduce his disability with regard to employment. Without this or a similar

Hutson, Franklin

October 4, 2005

Page Seven

vocational rehabilitation plan, I am of the opinion that Mr. Hutson will encounter very significant difficulty re-entering the competitive job market and will be relegated to at or near minimum wage (\$5.15 - \$6.50 per hour).



Jean R. Hutchinson, M.Ed.

Certified Rehabilitation Counselor

Certified in Vocational Evaluation

October 4, 2005

Independent Medical Evaluation

Patient: Hutson, Franklin

Date: 08/23/05

The following is an Independent Medical Evaluation. This patient has never been a patient at Crowfield Pain Center or of Jeffrey E. Faaberg, Sr., M. D. The patient was instructed during the examination to cease motions that produced significant pain to avoid further injury but to give maximal effort. The patient did consent to this examination.

Circumstances of Injury

Mr. Franklin Hutson was working for the South Carolina State Ports Authority as a crane operator on 10/21/04. During this activity his container crane slammed forward and backward several times. This produced stabbing back pain and right leg pain with numbness to the foot.

Treatment History

Mr. Hutson was seen the following Monday by his family physician. Medical treatment was undertaken. He was referred to Don Stovall, M. D. of orthopedic spine surgery. Physical therapy was prescribed. This worsened his pain. An injection was performed by Dr. Stovall's partner, George Warren, M. D. of orthopedics. This helped the patient for two to three days.

Several studies were undertaken, including MRI and CT Myelography. Based on study findings Dr. Stovall felt surgery was not indicated.

Current History

Currently Mr. Hutson complains of primarily lower back pain. His pain intensity averages 7/10. He gets some relief of pain with Lortab. Prolonged sitting significantly worsens his pain.

Hutson, Franklin

On his pain diagram he checks the low back and right foot and ankle. He writes in hips. On his diagram he shades the lower lumbar area with lines drawn down both legs posteriorly. His pain varies from five to eight out of ten. His pain qualities include burning, sharp, throbbing and stabbing. His pain travels into his hips and down the right leg. His pain is always present with varying intensity. He has associated numbness, tingling pins and needles, weakness and muscle spasm with tightness. Coughing, sneezing, sitting, standing, physical activity, sexual activity and straining to use the bathroom worsen his pain. He gets some relief with relaxation, lying down, alcoholic drinks and medications. He awakens twice per night due to pain. He estimates ten physician visits and twenty allied health care professional visits such as with physical therapy, occupational therapy and chiropractor. He has had several injections by Dr. Warren. His ability to enjoy social, recreational and sexual activity has reduced by greater than sixty percent.

He has been unable to return to work. His last day of employment was 10/25/04. His work duties involved a great deal of sitting and repetitive activity with some standing, walking, light and heavy lifting, bending, pushing and driving.

He is a high school graduate. He is an occasional social drinker and a ½ to 1 pack per day smoker.

He is divorced or separated and lives alone. He reports his relationship as 8/10 prior to his injury and 3/10 currently.

Current medications include Lortab one to two per day. This gives him moderate relief for two to four hours.

Past Medical History

Allergies: NKDA

Previous Surgeries: Gunshot wound repair of the right arm.

Other Medical Conditions: None stated.

Previous Injury: None stated.

Review of Systems: No significant change in bowel, bladder or erectile function.

Current Activities of Daily Living: Currently Mr. Hutson can sit for ten to fifteen minutes. He can stand for a similar period of time. He can lift a maximum of fifteen to twenty pounds infrequently.

Hutson, Franklin

Review of Studies

Lumbar Myelogram 06/22/05. Moderate compression L 2-3 with underfilling of exiting nerve roots left greater than right.

CT Lumbar Spine with contrast 06/22/05. Moderate diffuse disk bulging L 2-3 with mild neural foraminal compromise on the left and some degree of spinal canal stenosis with minimal diffuse disk bulge L 5 S1. W. Eugene Phillips, II, M. D.

MRI was reviewed today. There is disk bulging at multiple levels.

Review of Records

Family Medicine.

Occupational Medicine and Physical Therapy notes.

Don Stovall, Jr., M. D. Dr. Stovall's assessment is L 2-3 disk bulge and L5 spondylolysis. An injection was prescribed.

Return to Work forms.

06/27/05 Dr. Stovall suggests 10% impairment of whole person and permanent work restrictions of 35 pounds occasional lifting and 25 pounds frequently.

Physical Examination

Mr. Franklin Hutson is a moderately ectomorphic male. He was instructed to avoid motions that could potentially further his injuries but to give maximum effort. He had a moderate degree of groaning and grunting with nearly all motions. He had no evidence of cogwheeling, giveaway or improvement in performance with distraction.

Vital Signs: BP 130/82, P 96, R 16, T 97.6°F, HT 5'9", WT 200 lb.

HEENT: PERRLA. Head is normocephalic. There is full ROM of the TMJ and the oral pharynx is clear. Funduscopic and tympanic membrane exam is intact. There is no deformity or tenderness of the skull.

Hutson, Franklin

NECK: Cervical spine range of motion is intact. Cervical spine compression is negative for radicular phenomena. There is no cervical facet joint crepitus. There is no tenderness or deformity.

CHEST: Lungs are clear to auscultation and percussion. There are no areas of chest wall tenderness.

ABDOMEN: Active bowel sounds are heard in all quadrants. There is no evidence of organomegaly.

BACK: There is no obvious spinal deformity. Thoracic spine range of motion is intact for the patient's stated age. Active lumbar spine range of motion is as follows: 10° forward flexion, lateral flexion 5° bilaterally, extension 0°. The patient's lumbar lordosis is significantly straight. Straight leg raise is positive at 40° bilaterally with ipsilateral back pain bilaterally.

EXTREMITIES: Surface temperature across the feet using infrared thermometry is 85°F right and 83°F left. Circumference measurements nine inches above the lateral malleolus is 16 ½" right and 16 ¼" left. Five inches above the proximal patella is 19 ½" bilaterally. Strength at the knee is grade four on the right in flexion and extension and grade four on the left in flexion. All other strength is intact. There is full active ROM in all joints without crepitus. Peripheral pulses are intact.

NEURO: Pt. is alert, oriented and has intact cognitive function and memory. He has a moderately depressed mood and affect. There is intact and symmetrical subjective sensory. Deep tendon reflexes are all 1 to 2/4. Motor strength is intact other than as mentioned above in extremity exam.

Assessment

Mr. Franklin Hutson is a forty-three-year-old container crane operator. He was jolted upward and forward and backward on 10/21/04. He suffered significant back pain and radicular leg pain subsequently. He is noted to have disk displacement at L 2-3 and spondylolysis at L5 on MRI and CT myelography. He has responded transiently to epidural steroid injections. He has been seen and rated by Don Stovall, M. D. of orthopedic spine surgery. He has been given restrictions of thirty-five pounds lifting maximum and 10% whole person impairment

Hutson, Franklin

I would agree with Dr. Stovall's assessment of maximum medical improvement. Mr. Hutson has evidence of impairment in both lower extremities with weakness at the right knee in flexion and extension and in the left knee in flexion. He has significant loss of lumbar spine range of motion with a moderate degree of pain behavior, although his effort appeared to be maximal. He also has positive straight leg raise bilaterally. Mr. Hutson appears to be at least moderately depressed.

Due to his significant loss of lumbar spine range of motion and radicular findings with positive straight leg raise I would assess his impairment at 20% whole person and whole spine. He does have two levels of findings on MRI at L 2-3 and spondylolysis as mentioned by Dr. Stovall.

Mr. Hutson has impairment of the lower extremities with weakness at the knee on the right in flexion and extension and on the left in flexion only. I would assign 24% regional impairment of the right lower extremity and 12% regional impairment of the left lower extremity.

Mr. Hutson has had significant impairment in his ability to tolerate activities of daily living. His maximum sitting and standing capability is currently fifteen minutes. His maximum lifting capability is currently twenty pounds. I am unaware of a functional capacity evaluation having been performed. This could further delineate his performance and work capacity. Based on this history and his physical exam findings I would place him in the sedentary category with maximum lifting of twenty pounds infrequently. He will need to be afforded frequent breaks in standing or sitting positions. This would prevent him from returning to his duties as a container crane operator as this requires significant periods of time in the sitting position.

Mr. Hutson also appears to have depression of at least a moderate degree. He would benefit by consultation with a behavioral medicine specialist for maximization of coping skills and cognitive therapy. He may also require referral to a psychiatrist for medical treatment.

Mr. Hutson would benefit by evaluation and treatment by a board certified pain physician. He may respond to interventional therapies. Facet joint injection and perhaps denervation of the lower lumbar facets may give him significant additional

relief. This would require a diagnostic medial branch block or facet joint injection depending upon the practitioner's preference. Long-term immediate release narcotic such as the Lortab he is currently taking will produce additional dependency and tolerance. This may also worsen his depression.

If any further information becomes available, this Independent Medical Evaluation may be amended.

Jeffrey E. Faaberg, Sr., M. D., ABIME

Reference: 5th edition Guide to Evaluation of Permanent Impairment – Range of Motion Model and Lower Extremity.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
FRANKLIN HUTSON,)
Claimant,)
v.)
S.C. STATE PORTS AUTHORITY,)
Employer,)
STATE ACCIDENT FUND,)
Carrier.)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

W.C.C. FILE NO. 0418244

**NOTICE OF EVIDENCE TO BE
INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF S.C.
STATE PORTS
AUTHORITY/STATE ACCIDENT
FUND**

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
THOMAS M. WHITE, ATTORNEY FOR CLAIMANT:**

YOU ARE HEREBY NOTIFIED THAT THE (PROPONENT), pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1985), Employer, S.C. State Ports Authority, and Carrier, State Accident Fund, herewith submits the following reports/physicians or other evidence on behalf of the Employer, S.C. State Ports Authority, and Carrier, State Accident Fund:

PHYSICIAN	MEDICAL FACILITY	REPORT DATE	PAGE NOS.
9.	Concentra Medical Centers	10/26/04 to 11/22/04	155 - 177
10. Paul Aitchison, MD	Tricounty Radiology Associates	11/17/04	178 - 179
11. George Warren, MD	Lowcountry Outpatient Surgery Center	2/4/05	180

YOU ARE FURTHER HEREBY NOTIFIED you have the right to cross-examination, and, should you desire to exercise that right, you are to forthwith schedule the deposition(s) of any

of the physicians or other person(s) whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, will be submitted at the Hearing before the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Employer/Carrier.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Employer/Carrier:

1. Employer representative;
2. Mr. Campbell; and
3. Mr. Lempesis.

CLAWSON & STAUBES, LLC

BY: 

Margaret M. Urbanic
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
(843) 577-2026

Attorneys for Employer, S.C. State Ports Authority, and Carrier,
State Accident Fund.

Charleston, South Carolina

 Day of September, 2005.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
FRANKLIN HUTSON,)
Claimant,)
v.)
S.C. STATE PORTS AUTHORITY,)
Employer,)
STATE ACCIDENT FUND,)
Carrier.)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

W.C.C. FILE NO. 0418244

NOTICE OF EVIDENCE TO BE
INTRODUCED AS DIRECT
EVIDENCE ON BEHALF OF S.C.
STATE PORTS AUTHORITY/STATE
ACCIDENT FUND

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND THOMAS
M. WHITE, ATTORNEY FOR CLAIMANT:**

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12.	SC Vocational Rehabilitation Dept	10/9/05 to 11/11/05	181 - 183

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1. Employer representative, and
2. Mr. Campbell, and
3. Mr. Lempesis.

CLAWSON & STAUBES, LLC



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126 Seven Farms Drive, Suite 200
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(843) 577-2026
Attorneys for Employer, S.C. State Ports
Authority, and Carrier, State Accident Fund.

Charleston, South Carolina

24 Day of July, 2006.



CONCENTRA
MEDICAL CENTERS

2004-5801

Transcription

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Patient:	Butterm, Franklin W	Service Date:	10/26/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148364		CHARLESTON, SC 29401
Claim #:			
Dictator:	Marc H Kolender, MD		
Diagnosis:	S46.0 Lumbosacral Strain		

Notes: **CHIEF COMPLAINT:**
Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:
Patient states : "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

HISTORY OF PRESENT ILLNESS:
States on 10/21/04, while operating crane, he was jarred and/or jerked on two separate occasions. No immediate pain until the following AM. Pain became severe. Has not RTW due to pain. Notes occ paresthesias into bilateral lateral legs, and brief numbness in bilateral feet. No radiation. Saw PMD on 10/25, who did not Dx due to work related nature of injury. No meds taken. Pain originally 10/10, today 4-5/10. Last 2 days, he has just laid in bed or on couch. Used heat. No hx of prior back injury. Asks for MRI. The pain is located on bilateral lumbosacral region. The symptoms are exacerbated by Activity, flexion, sitting or standing. Denies urinary incontinence and fecal incontinence. Job/Title/Position: Crane operator.

PAST MEDICAL, SOCIAL, FAMILY HISTORY: Noncontributory based upon review of comprehensive questionnaire.

ROS: Noncontributory based upon review of comprehensive questionnaire.

PE:
MUSCULOSKELETAL:
Lumbar:

- Pt. is in moderate distress
- Gross exam of the spine reveals no swelling, ecchymosis, changes in spinal curvature, or other abnormalities and guarding in right sidebending
- Reflex testing is normal and equal bilaterally to Achilles and Patellar.
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Normal strength to dorsi/plantar flexion of great toe.
- Lumbar ROM is decreased to all planes mildly to moderately with pain, flex and ext are worst.
- Sensation is noted to be within normal limits
- palpation is positive for pain at L3 L4 L5 mildly.
- Negative tissue texture change palpated

- noted with flexed posture
- Circulatory exam is normal with equal pulses bilaterally.

X-RAY / LAB REPORT:
Lumbar series:

Dictated But Not Read

Dictated On: Oct 26 2004 12:39PM

Dictated By: Marc H Kolender, MD

Printed Date: 10/29/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Butson, Franklin W	Service Date:	10/26/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148364		CHARLESTON, SC 29401
Claim #:			
Dictator:	Marc H Kolender, MD		
Diagnosis:	846.0 Lumbosacral Strain		

Notes:

LS-spine x-ray: Patient advised that the x-ray reading was preliminary. Negative.

ASSESSMENT:

1. Lumbosacral strain. 846.0., Moderate to severe
Of note, pt expresses some discontent w/ work.

PLAN:

MEDICATIONS:

Celebrex 200 mg bid and Cyclobenzaprine 10 mg qhs

PHYSICAL THERAPY:

Schedule for therapy, evaluate and treat for injury care.

ACTIVITY STATUS:

No activity. He is medically unable to work.

RETURN FOR EVALUATION: Thursday

Return if symptoms worsen, if you develop any new symptoms and if pain increases.

The patients company was contacted today.

Diagnosis, treatment plan and expectations were discussed with the patient. Advised of medication usage and side effects. The patient was instructed to return to the clinic as needed.

Dictated But Not Read

Dictated On: Oct 26 2004 12:39PM

Dictated By: Marc H Kolender, MD

Printed Date: 10/29/2004

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

2004-5801 (134)

Patient:	Hutson, Franklin W	Service Date:	10/27/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148467		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: VISIT HISTORY

INITIAL VISIT INFORMATION:

Patient is a 42 year old male employee of SC State Ports Authority who reports that his back was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:

Patient states: 'the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard.'

Visit Number (cumulative total): 1 visits.

Missed Appointments (for this case): 0 visits.

SUBJECTIVE

THERAPY INITIAL EVALUATION

HISTORY OF PRESENT CONDITION

The patient relates their chief complaint to an incident on 10/21/04 when after operating a crane he complained of back pain. The patient had been working a great deal of overtime operating a container crane for the ports authority which requires him to spend a great deal of time seated in a flexed lumbar position while looking down. The patient states that while operating the crane he gets jarred a great deal when moving containers. On the day of the incident the patient had gotten off the crane and had experienced upper lumbar and 'hip' pain that caused him to go home and soak in a hot tub and then layed in bed the next day as the pain continued. The patient described the pain as being like a 'knife sticking in my back' in the lumbar region and occasional 'sticking' in the thoracic spine. Since then the patient has been resting more and does feel better but still experiences difficulty with sitting greater than 15-20 minutes and has a difficult time 'getting comfortable.' Symptoms are worse with extended sitting, forward flexion, driving, walking greater than 'a few minutes,' and extension in standing, though the patient has attempted to remain inactive and he has not tested out his ability to lift and turn since he injury.

Symptoms are better with supine, resting, flexeril.

JOB REQUIREMENTS

Prolonged sitting, climbing ladders, operating the crane but little lifting and walking.

OVERTIME

As much as 30-40 hours of overtime per week, as much as 17-18 hours. One half of his total shift time is spent operating the crane.

PAIN RATING

10/10 when the stabbing pain occurs, 0/10 at rest.

MEDS

celebrex and flexeril

PMH

Gunshot wound right arm.

Dictated But Not Read

Dictated On: Oct 27 2004 12:41PM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 10/30/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Rutson, Franklin W	Service Date:	10/27/2004
Soc. Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CWC - Charleston		176 Concord St
Service ID #:	1040148467		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes:

The symptoms did not radiate

WORK STATUS: Patient indicates that they are off work due to medical restrictions.

OBJECTIVE

POSTURE: Mild forward head and rounded shoulders

PALPATION:

ASIS even in standing and supine

PSIS even in prone and standing

ILIAC CRESTS even in standing

SHOULDER HEIGHT elevated left

LUMBAR AND THORACIC LORDOSIS diminished markedly at both regions.

AROM:

flexion 52 pain lumbar

extension 15 pain lumbar

SB right 22 pain lumbar

SB left 14 pain lumbar

Strength

MMT

Lower ABD 2/5 pain lumbar

Upper ABD 2+ pain lumbar

Hip flexion 3/5 B pain lumbar

Hip ABD NT

Hip ADD NT

Hip extension 3-/5 B pain lumbar

Knee extension 4/5 B pain lumbar

Knee flexion 4-/5 B pain lumbar

PF WNL

DF WNL pain right in lumbar region.

Hallux extension WNL

Special tests

Kemps, compression, SLR, slump without even bending forward all increase pain in the lumbar region but without radicular symptoms. Sacral compression increased pain lumbar. Malingering tests TBA.

SENSATION WNL B to lite touch.

ASSESSMENT

Patient presents with assessed condition of Lumbar Strain.

The cause of symptoms/dysfunctions is consistent with the above Mechanism of Injury. This limits the patient's ability to perform carrying, climbing, driving, crouching, heavy equipment operation, ascending a ladder, descending a ladder, lifting, pulling, pushing, sitting, standing and walking.

Subjective report is consistent with objective findings.

Patient presents as an appropriate therapy candidate to resolve the functional deficits

Dictated But Not Read

Dictated By: Chris Studebaker, PT 4774

Dictated On: Oct 27 2004 12:41PM

Printed Date: 10/30/2004

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Hutson, Franklin W	Service Date:	10/27/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148467		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	S46.0 Lumbosacral Strain		

Notes:

noted above.
Response to current treatment: The patient tolerated current treatment well with no adverse reaction.
Therapy Goals:
- Patient will return to work, same job same employer.
- Patient will demonstrate independence and be compliant with home exercise program.
- Resolve noted objective findings.
- Functional:.. carrying, climbing, driving, crouching, heavy equipment operation, ascending a ladder, descending a ladder, lifting, pulling, pushing, sitting, standing and walking to within functional limits..
- Range of Motion: Increase range of motion to the following: lumbar all planes to WFL.
- Strength: Increase strength to the following: lumbar flexion, extension and LE MMT to 4+/5 or better to facilitate return to PLF..
- Reduce Pain Rating to (0-10 scale): 2/10 at worst during sitting >2 hours..

PLAN

PLAN

The patient is to be seen 3x/week for ther ex, therapeutic activities for today's educational activities and modalities and manual therapy PRN..
Education:
- Emphasized to patient importance of compliance with scheduled therapy and medical appointments.
- Educated patient in proper body mechanics bed mobility and sleeping postures, driving and sit to stand.
- Educated patient in compliance with activity restrictions during work and non-work activities.
- Educated patient in the pathology of their current condition.
- Educated patient in the normal healing process of their current condition.
- Educated patient in proper application and frequency of heat and/or ice.
- Educated patient in specific home exercise program with emphasis on self responsibility and compliance.
- Educated in postural awareness and stabilization.

TREATMENT

PT Evaluation
Cold Packs, 1 or More Area.
Electrical Stimulation Unattended
Therapeutic Exercises (ea 15 min).
Therapeutic Activities (ea 15 min)
Electrode.

Therapeutic Exercise (One to One)

Abdominal hollow, 5-6 second hold 10' of practise, Supine
AROM Rotation, 3 x 10 with ABD bracing, Supine
QL, Erector Spinae Stretches, 10-20 second hold, 5x/each bilateral, Supine

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Dictated By: Chris Studebaker, PT 4774

Dictated On: Oct 27 2004 12:41PM

Printed Date: 10/30/2004

Page: 3



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Butson, Franklin W	Service Date:	10/27/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962	Age:	42
Service Location:	CMC - Charleston	Employer:	SC State Ports Authority
Service ID #:	1040148467		176 Concord St
Claim #:			CHARLESTON, SC 29401
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: Precautions-Comments:
IFC e-stim 80/150 15-20 minutes lumbar region L1-L5 with ice.

Cumulative Therapy Charges:

Qty - Description
001 - Therapeutic Exercises-15m
001 - Therapeutic Activities-15m
001 - PT Eval
001 - Hot / Cold Packs, 1 or More Areas
001 - Electrical Stimulation Unattended
001 - Electrodes

Dictated But Not Read

Dictated On: Oct 27 2004 12:41PM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 10/30/2004

Page: 4



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient: Hutson, Franklin W Service Date: 10/28/2004
Soc. Sec. #: Injury Date: 10/21/2004
Date of Birth: 05/14/1962 Age: 42 Employer: SC State Ports Authority
Service Location: CMC - Charleston 176 Concord St
Service ID #: 1040148612 CHARLESTON, SC 29401
Claim #:
Dictator: Marc H Kolender, MD
Diagnosis: 846.0 Lumbosacral Strain

Notes:

CHIEF COMPLAINT:

Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:

Patient states: "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:

He feels the pattern of symptoms is 10% better. Patient has not been working because he is medically unable to work. Patient has been taking their medications and has noted improvement. Patient has had physical therapy 1 time and feels better. The pain is located on bilateral lumbosacral region. The pain is described as moderate. The pain did not radiate. The symptoms are exacerbated by flexion. Associated paresthesias of brief and intermittent in right foot. Denies numbness, urinary incontinence and fecal incontinence. Pt expresses desire to transfer to another work position after he improves from this injury to "avoid the wear and tear" of current position.

PE:

MUSCULOSKELETAL:

- Lumbar: - Pt. is in mild distress
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Lumbar ROM is decreased to all planes, FF and ext moderately, all lateral motions mildly, all w/ some degree of pain.
- Sensation is noted to be within normal limits
- palpation is positive for pain at L3 L4 L5 slightly.

No palpable spasm. Reflexes symmetric.

NEUROLOGIC:

Gait & Posture: Right shift. W/ forward flex posture

Motor: 5/5 strength major flexors/extensors.

X-RAY / LAB REPORT: Studies are as previously noted

ASSESSMENT:

1. Lumbar strain. 847.2., May be some element of job discontent in current presentation of illness

PLAN:

MEDICATIONS:

Patient instructed to continue their previous medications as prescribed., Celebrex and Cyclobenzaprine 10 mg qhs
Continue with the previous therapy schedule.

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Dictated On: Oct 28 2004 8:34AM

Dictated By: Marc H Kolender, MD

Printed Date: 10/31/2004

Page: 1



CONCENTRA
MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient: Hutson, Franklin W
Soc. Sec. #:
Date of Birth: 05/14/1962 **Age:** 42
Service Location: CMC - Charleston
Service ID #: 1040148612
Claim #:
Dictator: Marc H Kolender, MD
Diagnosis: 846.0 Lumbosacral Strain

Service Date: 10/28/2004
Injury Date: 10/21/2004
Employer: SC State Ports Authority
176 Concord St
CHARLESTON, SC 29401

Notes:

ACTIVITY STATUS:

Modified activity

- Upgrade Restrictions.
 - No lifting over 10 lbs.
 - No bending more than 0 times per hour.
 - No pushing/pulling over 10 lbs. of force.
 - No squatting.
- should alternate sitting and standing q 10-15 minutes

RETURN FOR EVALUATION: Tuesday

Return if symptoms worsen, if you develop any new symptoms and if pain increases. Diagnosis, treatment plan and expectations were discussed with the patient. Advised of medication usage and side effects. The patient was instructed to return to the clinic as needed.

Dictated But Not Read

Dictated On: Oct 28 2004 8:34AM

Dictated By: Marc H Kolender, MD

Printed Date: 10/31/2004

Page: 2



**CONCENTRA
MEDICAL CENTERS**

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

2004-5801

Transcription

Patient:	Franklin W	Service Date:	10/29/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148823		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: VISIT HISTORY

Visit Number (cumulative total): 2 visits.
Missed Appointments (for this case): 0 visits.

SUBJECTIVE

THERAPY PROGRESS NOTE

The patient states that he had 'a tough night last night because I could not get comfortable because of my back.' The patient continues to complain of left central lumbar pain at the L4-5 region with some dysesthesia noted in the right thigh with prolonged sitting. The patient states that he was unable to walk greater than 10-15 minutes without an increase in lumbalgia.

OBJECTIVE

Waddell's tests: mild cervical pressure increased lumbalgia and passive rotation of hips with no trunk rotation also increased symptoms.
X-ray results state that the patient has mild spondylosis of L5-S1.

ASSESSMENT

Subjective report is inconsistent with objective findings: waddell's positive tests. Spoke with Dr. Kolender regarding the patient's subjective report and possible exaggeration of symptoms.
Response to current Treatment: The patient tolerated current treatment well with no adverse reaction.

PLAN

RECOMMENDATIONS

Continue therapy Three times per week until goals met, progress plateaued or next medical recheck.
Will proceed with current POC until more information can be established regarding verity of symptom report.

TREATMENT

Cold Packs, 1 or More Area.
Electrical Stimulation Unattended
Therapeutic Exercises (ea 15 min).
Electrode
Ultrasound (ea 15 min).

Therapeutic Exercise (One to One)

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Dictated On: Oct 29 2004 11:54AM

Dictator: Chris Studebaker, PT 4774

Printed Date: 11/01/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Butson, Franklin W	Service Date:	10/29/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148823		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: Abdominal hollow, 5-6 second hold 10' of practise, Quadruped
Treadmill Warm-up, 5', Standing
A/P pelvic tilt on ball, , with ABD contraction, Swiss Ball, Sitting
Static Prone-on-elbows, 5 minutes, Prone
Quadruped pelvic tilt, 20 x 3, Quadruped
Quadruped SB, 20 x 3, Quadruped
AROM Rotation, 3 x 10 with ABD bracing, Supine
QL, Erector Spinae Stretches, 10-20 second hold, 5x/each bilateral, Supine

Precautions-Comments:

IFC e-stim 80/150 15-20 minutes lumbar region L1-L5 with ice.
US 1.0 MHz 100% at 0.8 W/CM2 8min with 10% ketoprofen cream/biofreeze as above, focusing today on right paraspinals.

Cumulative Therapy Charges:

Qty	Description
001	Ultrasound-15m
003	Therapeutic Exercises-15m
001	Hot / Cold Packs, 1 or More Areas
001	Electrical Stimulation Unattended
001	Electrodes

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Dictated On: Oct 29 2004 11:54AM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 11/01/2004

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29405 (843) 572-0810

Transcription

2004-5801 B

Patient:	Hutson, Franklin W	Service Date:	11/01/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148965		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: VISIT HISTORY

Visit Number (cumulative total): 3 visits.
Missed Appointments (for this case): 0 visits.

SUBJECTIVE

THERAPY PROGRESS NOTE.

Patient reports no change in injury status.
The patient states that he has been doing his HEP.
Complaints are still isolated to the right paraspinals at lower lumbar as they were last visit.

OBJECTIVE

Patient was able to tolerate supine, prone and seated on the ball.

ASSESSMENT

Patient's symptoms are unchanged.
Response to current Treatment: The patient tolerated current treatment well with no adverse reaction.

Patient demonstrates adherence with scheduled therapy visits.
Good effort noted throughout therapy sessions.

PLAN

PLAN OF CARE

Progress above treatment program to achieve stated therapy goals.
Will continue to monitor for signs of malingering due to his questionable presentation in earlier visits.

TREATMENT

Cold Packs, 1 or More Area.
Electrical Stimulation Unattended
Therapeutic Exercises (ea 15 min).

Therapeutic Exercise (One to One)

Abdominal hollow, 5-6 second hold 10' of practise, Quadruped
CW/CCW circles on ball, Slow, with ABD contraction, Swiss Ball, Sitting
Treadmill Warm-up, 10', Standing
A/P pelvic tilt on ball, , with ABD contraction, Swiss Ball, Sitting

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Dictated On: Nov 1 2004 12:25PM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 11/09/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Franklin W	Service Date:	11/01/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040148965		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes:

Static Prone-on-elbows, 5 minutes, Prone
Quadruped pelvic tilt, 20 x 3, Quadruped
Quadruped SB, 20 x 3, Quadruped
APOM Rotation, 3 x 10 with ABD bracing, Supine
QL, Erector Spinae Stretches, 10-20 second hold, 5x/each bilateral, Supine

Precautions-Comments:

IPC e-stim 80/150 15-20 minutes lumbar region L1-L5 with ice.

Cumulative Therapy Charges:

Qty - Description

004 - Therapeutic Exercises-15m

001 - Hot / Cold Packs, 1 or More Areas

001 - Electrical Stimulation Unattended

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Dictated On: Nov 1 2004 12:25PM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 11/09/2004

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

2004-5801

Patient:	Hutson, Franklin W	Service Date:	11/02/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040149125		CHARLESTON, SC 29401
Claim #:			
Dictator:	Marc H Kolender, MD		
Diagnosis:	S46.0 Lumbosacral Strain		

Notes: **CHIEF COMPLAINT:**
Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:
Patient states: "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:
He feels the pattern of symptoms is no better. Patient has not been working because no light duty available. Patient has been taking their medications and has noted improvement. Eoc states Flexeril causes nausea. Patient has had physical therapy and feels better. The pain is located on lumbosacral region. Pain Intensity Level: 8/10. The pain did not radiate. The symptoms are exacerbated by flexion or extension. Associated numbness of occ into right foot. Denies paresthesias, urinary incontinence and fecal incontinence.

PE:
MUSCULOSKELETAL:
Lumbar: - Pt. is in mild distress
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Lumbar ROM is decreased to all planes moderately with pain
- Sensation is noted to be within normal limits
- ROM testing reveals same range in all planes as previous visit
- palpation is positive for pain at L3 L4 L5 bilaterally
- Waddells are positive for: And overreaction

Normal gait. Reflexes symmetric.

X-RAY / LAB REPORT:
Lumbar series:
LS-spine x-ray: Mild lumbar spondylosis

ASSESSMENT:
1. Lumbosacral strain. S46.0.

PLAN:

MEDICATIONS:
D/C flexeril
Celbrex 200 bid and Skelaxin 400 1-2 qhs
Continue with the previous therapy schedule.

ACTIVITY STATUS:
Modified activity
- Upgrade Restrictions.
- No lifting over 15 lbs.

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Dictated On: Nov 2 2004 10:44AM

Dictated By: Marc H Kolender, MD

Printed Date: 11/05/2004

Page: 1



CONCENTRA
MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Hutson, Franklin W	Service Date:	11/02/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/18/1964	Age:	42
Service Location:	CMC - Charleston	Employer:	SC State Ports Authority
Service ID #:	1040149125		176 Concord St
Claim #:			CHARLESTON, SC 29401
Dictator:	Marc H Kolender, MD		
Diagnosis:	846.0 Lumbosacral Strain		

Notes:

- No bending more than 0 times per hour.
- No pushing/pulling over 15 lbs. of force. Should alternate sitting and standing every 15 minutes

RETURN FOR EVALUATION: In 1 week

Return if symptoms worsen, if you develop any new symptoms and if pain increases. Diagnosis, treatment plan and expectations were discussed with the patient. Advised of medication usage and side effects. The patient was instructed to return to the clinic as needed.

Dictated But Not Read

Dictated On: Nov 2 2004 10:44AM

Dictated By: Marc H Kolender, MD

Printed Date: 11/05/2004

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CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

2004-5801 B

Patient:	Hutsor Franklin W	Service Date:	11/03/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CMC - Charleston		176 Concord St
Service ID #:	1040149264		CHARLESTON, SC 29401
Claim #:			
Dictator:	Chris Studebaker, PT		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: VISIT HISTORY

Visit Number (cumulative total): 4 visits.
Missed Appointments (for this case): 0 visits.

SUBJECTIVE

THERAPY PROGRESS NOTE.

Patient reports no change in injury status.
Patient reports they are performing their home exercise program daily.
Response to Prior Treatment: The patient reported they tolerated the previous treatment well with no adverse reaction.

OBJECTIVE

Hoover test positive bilateral: no down ward force of the contralateral leg suggesting less than full exertion.
Passive rotation and cervical pressure waddell's tests also suggest questionable results.
SLR painful at under 20 degrees bilateral.

Quadruped pelvic tilt painful.

ASSESSMENT

Patient's condition related to presenting diagnosis has not changed.
Subjective report is inconsistent with objective findings.
Patient demonstrates adherence with scheduled therapy visits.
Good effort noted throughout therapy sessions.
Patient requires minimal cues to perform exercise program.
Malingering suspected, see objective section.

PLAN

PLAN OF CARE

Progress above treatment program to achieve stated therapy goals.
Will continue to monitor for more signs of malingering or authenticity of symptoms.

TREATMENT

Cold Packs, 1 or More Area.
Electrical Stimulation Unattended
Therapeutic Exercises (ea 15 min).

Therapeutic Exercise (One to One)

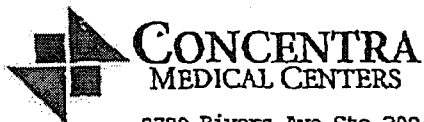
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Dictated On: Nov 3 2004 11:51AM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 11/06/2004

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CONCENTRA
MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient: Intern Dr. Klin W Service Date: 11/03/2004
Soc. Sec. #: Injury Date: 10/21/2004
Date of Birth: 05/14/1962 Age: 42 Employer: SC State Ports Authority
Service Location: CMC - Charleston 176 Concord St
Service ID #: 1040149264 CHARLESTON, SC 29401
Claim #:
Dictator: Chris Studebaker, PT
Diagnosis: 846.0 Lumbosacral Strain

Notes: Abdominal hollow, 5-6 second hold 10' of practise, Quadruped
CW/CCW circles on ball, Slow, with ABD sccontraction, Swiss Ball, Sitting
Treadmill Warm-up, 10', Standing
A/P pelvic tilt on ball, , with ABD sccontraction, Swiss Ball, Sitting
Static Prone-on-elbows, 5 minutes, Prone
Quadruped pelvic tilt, 20 x 3, Quadruped
Quadruped SB, 20 x 3, Quadruped
AROM Rotation, 3 x 10 with ABD bracing, Supine
QL, Erector Spinae Stretches, 10-20 second hold, 5x/each bilateral, Supine

Precautions-Comments:

IFC e-stim 1/15 Htz 15-20 minutes lumbar region L1-L5 with ice.

Cumulative Therapy Charges:

Qty - Description

004 - Therapeutic Exercises-15m

001 - Hot / Cold Packs, 1 or More Areas

001 - Electrical Stimulation Unattended

Dictated But Not Read

Dictated On: Nov 3 2004 11:51AM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 11/06/2004

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Rutson, Franklin W	Service Date:	11/04/2004
Soc.Sec. #:	4	Injury Date:	10/21/2004
Date of Birth:	05/14/1962	Age:	42
Service Location:	CNC - Charleston	Employer:	SC State Ports Authority
Service ID #:	1040149445		176 Concord St
Claim #:	2004-005801		CHARLESTON, SC 29401
Dictator:	Chris Studebaker, PT		
Diagnosis:	B46.0 Lumbosacral Strain		

Notes:

VISIT HISTORY

Visit Number (cumulative total): 5 visits.
Missed Appointments (for this case): 0 visits.

SUBJECTIVE

THERAPY DISCHARGE NOTE.

Patient reports no change in injury status, the exact same symptoms as he originally had.

Continued pain in the L2-L5 region worse with bending, sitting and lifting, carrying or other use of the trunk.

Work Status: Patient indicates that they are not working because their employer is unable to accommodate modified activity.

Independent with HEP.

OBJECTIVE

Trunk AROM

flexion 45 limited by pain
extension 12 limited by pain
RSB 22 limited by pain
LSB 16 limited by pain

SLR

55 degrees right
42 degrees left

FMT

trunk flexion 2/5 limited by pain
extension 2/5 limited by pain
hip flexion and extension 2/5 lumbar pain

Special tests

waddell's tests positive for cervical pressure, passive roation of the hips. Passive flexion of the knees to 90 degrees increased lumbar pain. Hoover tests positive.

ASSESSMENT

Patient's condition related to presenting diagnosis has not changed.

Patient demonstrates adherence with scheduled therapy visits.

Good effort noted throughout therapy sessions.

Patient is able to demonstrate therapy exercises as instructed.

Subjective report is inconsistent with objective findings.

Response to current Treatment: The patient tolerated current treatment well with no

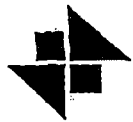
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Dictated On: Nov 4 2004 1:43PM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 01/17/2005

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient: nklin W
Soc. Sec. #:
Date of Birth: 05/14/1962 Age: 42
Service Location: CMC - Charleston
Service ID #: 1040149445
Claim #: 2004-005801
Dictator: Chris Studebaker, PT
Diagnosis: 846.0 Lumbosacral Strain

Service Date: 11/04/2004
Injury Date: 10/21/2004
Employer: SC State Ports Authority
176 Concord St
CHARLESTON, SC 29401

Notes: adverse reaction.
Therapy goals not achieved as he continues to exhibit deficits in ROM, strength and continued pain and decreased functional status. Questionable tests results as per the last few years..

PLAN

RECOMMENDATIONS

Discontinue therapy, progress plateaued.

TREATMENT

Cold Packs, 1 or More Area.
Electrical Stimulation Unattended
Therapeutic Exercises (ea 15 min)
PT ReEvaluation

Therapeutic Exercise (One to One)

Abdominal hollow, 5-6 second hold 10' of practise, Quadruped
CW/CCW circles on ball, Slow, with ABD contraction, Swiss Ball, Sitting
Treadmill Warm-up, 10', Standing
A/P pelvic tilt on ball, , with ABD contraction, Swiss Ball, Sitting
Static Prone-on-elbows, 5 minutes, Prone
Quadruped pelvic tilt, 20 x 3, Quadruped
Quadruped SB, 20 x 3, Quadruped
AROM Rotation, 3 x 10 with ABD bracing, Supine
QL, Erector Spinae Stretches, 10-20 second hold, 5x/each bilateral, Supine

Precautions-Comments:

IFC e-stim 1/15 Htz 15-20 minutes lumbar region L1-L5 with ice.

Cumulative Therapy Charges:

Qty - Description
004 - Therapeutic Exercises-15m
001 - PT ReEval
001 - Hot / Cold Packs, 1 or More Areas
001 - Electrical Stimulation Unattended

Dictated But Not Read

Dictated On: Nov 4 2004 1:43PM

Dictated By: Chris Studebaker, PT 4774

Printed Date: 01/17/2005

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

2004-5801 B

Patient:	Franklin W	Service Date:	11/09/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1962 Age: 42	Employer:	SC State Ports Authority
Service Location:	CWC - Charleston		176 Concord St
Service ID #:	1040149988		CHARLESTON, SC 29401
Claim #:			
Dictator:	Locum G Potter, MD		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: **CHIEF COMPLAINT:**
Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:
Patient states : "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:
Patient reports that he is no better. Patient has not been working because he says that his job has nothing for him to do. Patient done with therapy because he said it did not help him.

PE:
MUSCULOSKELETAL:
Lumbar: Negative bilateral leg raise. No palpable spasm. Normal gait. Reflexes symmetric. Decreased active range of motion: All directions: 30 degrees with pain
Positive Waddells overreaction. Positive Waddells tenderness.

X-RAY / LAB REPORT:

MRI:
MRI: Ordered.

ASSESSMENT:

1. Lumbar strain. 847.2.

PLAN:

ACTIVITY STATUS:
Modified activity

The patients company was contacted today. Will return my call to discuss patients work status.

MEDICATIONS:
Ibuprofen and Cyclobenzaprine

RETURN FOR EVALUATION: In 1 week
Diagnosis, treatment plan and expectations were discussed with the patient.

Dictated But Not Read

Dictated On: Nov 9 2004 11:32AM

Dictated By: Locum G Potter, MD 26202

Printed Date: 11/12/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

2004-5801

Patient: lin W
Soc. Sec. #:
Date of Birth: 05/14/1962 Age: 42
Service Location: CMC - Charleston
Service ID #: 1040150797
Claim #:
Dictator: Marc H Kolender, MD
Diagnosis: 846.0 Lumbosacral Strain

Service Date: 11/16/2004
Injury Date: 10/21/2004
Employer: SC State Ports Authority
176 Concord St
CHARLESTON, SC 29401

Notes:

CHIEF COMPLAINT:

Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:

Patient states: "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:

He feels the pattern of symptoms is no better. Patient has not been working because no light duty available. Patient has been taking their medications and has not noted any improvement. Patient has had physical therapy and does not feel better. The pain is located on bilateral lumbosacral region. Pain Intensity Level: 9/10. The pain did not radiate. Associated paresthesias of occ into right leg. Occ numbness into right foot.. Denies urinary incontinence and fecal incontinence.

PE:

MUSCULOSKELETAL:

Lumbar: - Pt. is in moderate distress
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Lumbar ROM is decreased to all planes markedly with pain, ? effort.
- Sensation is noted to be within normal limits
- ROM testing reveals same range in all planes as previous visit
- palpation is positive for pain at L2 L3
- passive rotation and overreaction

Normal gait. Exc mild FF.

NEUROLOGIC:

DTRs: Reflexes at knee and ankles normal bilaterally.

X-RAY / LAB REPORT:

MRI:

MRI: Scheduled.

ASSESSMENT:

1. Lumbosacral strain. 846.0.

PLAN:

MEDICATIONS:

D/C Ibuprofen, Continue Flexeril
Darvocet N100 #10 one qhs prn severe pain and Naproxen 550 mg bid

ACTIVITY STATUS:

Modified activity

RETURN FOR EVALUATION: After MRI

Dictated But Not Read

Dictated On: Nov 16 2004 12:26PM

Dictated By: Marc H Kolender, MD

Printed Date: 11/19/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient:	Hutson, Franklin W	Service Date:	11/16/2004
Soc.Sec. #:		Injury Date:	10/21/2004
Date of Birth:	05/14/1964	Age:	42
Service Location:	CMC - Charleston	Employer:	SC State Ports Authority
Service ID #:	1040150797		176 Concord St
Claim #:			CHARLESTON, SC 29401
Dictator:	Marc H Kolender, MD		
Diagnosis:	846.0 Lumbosacral Strain		

Notes: Return if symptoms worsen, if you develop any new symptoms and if pain increases.

The patients company was contacted today.
Diagnosis, treatment plan and expectations were discussed with the patient. The patient was instructed to return to the clinic as needed. Advised of medication usage and side effects.

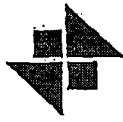
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Dictated On: Nov 16 2004 12:26PM

Dictated By: Marc H Kolender, MD

Printed Date: 11/19/2004

Page: 2



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29405 (843) 572-0810

Transcription

2004-5801

Patient: Hutson, Franklin W
Soc. Sec. #:
Date of Birth: 05/14/1962 **Age:** 42
Service Location: CMC - Charleston
Service ID #: 1040151396
Claim #:
Dictator: Marc H Kolender, MD
Diagnosis: 846.0 Lumbosacral Strain

Service Date: 11/22/2004
Injury Date: 10/21/2004
Employer: SC State Ports Authority
176 Concord St
CHARLESTON, SC 29401

Notes:

CHIEF COMPLAINT:

Patient is a 42 year old male employee of SC State Ports Authority who complains about his back which was injured on 10/21/2004 9:00:00 PM.

PATIENT STATEMENT:

Patient states: "the crane lost control power and slammed on breaks and one time the container hung in the cell guide then dropped and jarred me up and down hard."

Patient returns for a recheck for the injury stated above.

HISTORY OF PRESENT ILLNESS:

He feels the pattern of symptoms is no better. Patient has not been working because no light duty available. Patient has been taking their medications and has noted improvement. Slightly. No further PT. The pain is located on bilateral lumbosacral region. The pain is described as severe and constant. The pain did not radiate. Associated paresthesias and numbness intermittently into right leg and foot. Denies urinary incontinence and fecal incontinence.

PE:

MUSCULOSKELETAL:

Lumbar: - Pt. is in moderate distress
- Straight leg raising is negative bilaterally both seated and supine and maneuver produces back pain, but no sciatic pain
- Lumbar ROM is decreased to all planes markedly
- Sensation is noted to be within normal limits
- ROM testing reveals same range in all planes as previous visit
- palpation is positive for pain at L2 L3

Reflexes symmetric. Gait FF guarding and slow

X-RAY / LAB REPORT:

MRI:

MRI: See report. 1) mild central canal stenosis, mild right neural foraminal stenosis and mild to moderate left neural foraminal stenosis at L2-3 secondary to a broad-based left central/intraforaminal protrusion
2) Bilateral spondylosis of L5 w/ Gr I anterior spondylolysthesis, but no significant stenosis

ASSESSMENT:

1. Lumbar radiculopathy. 724.4.
2. Lumbar strain. 847.2.
3. Spondylolysthesis.

PLAN:

MEDICATIONS:

Patient instructed to continue their previous medications as prescribed., Naproxen, Cyclobenzaprine and Acetaminophen with propoxyphen
Home Exercise program as instructed.

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Dictated On: Nov 22 2004 1:16PM

Dictated By: Marc H Kolender, MD

Printed Date: 11/24/2004

Page: 1



CONCENTRA MEDICAL CENTERS

8780 Rivers Ave Ste 200-B North Charleston, SC 29406 (843) 572-0810

Transcription

Patient: Hutson, Franklin W
Soc.Sec. #:
Date of Birth: 05/14/1964 Age: 42
Service Location: CMC - Charleston
Service ID #: 1040151396
Claim #:
Dictator: Marc H Kolender, MD
Diagnosis: 846.0 Lumbosacral Strain

Service Date: 11/22/2004
Injury Date: 10/21/2004
Employer: SC State Ports Authority
176 Concord St
CHARLESTON, SC 29401

Notes: ACTIVITY STATUS:
No activity. He is medically unable to work.

RETURN FOR EVALUATION: In 1 week

PATIENT REFERRED TO: An orthopedic surgeon at the earliest convenient time.

Return if symptoms worsen, if you develop any new symptoms and if pain increases..

The patients company was contacted earlier today.
Diagnosis, treatment plan and expectations were discussed with the patient. The patient
was instructed to return to the clinic as needed.

Dictated But Not Read

Dictated On: Nov 22 2004 1:16PM

Dictated By: Marc H Kolender, MD

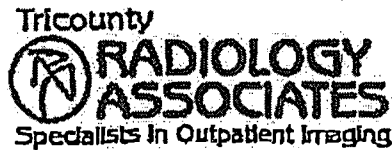
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Page: 2

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P. 07/12



Robert M. Steinberg, M.D.
Marilyn R. Hendrix, M.D.
James A. Thesing, D.O.
John J. Murphy, M.D.

Dec Dibona, MD
Visit.Referring Address

Visit.Referring City, Visit.Referring State Visit.Referring Zip
Birthdate:

PATIENT: Hutson, Frank
Phone #: 843-336-4145
ID Number: 328650
Birthdate: 5/14/1962

MRI OF THE LUMBAR SPINE
EXAM DATE: 11/17/2004

CLINICAL HISTORY: Low back pain radiating down right leg.

TECHNIQUE: Routine MRI of the lumbar spine was performed at the Tricom 1.5 Tesla Siemens MRI utilizing sagittal T1 and T2 with axial T1 and T2 sequences.

FINDINGS: The retroperitoneal soft tissues are within normal limits. There is straightening of the normal lumbar lordosis. There is bilateral spondylolysis of L5 with a grade I anterior spondylolisthesis. The conus terminates at L1 and is without mass.

The L1-2 intervertebral disc is within normal limits.

At L2-3, there is a broad-based left central/intraforaminal protrusion causing mild central canal stenosis and mild to moderate left neural foraminal stenosis.

The L3-4 intervertebral disc is normal.

The L4-5 intervertebral disc is normal.

At L5-S1, there is a grade I anterior spondylolisthesis without stenosis.

IMPRESSION:

1. Mild central canal stenosis, mild right neural foraminal stenosis and mild to moderate left neural foraminal stenosis at L2-3 secondary to a broad-based left central/intraforaminal protrusion.
2. Bilateral spondylolysis of L5 with a grade I anterior spondylolisthesis, but no significant stenosis.

Paul Aitchison, M.D. /bjl
Dictated on 11/18/2004

Job # 1744696

This document has been electronically Reviewed and Signed by Paul Aitchison, M.D.

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P. 08/12

Tricounty
 **RADIOLOGY
ASSOCIATES**
Specialists In Outpatient Imaging

Robert M. Steinberg, M.D.
Marilyn R. Hendrix, M.D.
James A. Thesing, D.O.
John J. Murphy, M.D.

Hutson, Frank ID#: 328650

Paul M. Hutchins MD

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SP
2004-5801

PATIENT: HUTSON, FRANKLIN WILSON
MEDICAL RECORD #: 1233
DATE OF SURGERY: 02/04/05
SURGEON: George Warren, M.D.
PREOPERATIVE DIAGNOSIS: Right sciatica.
POSTOPERATIVE DIAGNOSIS: Right sciatica.
OPERATION: Lumbar epidural steroid injection, L5-S1, right.

DISCUSSION: This gentleman displayed significant low tolerance for pain both at the time of placing the INT for IV sedation as well as 1% Xylocaine for skin anesthesia.

PROCEDURE: The patient was placed prone on the imaging table and given a total of 6 mg of IV Versed for conscious sedation. The L5-S1 interlaminar space on the right was identified and marked correspondingly on the skin. After prep and drape the site was infiltrated with 1% Xylocaine with significant intolerance. An 18 gauge Crawford needle was placed down to the ligament. Using loss of resistance technique the epidural space was entered. Aspiration was negative. Injection of contrast showed epidural flow. Into this site was injected 4 cc of normal saline and 120 mg of Depo-Medrol. The needle was withdrawn.

The patient was discharged to the recovery area for observation.

GEORGE WARREN, M.D.

DD: 02/07/05
DT: 02/07/05
GW\ETS:bkf 0207-005

South Carolina Vocational Rehabilitation Department CPE - Career Planning Report

Caseload#: 271

Client Name: Franklin Hutson

Primary Disability: 1001 - Mobility Orthopedic/Neurological Impairments
Secondary Disability: 0000 - No impairment

Form Date: 11/10/2005

ASSESSMENTS		Form Date: 11/10/2005	
☒ Interview	☒ Vocational Testing	☒ Career Exploration	☐ Work Evaluation
☐ Work Samples			
COMMUNITY BASED WORK EXPERIENCES			
☐ Trial Work Experience No. 1 (06)	☐ Job Shadowing No. 1	☐ Job Tryout No. 1	☐ Job Mentoring No. 1
☐ Trial Work Experience No. 2 (06)	☐ Job Shadowing No. 2	☐ Job Tryout No. 2	☐ Job Mentoring No. 2
☐ Trial Work Experience No. 3 (06)	☐ Job Shadowing No. 3	☐ Job Tryout No. 3	☐ Job Mentoring No. 3
Comments:			
☐ Based on Trial Work Experiences / Extended Evaluation, recommend case closure due to the severity of the disability.			
VOCATIONAL OBJECTIVES			
1. Job Title:		Business:	
2. Job Title:		Business:	
Justification for Vocational Objectives: Cl. was not able to agree on any career goal because he claimed unable to physically do any type of job.			
RECOMMENDATIONS FOR IPE:			
☐ Job Readiness Training	☐ Additional Ed. / Training	☐ Treatment	☐ Pre-Employment Classes
☐ Evaluation Center	☐ Supported Employment	☐ Rehab. Technology	☐ Employment Classes
Specific Recommendations / Classes: Client was recommended for eval. center, but claimed he had already been through the evaluations.		☐ On Job Training	☐ Disability Classes
Test Score(s):		WRAT/MATH - 7.0	
ABLE/VOCABULARY - PHS		ABLE/READING - PHS	

Franklin Hutson
CPE Specialist Signature

11/10/05
Date

Individual Report for the Adult Basic Learning Examination (ABLE)

Level
Form I

Name Franklin Hutson

Instructor _____

Group _____

Program _____

Date Nov. 11, 2005

Directions for Completing the Individual Report

The chart below contains information about the subtests and total scores for Level 3 of ABLE. Norms for Level 3 can be found in the Level 3 Norms Booklet.

Tests	Number of Items	Raw Score	SS	PR	Stanine Profile			GE
					Below Average	Average	Above Average	
VOCABULARY	32	27	136	93	1 2 3	4 5 6	7 (8) 9	PHS
READING COMPREHENSION	48	45	149	96	1 2 3	4 5 6	7 8 (9)	PHS
Functional Reading	24							
Educational Reading	24							
Literary Comprehension	24							
Inferential Comprehension	24							
SPELLING	30				1 2 3	4 5 6	7 8 9	
Structural Principles	12							
Phonetic Principles	12							
Homophones	6							
LANGUAGE	30				1 2 3	4 5 6	7 8 9	
Applied Grammar	12							
Punctuation	11							
Capitalization	7							
ELL LANGUAGE (ling + Language)	60				1 2 3	4 5 6	7 8 9	
NUMBER OPERATIONS	40				1 2 3	4 5 6	7 8 9	
Computation	33							
Concepts of Number	7							
PROBLEM SOLVING	40				1 2 3	4 5 6	7 8 9	
Geometric Concepts	4							
Sorting and Retrieving	6							
Adding	7							
Forming an Outcome	23							
MATHEMATICS (Operations + Problem Solving)	80				1 2 3	4 5 6	7 8 9	

WIDE RANGE ACHIEVEMENT TEST - REVISION 3

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1. Gary S. Williams

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1937 1946 1965 1976 1978 1984 1993

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2007-CP-10-2305

Franklin Hutson,
Claimant

Appellant,

v.

SC State Ports Authority,
Employer

State Accident Fund
Carrier,

Respondents.

BRIEF OF APPELLANT

Thomas M. White, Esquire
The Steinberg Law Firm, LLP
Post Office Box 1028
Goose Creek, SC, 29445
(843) 572-0700
Attorney for Appellant

TABLE OF CONTENT AND CASES

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<u>Lee v. Harborside Café</u> , 350 S.C. 74, 564 S.E.2d 354 (Ct. App. 2002)	9
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<u>Muir v. C.R. Bard, Inc.</u> , 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999)	5

<u>Sharpe v. Case Produce Co.</u> , 329 S.C. 534, 495 S.E.2d 790 (Ct. App. 1997) . . .	5
<u>Singleton v. Young Lumber Co.</u> , 236 S.C. 454, 114 S.E.2d 837 (1960)	9,10,11,15
<u>Thompson ex rel. Harvey v. Cisson Const. Co.</u> , 337 S.C. 137, 659 S.E.2d 171 (Ct. App. 2008)	5,8
<u>Tiller v. Nat'l Health Care Ctr. of Sumter</u> , 334 S.C. 333, 513 S.E.2d 843 (1999) .	5
<u>Wigfall v. Tideland Utilities, Inc.</u> , 354 S.C. 100, 580 S.E.2d 100 (2003) .	8,9,10,11
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S.C. Code Ann. § 42-9-20 (1976)	4
S.C. Code Ann. § 42-9-30 (1976) (referenced, never directly cited)	

STATEMENT OF ISSUES ON APPEAL

- I. Did the Court of Common Pleas Charleston County err in holding there was substantial evidence in the record to support a finding that Claimant was capable of running a restaurant and, therefore, did not suffer wage loss under S.C. Code Ann. § 42-9-20 (1976) based solely on Claimant's speculative testimony concerning possible future employment?

- II. Did the Court of Common Pleas Charleston County commit an error of law in affirming an award limiting Claimant's recovery to the back under S.C. Code Ann. § 42-9-30 (1976) when it was found the Claimant's injury affected his back and leg?

- III. Did the Court of Common Pleas Charleston County commit an error of law in not remanding the claim to the Commission to make findings of fact sufficient for appellate review as to the Claimant's current earning capacity and/or the extent of his loss or loss of use of his back. leg and/or whole person?

STATEMENT OF THE CASE

This matter came before the South Carolina Workers' Compensation Commission on a Form 50 and a stop pay. Claimant contends he was permanently and totally disabled under § 42-9-10/42-9-30 or, in the alternative, suffered a wage loss under § 42-9-20 as a result of his accepted on-the-job injury of October 21, 2004.

The Defendants contend the Claimant only has suffered a loss of use and disability to his back and should receive benefits solely under §42-9-30.

This matter was heard August 1, 2006, by a single Commissioner. An additional hearing was held on August 25, 2006. An Order was issued January 11, 2007, finding the Claimant should receive a thirty percent permanent partial disability for the loss of use to his back under § 42-9-30, and the Defendants should receive a credit for overpayment of temporary total benefits from August 31, 2005 to December 9, 2005 and from June 26, 2006 forward.

The Claimant timely filed a Form 30 Request for Commission Review. On May 9, 2007, the Commission issued an Order sustaining the Single Commissioners Order in its entirety.

The Claimant timely filed an appeal with the Court of Common Pleas in Charleston County on June 1, 2007. On March 11, 2008, a hearing was held. On April 17, 2008 an Order was issued affirming the findings of the full Commission.

The Claimant timely filed a Notice of Appeal to the South Carolina Court of

Appeals on May 13, 2008. Claimant timely filed a Motion for Extension of time to file Initial Appellant Brief on July 28, 2008. Claimant timely filed an Amended Motion for Extension of time to file Initial Appellant Brief on September 8, 2008.

ARGUMENT

- I. **THE COURT OF COMMON PLEAS CHARLESTON COUNTY ERRED IN HOLDING THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING THAT CLAIMANT WAS CAPABLE OF RUNNING A RESTAURANT AND THUS DID NOT SUFFER A WAGE LOSS UNDER S.C. CODE ANN. § 42-9-20 (1976).**

§ 42-9-20 governs the amount of compensation for partial disability. That section states in pertinent part:

Except as otherwise provided in § 42-9-30, when the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid, as provided in this chapter, to the injured employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the difference between his average weekly wages before the injury and the average weekly wages which he is **able to earn thereafter . . .**

S.C. Code Ann. § 42-9-20 (1976) (emphasis added).

"The South Carolina Administrative Procedures Act governs judicial review of a decision of the workers' compensation commission." Lark v. Bi-Lo, Inc., 276

S.C. 130, 134, 276 S.E.2d 304, 306 (1981). That act states in pertinent part:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . (d) affected by other error of law [or are]. . . (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

S.C. Code Ann. § 1-23-380(A)(5)(d)(e) (Supp. 2006).

Pursuant to the APA, an appellate court's review is limited to deciding whether the appellate panel's decision is unsupported by substantial evidence or is controlled by some error of law. Thompson ex rel. Harvey v. Cisson Const. Co., 377 S.C. 137, 151, 659 S.E.2d 171, 178 (Ct. App. 2008) (citing Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007)).

"The appellate Panel's factual findings will normally be upheld; however, such a finding may not be based upon **surmise, conjecture, or speculation**, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Id., at 153 (emphasis added) (citing Tiller v. Nat'l Health care Ctr. Of Sumter, 334 S.C. 333, 339, 513 S.E.2d 843, 845 (1999); Muir v. C.R. Bard, Inc., 336 S.C. at 282, 519 S.E.2d at 591 (Ct. App. 1999); Sharpe v. Case Produce Co., 329 S.C. 534, 543, 495 S.E.2d 790, 794 (Ct. App. 1997) rev'd on other grounds). See, Wynn v. Peoples Natural Gas Co. of S.C., 238 S.C. 1, 118 S.E.2d 812 (1961) (Supreme Court of S.C. reversed appellate panels finding of total disability which was based on Claimants speculative testimony that he was unable to work and in disregard of expert testimony to the contrary.)

In the case at bar, the Court of Common Pleas Charleston County erred in finding there was substantial evidence in the record to support the commissions finding that the Claimant could run a restaurant and, therefore, did not suffer wage loss under § 42-9-20 which was based solely on the Claimants speculative testimony and in disregard of the **only** expert evidence in the record.

The parties stipulated that before the accident Claimant was making \$1,730.00 a week. (R. p. 69, lines 20-22). The only vocational evidence in the record noted that Claimant had been referred to the South Carolina Department of vocational rehabilitation. Further, in his present status, he was unemployable but upon successful completion of a vocational training program, it was the vocational expert's opinion that his earnings would be between \$5.15 and \$6.50 an hour. (R. pp. 282-289). The Defendants failed to offer any vocational evidence and the preceding vocational expert evidence is uncontroverted. For the last 25 years the Claimant has worked as a crane operator except for one year in which he worked as a rigger. (R. p. 72, line 12 - p. 74, line 11). Claimant has tried to obtain several jobs with his current restrictions without success. (R. p. 86, lines 3-25).

The single commissioner based his finding that Claimant could run a restaurant solely on Claimant's speculative testimony. The claimant stated the following when questioned by the single Commissioner at the hearing. He did not own a restaurant at the time of the hearing. (R. p. 96, lines 3-6). He has never owned a business. (R. p. 97, lines 4-6). He has never tried to figure out menus, write checks, pay bills, stand and work a register, or stand and help in a kitchen. (R. p. 96, lines 7-24). When asked by opposing counsel what type of revenue Claimant could expect to generate running a restaurant he answered that restaurants don't generally disclose that information and that it all depended on how big the restaurant was, what kind of food they served, and how good it is. (R. p. 91, line 19 - p. 92, line 6). When specifically asked this question again by

the single Commissioner the Claimant surmised, it depends on how many people I get coming in there. My food's good. (R. p. 102, lines 7-15). The only evidence in the record that Claimant could earn more than \$6.50 an hour is when he speculated that he believed he could supervise other people and make a decent salary. (R. p. 87, lines 12-20). A vague statement at best. The single Commissioner stated in his Order that the Claimants confidence in his ability to run a restaurant "runs contrary to the greater weight of the other evidence in the record." (R. p. 15, lines 24-25). Other than the Claimant saying that he thought he could run a restaurant, there is absolutely no evidence anywhere in the record that Claimant was capable of performing that type of work or even had any idea of what it would take to run a restaurant.

According to the above statutes, case law, and analysis, Claimant should have recovered for a significant wage loss under § 42-9-20. Claimant was making \$1,730.00 a week before the accident as a crane operator and now is capable of making \$6.50 an hour at best. The single Commissioner's finding that Claimant was capable of running a restaurant was clearly erroneous, it substantially prejudiced Claimants rights, was unsupported by the substantial evidence of the record as a whole, and was based on mere speculation. Consequently, the Court of Common Pleas Charleston County erred in holding there was substantial evidence in the record to uphold the Single Commissioner and Appellate Panel's findings and that court's order should therefore be reversed.

II. THE COURT OF COMMON PLEAS CHARLESTON COUNTY COMMITTED AN ERROR OF LAW IN AFFIRMING AN AWARD THAT LIMITED CLAIMANT'S RECOVERY TO THE BACK UNDER S.C. CODE ANN. § 42-9-30 (1976).

As cited above, an appellate court may reverse or modify a decision of an administrative agency affected by an error of law. See, S.C. Code Ann. § 1-23-380(A)(5)(d) (Supp. 2006). "The South Carolina Court of Appeals exercises freedom and independence in deciding an issue of law in a workers' compensation case." Thompson ex rel. Harvey v. Cisson Const. Co., 377 S.C. 137, 154, 659 S.E.2d 171, 179 (Ct. App. 2008). "No passivity or complaisance is owed or given to the ruling of the Appellate Panel or circuit judge in this context." Id.

The term disability is defined under our states Workers' Compensation Act as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." S.C. Code Ann. § 42-1-120 (1976). The whole philosophy of our Workers' Compensation Act is to compensate for, or relieve from, the loss or impairment of an employee's capacity to earn, or from the deprivation of support from his earnings, and not to indemnify for any physical ailment or impairment as such, except in the classes of cases specifically provided in the Act. Jewel v. R.B. Pond, 198 S.C. 86, 15 S.E. 684, 686, (1941).

There are two competing models of workers' compensation benefits that are available. The economic [or general disability] model defines disability in terms of Claimant's loss of earning capacity. The medical [or scheduled

member] model is based upon degrees of medical impairment and specified body parts. See, Wigfall v. Tideland, 354, S.C. 100, 580 S.E.2d 100 (2003).

This court recently explained in Bass v. Kenco Group:

Generally, an injured employee may proceed under either the general disability sections § 42-9-10 and § 42-9-20 or under the scheduled member section § 42-9-30 in order to maximize recovery under the South Carolina Workers' Compensation Act. See, Brown v. Owen Steel Co., 316 S.C. 278, 280, 450 S.E.2d 57, 58 (Ct. App. 1994) (proceeding under the general disability sections for an injury to a scheduled member gives the claimant "the opportunity to establish a disability greater than the presumptive disability provided for under the scheduled member section.") Only where a scheduled loss is not accompanied by additional complications affecting another part of the body is the scheduled recovery exclusive. Id. (citing Singleton v. Young Lumber Co., 236 S.C. 454, 471, 114 S.E.2d 837, 845 (1960)).

Bass v. Kenco Group, 366 S.C. 450, 463, 622 S.E.2d 577, 583-584 (Ct App. 2005) (Claimant recovered under § 42-9-20 and wasn't limited to § 42-9-30 because his injury to shoulder affected his mental state causing mental injuries) (citing Lee v. Harborside Café, 350 S.C. 74, 78 564 S.E.2d 354, 356 (Ct. App. 2002)).

Our Supreme Court has recently stated that Singleton "stands for the rule that an individual is not limited to scheduled benefits under § 42-9-30 if he can show additional injuries beyond a lone scheduled injury. This principle recognizes 'the common-sense fact that, when two or more scheduled injuries [or a scheduled and non-scheduled injury] occur together, the disabling effect may be far greater than the arithmetical total of the schedule allowances added together.'" Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 106, 580 S.E.2d 100, 103 (2003).

Turning to the facts of the case at bar, the record clearly shows that Claimant suffered injury to both his back and leg as well as a significant wage loss, which was discussed in the preceding section. Therefore, Claimant is not limited by Singleton and Wigfall to recovery for his back under § 42-9-30.

The medical records reveal the Claimant had a significant disc injury at L5-S1 and at L2-L3. (R. pp. 128-170, 290-295). He was having numbness into his leg. He treated with multiple doctors, including Dr. Stovall who put him on permanent work restrictions of no lifting over thirty-five pounds occasionally and twenty-five pounds frequent. (R. pp. 135-160). Dr. Don Johnson found that he could not return to work as a crane operator because of the jarring of his back and radiating pain into his leg. (R. pp. 168-169). Dr. Faaberg found that he was limited in his ability to sit or stand for more than about fifteen minutes at a time and his maximum lift was twenty pounds and, at best, he could only do sedentary work. (R. pp. 290-295).

In addition to the injuries from this accident, the Claimant also suffered from a significant preexisting condition to his right hand which, as found by Dr. Johnson, from a vocational rehab standpoint because he has lost the use of his right hand, he would not be retrainable for computer or a type of job requiring manual dexterity. (R. p. 169).

The uncontroverted Vocational evidence found that Claimant could not perform the required job task of his former work as a crane operator. The expert further found he was unable to return to any past employment and he did not have transferable skills to perform other work that was within his residual,

functional capacity. (R. pp. 282-289).

The Order of the single Commissioner, which was affirmed by the Full Commission, and was not appealed by the Defendants made the following findings of fact. Fact # 3, Claimant suffered an admitted injury to his back. Fact # 4, Claimant suffers radicular symptoms into right leg. These symptoms affect function of Claimants right leg. Fact # 5, Claimant, had he not testified he thought he could run a restaurant, would have been found permanently and totally disabled under § 42-9-10 with the affects to the right leg taking the case out of Singleton. (R. pp. 15-16).

Additionally, at the haring of August 25, 2006, the Commissioner stated on the record:

As far as the leg is concerned, I don't have the proposed order yet. I don't know how it was phrased but, in its final form the Order is going to make clear that I found that his leg was – the function of his leg was affected. The purpose of that finding was to take this case out of Singleton and Wigfall. I believe this was an injury that affected not only his back but also his leg.

(R. p. 112, line 24 - p. 113, line 7).

Later in the same transcript, the Single Commissioner states:

I thought there was no question in my mind that your client suffered a profound injury to his back. There is no question but his leg is affected. There is no question in my mind that this case is outside the purview of Singleton and Wigfall.

(R. p. 114, lines 9-14).

In summation, Claimant suffered injury to both his back and leg. Therefore, according to Singleton and Wigfall Claimant is not limited to recovery for his back only under § 42-9-30. Rather, it was an error of law for the single

Commissioner to limit Claimant's recovery to his back under § 42-9-30 and fail to make a ruling as to Claimant's loss or loss of use of his right leg where said Commissioner made specific findings of fact that Claimant not only suffered an injury to his back but also suffered symptoms into his right leg which affected the function of that leg. Subsequently, the Court of Common Pleas Charleston County erred as a matter of law in upholding the Commissions ruling and this court, exercising its freedom and independence in deciding an issue of law in a workers' compensation case should reverse the decision below.

III. THE COURT OF COMMON PLEAS CHARLESTON COUNTY COMMITTED AN ERROR OF LAW IN NOT REMANDING THE CLAIM TO THE COMMISSION TO MAKE FINDINGS OF FACT SUFFICIENT FOR APPELLATE REVIEW AS TO THE CLAIMANT'S CURRENT EARNING CAPACITY AND/OR THE EXTENT OF HIS LOSS OR LOSS OF USE OF HIS BACK, LEG, AND/OR WHOLE PERSON.

Whether an administrative bodies ruling is sufficient for appellate review is governed by § 1-23-350. That section states in relevant part:

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

S.C. Code Ann. § 1-23-350 (1976).

The "duty on the part of the Commission requires that, not only must findings of fact be made upon the essential factual issues, but that they be sufficiently definite and detailed to enable the appellate court to properly

determine whether the findings of fact are supported by the evidence and whether the laws has been properly applied to those findings. Hill v. Jones, 225 S.C. 219, 223-224, 178 S.E.2d 142, 144 (1970). "Where the decision of the commission fails to comply with the foregoing requirements, it will ordinarily be reversed and the cause remanded to the commission, where the evidence is in conflict, in order that such detailed and specific findings may be made as will enable the appellate court to properly review the factual and legal basis of the award. Id.

It is the well settled law of this state that where an injured party claims benefits under a particular section of the Workers' Compensation Act the Commission must make specific rulings as to each claim based upon the substantial evidence in the record or there will be grounds for remand. See, Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (Ct. App. 1996) (where single commissioner failed to make any findings regarding appellant's claim that her disability extended beyond the disability to the scheduled member, the case was remanded to the commission for specific findings of fact on that issue.) cert. dismissed as improvidently granted, 326 S.C. 261, 486 S.E.2d 263 (1997). See Gilliam v. Woodside Mills, 319 S.C. 385, 461 S.E.2d 818 (1995) (holding case should have been remanded to commission to address claimant's eligibility for an award under sections 42-9-10 and 42-9-20 when substantial evidence showed injury not confined to scheduled member). See Hendricks v. Pickens County, 335 S.C. 405, 517 S.E.2d 698 (Ct. App. 1999) (Case remanded to Commission where claimant alleged general disability benefits under sections

42-9-10 and 42-9-20 but Commission awarded benefits under 42-9-30 without sufficient findings of fact as to whether claimant was entitled to general disability benefits.)

Turning to the facts at bar, the Court of Common Pleas committed an error of law in not remanding the claim to the Commission to make specific findings of fact sufficient for appellate review as to the Claimants loss or loss of use of his back, leg, and/or whole person. Claimant alleged at each level of adjudication that he was entitled to benefits not only under section 42-9-30 but also sections 42-9-10 and 42-9-20 because of injury to his back and his leg. The Order of the single Commissioner found, Fact # 3, Claimant suffered an admitted injury to his back. Fact # 4, Claimant suffers radicular symptoms into right let. These symptoms affect function of Claimants right leg. However, the single commissioner made no finding whatsoever, neither affirmative or negative, as to Claimant's loss or loss of use of his leg and/or whole person. Fact # 7 merely stated, " [a]fter reviewing the medical records I find that the Claimant has suffered a 30% loss of use to his back under § 42-9-30." (R. pp. 15-16). Morgan is directly on point with these facts. In Morgan the claimant was found to have suffered a 100% loss of use of the right arm by the single commissioner; the commissioner also noted that the injury to the arm affected other parts of the claimant's body. However, because the commissioner failed to make any findings as to whether Claimant was entitled to recover for impairment as to the whole person, as Claimant alleged, the case was remanded to the Commission by this Court.

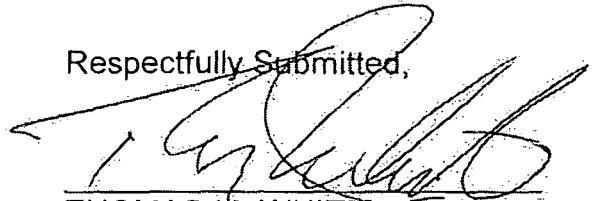
Additionally, the Court of Common Pleas committed an error of law in not remanding the claim to the Commission to make specific findings of fact sufficient for appellate review as to the Claimants current earning capacity. As discussed above, the single Commissioner's finding that Claimant could run a restaurant and, therefore, did not suffer wage loss under § 42-9-20 was based on mere speculation. The entire record is void of any substantive evidence that Claimant could earn an income equal to that which he was earning before the accident. As noted above, the single Commissioner stated in his Order that the Claimant's confidence in his ability to run a restaurant "runs contrary to the greater weight of the other evidence in the record." Additionally, the Commissioner noted that had Claimant not testified he thought he could run a restaurant, "I would have found him permanently and totally disabled under § 42-9-10 with the affects to the right leg taking the case out of Singleton." (R. pp. 15-16). These facts are similar to Gilliam where the South Carolina Supreme Court remanded the case to the Commission to consider loss of earning capacity because there was substantial evidence that the claimant was not limited to recovery under § 42-9-30.

According to the above statutes, case law, and analysis, the Court of Common Pleas Charleston County committed an error of law in not remanding the claim to the Commission to make findings of fact sufficient for appellate review as to the Claimant's current earning capacity and/or the extent of his loss or loss of use of his back, leg, and/or whole person.

CONCLUSION

The Claimant suffered a loss of use to both his back and right leg. Therefore, Claimant is not limited to recovery only to the back under § 42-9-30. Additionally, Claimant has suffered a substantial loss of earning capacity due to these injuries. Consequently, the Order of the Court of Common Pleas Charleston County affirming the single Commissioner and the Commission Appellate Panel's Orders should be reversed or modified with instructions that Claimant receive either total disability under § 42-9-10 / § 42-9-30 or wage loss under § 42-9-20. In the alternative, if the Order of the Court of Common Pleas Charleston County is not reversed or modified the case should be remanded back to the Commission to make findings of fact sufficient for appellate review as to the Claimant's current earning capacity and/or the extent of his loss or loss of use of his back, leg, and/or whole person.

Respectfully Submitted,



THOMAS M. WHITE

DATED: _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2007-CP-10-2305

Franklin Hutson
Claimant

Appellant,

v.

South Carolina State Ports Authority,
Employer

State Accident Fund
Carrier,

Respondents.

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STATEMENT OF ISSUES ON APPEAL

I. THE COURT OF COMMON PLEAS WAS CORRECT IN HOLDING THAT THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S FINDINGS THAT THE CLAIMANT DID NOT SUFFER A WAGE LOSS UNDER § 42-9-20.

II. THE COURT OF COMMON PLEAS WAS CORRECT IN AFFIRMING THE COMMISSION'S AWARD THAT CLAIMANT SUFFERED A 30% PERMANENT PARTIAL DISABILITY TO HIS BACK UNDER § 42-9-30.

III. THE ORDER OF COMMISSION MAKES SUFFICIENT FINDINGS TO BE UPHOLD UNDER APPELLATE REVIEW.

STATEMENT OF THE CASE

This matter came before the South Carolina Workers' Compensation Commission on August 1, 2006. A hearing was held pursuant to Forms 50/51 and Form 21. (R. pp. 31-34). The Respondents' filed a Form 21 on August 31, 2005 requesting a credit for overpayment from the date of maximum medical improvement.

This case involves an admitted injury to the Appellant's back which occurred in the course and scope of his job at the South Carolina State Ports Authority. At the hearing on August 6, 2006, Appellant alleged that he suffered a wage loss under § 42-9-20 or that he was permanently and totally disabled under § 42-9-10 and/or § 42-9-30(19). Appellant claims that he suffered an injury to his back and legs, primarily his right leg and alleges a date of maximum medical improvement as of September 20, 2005. (R. pp. 69-70, lines 24-9). It was the position of the Respondent's that the Appellant reached maximum medical improvement as of June 25, 2005. Respondents asked to stop temporary total

benefits and asked for a credit for overpayment of benefits paid after the date of maximum medical improvement and alleged that the Appellant is only entitled to permanent partial disability. Respondents denied that the Appellant is permanently and totally disabled or that he suffered a wage loss under § 42-9-20. (R. p.70, lines 10-18).

The Single Commissioner found that Appellant was not permanently and totally disabled and that the Appellant did not suffer a wage loss. The Single Commissioner found that Appellant had a 30% permanent partial disability to his spine. (R. pp. 10-18). Appellant appealed the Order to the Full Commission which affirmed the Order. (R. pp. 19-22). Appellant then appealed the Order to the Circuit Court which also affirmed the Order in its entirety. (R. pp. 23-29).

STANDARD OF REVIEW

In a workers' compensation appeal, no court can substitute its judgment from that of the Commission. The court may reverse or modify the decision of the Commission only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative and substantial evidence. Substantial evidence is not a mere scintilla of evidence nor evidence viewed from one side, but such evidence, when the whole record is considered, as would allow reasonable minds to reach the conclusion reached by the Full Commission. Jane Doe v. Department of Disabilities and Special Needs, 364 S.C. 411, 613 SE 2nd 785, (Ct. App. 2005).

In a workers' compensation case, the Full Commission is the ultimate fact finder. DeBruhl v. Kershaw County Sheriff's Dept., 397 S.E.2d 782 (Ct. App.

1990); Rogers v. Kunja Knitting Mills, 440 S.E.2d 401 (Ct. App. 1994). The Full Commission, sitting as a finder of fact, can consider all of the evidence and reach its own findings of fact and conclusions of law. The scope of review of the Full Commission is not limited. Lowe v. Am-Can Transport Services, 324 S.E.2d 87 (Ct. App. 1984); Green v. Raybestos-Manhattan, Inc., 156 S.E.2d 318 (1967).

"The Commission's decision must be affirmed if the factual findings are supported by substantial evidence in the record. Substantial evidence is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached. The possibility of drawing two inconsistent conclusions from the evidence does not prevent the Commission's finding from being supported by substantial evidence. Where there is a conflict in the evidence, the Commission's findings of fact are conclusive. The final determination of witness credibility and the weight to be accorded evidence is reserved to the Commission and it is not the task of the court to weigh the evidence as found by the Commission." Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999).

LEGAL ARGUMENTS

I. THE COURT OF COMMON PLEAS WAS CORRECT IN HOLDING THAT THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S FINDINGS THAT THE CLAIMANT DID NOT SUFFER A WAGE LOSS UNDER § 42-9-20.

The Appellant appeals the finding that there is substantial evidence to support the finding that the Appellant could run a restaurant and did not suffer a wage loss under § 42-9-20. The Circuit Court was correct in finding that there is

substantial evidence to support the finding that Appellant did not suffer a wage loss as the record is full of testimony regarding the Appellant's plan to open a restaurant. Appellant studied culinary arts and food sanitation at Trident Technical College. (R. p. 72, lines 7-11). Appellant testified that his family has been in the restaurant business all his life and that he has several aunts and uncles in the restaurant business. (R. p. 87, lines 12-20). He testified that if he "established that something like that I can supervise other people to work for me and make, you know, a decent salary." (R. p. 87, lines 17-20). He testified that he had been researching locations, getting menu selections and pricing equipment to determine what it would take to set up an establishment. (R. pp. 87-88, lines 21-3). Appellant testified that he had been working on the restaurant project since Dr. Stovall had released him. (R. p. 91, lines 4-6). Appellant testified that he had several potential locations that he was looking at in the Goose Creek/Moncks Corner area. (R. p. 91, lines 15-18). Appellant testified that he would be able to sit and figure out menus; sit and figure out how to write checks and pay the bills and would stand if he had to work the register. (R. p. 96, lines 7-21). Appellant testified that he would be able to help in the restaurant. (R. p. 96, lines 18-20). Appellant testified that he had spoken to his family members and they told him that it took long hours to run a restaurant, including manual labor. (R. pp. 100-101, lines 19-6). Appellant also testified that he was aware that laws require at least 10% down to make a small business loan. (R. p. 101, lines 13-18).

Appellant argues that there is uncontradicted expert vocational evidence

that he can not earn above minimum wage and has no transferable skills.

However, the evidence is not contradicted as the Appellant's own testimony is in sharp contrast to the vocational report. Regardless, the Commission has the ability to weigh the evidence and make the final determination as to the weight of evidence is reversed for the Commission. Where there is a conflict in the evidence, the Commission's findings of fact are conclusive. Sharpe v. Case Produce, Inc., 336 S.C. 154, 519 S.E.2d 102 (1999). The Commission is neither required to accept or rely fully on the report of Jean Hutchinson.

At the hearing, Appellant testified extensively about his ability to run a restaurant. The Commission obviously put more weight on the testimony of the Appellant than the vocational opinion. Furthermore, the vocational report does not reference the opinion of Dr. Stovall who found that Appellant could engage in medium work. Nor does the vocational report mention or address, Appellant's plan to open a restaurant. Therefore, it is not surprising that Commission placed little weight on the vocational expert's opinion. (R. pp. 282-289).

Appellant also argues that the evidence that he could run a restaurant is speculative. However, the basis for finding that Appellant is capable of running a restaurant is based on the Appellant's own testimony. Appellant is asking the Court to disregard his entire testimony in order to find that he is permanently and totally disabled. As this case is still pending, Claimant has no motivation or incentive to try and actually start a restaurant as he is seeking to be found permanently and totally disabled or to have suffered a total wage loss.

Therefore, the Circuit Court was correct in finding that there was

substantial evidence to affirm the finding that the Appellant was not permanently and totally disabled and that he did not suffer a wage loss.

II. THE COURT OF COMMON PLEAS WAS
CORRECT IN AFFIRMING THE COMMISSION'S
AWARD THAT CLAIMANT SUFFERED A 30%
PERMANENT PARTIAL DISABILITY TO HIS BACK
UNDER § 42-9-30.

Appellant contends that under Singleton v. Young Lumber Co., 236 S.C. 454, 114 S.E.2d 837 (1960), the award should not be limited to § 42-9-30.

Singleton stands for the rule that a claimant with one scheduled injury is limited to the recovery under § 42-9-30. Additionally, Singleton stands for the proposition that an individual is not limited to an award under § 42-9-30 if he can show additional injuries beyond a lone scheduled injury. However, in the case at bar, Appellant only suffered one injury and that was to his back.

Appellant was treated by Dr. Stovall, an orthopaedic surgeon at Lowcountry Orthopaedics and Sports Medicine. On December 2, 2004, Dr. Stovall noted that the MRI of Appellant's lumbar spine did not show a herniated disc at L5-S1. A disc bulge at L2-3 was noted. However, Dr. Stovall specifically noted that the disc bulge at L2-3 does not correlate with Appellant's right side symptoms and therefore, any of his symptoms were probably coming from spondyloysis. (R. p. 136). Appellant was given one epidural injection in L5-S1 and underwent a course of physical therapy. (R. p. 146). No surgery was recommended. (R. p. 156). On June 27, 2005, Dr. Stovall released the Appellant stating that he has reached maximum medical improvement. Dr. Stovall noted that surgical intervention would not benefit the Appellant and

assigned a 10% **whole person** rating to the Claimant. Dr. Stovall noted the Appellant's permanent work restrictions would include lifting no more than thirty-five (35) pounds on occasional basis and no more than twenty-five (25) pounds on a frequent basis but Appellant would be able to carry on a moderate level of activity at the medium work capacity and discharged him from care. (R. p. 156).

The AMA Guides to the Evaluation of Permanent Impairment are utilized to determine impairment ratings. The AMA Guides indicate that for a 10-13% impairment to be assigned to the whole person there should be significant signs of radiculopathy in the legs. (AMA Guidelines 5th Edition, Table 15-3 p. 384). As Dr. Stovall assigned a 10% impairment whole person rating it was clearly inclusive of any radiculopathy in Appellant's legs. Therefore, the impairment rating is reflective of a back injury with some radiculopathy in the lower back.

Appellant references the opinions of Drs. Johnson and Faaberg. Both doctors were retained by Appellant's counsel to perform independent medical examinations. Logically, the opinion of Dr. Stovall, the treating physician, was given greater weight.

Appellant is alleging a pre-existing injury that would hinder his employment opportunities. Appellant apparently was injured in the right hand by a gunshot at the age of 12. (R. p. 84, lines 2-10). The pre-existing condition to his arm is not much of a hindrance to his employment, as he was successfully able to work for many years as a crane operator. Furthermore, as this case was decided prior to Ellison v. Frigidaire Home Products, 371 S.C. 159, 638 S.E.2d 664 (2006), which allows the commission to consider pre existing conditions in

determining impairment. Therefore, the parties are not bound by the decision in Ellison.

The Commission did not find that the Appellant suffered a separate injury to his right leg, merely that his symptoms arose from his injury to his back. Therefore, as the symptoms in his leg can only be attributed to the back injury, and if it was not for his back injury, his leg would not be affected; there is substantial evidence for an award under § 42-9-30.

III. THE ORDER OF COMMISSION MAKES SUFFICIENT FINDINGS TO BE UPHOLD UNDER APPELLATE REVIEW.

Appellant alleges that the Circuit Court erred by failing to remand the case for specific findings for loss of use to Claimant's back, leg and/or whole person. Claimant further alleges that he is entitled to benefits under sections 42-9-10 and/or 42-9-20 because of an injury to his neck and back. However, the only injury the Claimant was found to have was an injury to his back. (R. p. 15).

In Morgan v. JPS Automotives, 321 S.C. 201, 467 S.E.2d 457 (Ct. App. 1996), claimant had an arm injury and developed reflex sympathetic dystrophy with dystonia¹. The Court of Appeals remanded the case for the commission to make specific findings of fact as to whether the claimant was entitled to recover for an impairment to the whole person presumably because of the reflex sympathetic dystrophy with dystonia. In the case at bar, the Commission did

¹ Reflex Sympathetic Dystrophy ("RSD") is a rare condition affecting the sympathetic nervous system, usually in an extremity, resulting in ongoing cycles of extreme pain. It is often triggered by an accident, surgery, or other injury. Early diagnosis and treatment of the condition is critical to curing RSD. If it is not treated early enough, the condition and the pain caused by it can become permanent. Mizell v. Glover, 351 S.C. 392, 570 S.E.2d 176 (2002).

reference the leg by stating in that Claimant suffers radicular symptoms in his leg. Therefore, the Order does address the leg and this case is clearly distinguishable from Morgan.

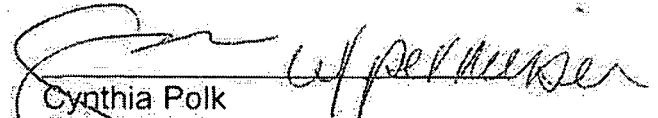
Appellant references the statements made by the Single Commissioner during the August 25, 2006 motion's hearing. As the hearing on August 25 was Appellant's Motion to Reconsider and the Commissioner ultimately did not make a ruling as motions to resolve issues on merits are statutorily prohibited. Regulation 67-215. The orders and findings in the orders are the subject of the appeal not statements made by the Commission that are not incorporated into the Order. The Order on appeal does not find a separate injury to the leg. The only injury Appellant suffered was to his back. Appellant argues that the record is void of any evidence that the Claimant could run a restaurant. However, the Claimant's testimony is what convinced the commissioner to not award under sections 42-9-10 or 42-9-20.

Appellant also relies on Gilliam v. Woodside, 319 S.C. 385, 461 S.E.2d 818 (1995) which is completely different from the case at bar. In Gilliam, the claimant had injured her hip. At the time of the decision, the hip was not a scheduled member and it was unclear if the hip was part of the pelvis or the leg. The Supreme Court found that the hip was part of the pelvis and not a scheduled member so the case had to be remanded to determine disability under § 42-9-10. Therefore, the Gilliam case is distinguishable from the case at bar as the back is a scheduled member under § 42-9-30.

CONCLUSION

Therefore, for all of the foregoing reasons, there is substantial evidence to support the order and the order should be affirmed in its entirety.

Respectfully submitted,


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January 28, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2007-CP-10-2305

Franklin Hutson,
Claimant

Appellant,

v.

SC State Ports Authority,
Employer

State Accident Fund
Carrier,

Respondents.

REPLY BRIEF

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S.C. Code Ann. § 42-9-10 (1976)	(referenced, never directly cited)
S.C. Code Ann. § 42-9-20 (1976)	(referenced, never directly cited)
S.C. Code Ann. § 42-9-30 (1976)	(referenced, never directly cited)

STATEMENT OF ISSUES ON APPEAL

- I. Did the Court of Common Pleas Charleston County err in holding there was substantial evidence in the record to support a finding that Claimant was capable of running a restaurant and, therefore, did not suffer wage loss under S.C. Code Ann. § 42-9-20 (1976) bases solely on Claimant's speculative testimony concerning possible future employment?
- II. Did the Court of Common Pleas Charleston County commit an error of law in affirming an award limiting Claimant's recovery to the back under S.C. Code Ann. § 42-9-30 (1976) when it was found the Claimant's injury affected his back and leg?
- III. Did the Court of Common Pleas Charleston County commit an error of law in not remanding the claim to the Commission to make findings of fact sufficient for appellate review as to the Claimant's current earning capacity and/or the extent of his loss or loss of use of his back, leg and / or whole person?

ARGUMENT

- I. **THE COURT OF COMMON PLEAS CHARLESTON COUNTY ERRED IN HOLDING THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT A FINDING THAT CLAIMANT WAS CAPABLE OF RUNNING A RESTAURANT AND THUS DID NOT SUFFER A WAGE LOSS UNDER S.C. CODE ANN. § 42-9-20 (1976).**

The Respondent argues that there is substantial evidence to support the finding that Appellant did not suffer a wage loss as the record is full of testimony regarding the Appellant's **plan** to open a restaurant. Respondent cites Appellants statement that "I can supervise other people to work for me and make, you know, a decent salary." (R. p. 87, lines 17-20). Respondent also cites the fact that Appellant studied culinary arts and food sanitation at Trident Technical College. (R. p. 72, lines 7-11). It is important to note that Appellant didn't receive any certificates or additional degrees in these fields as he did not

finish these studies. (R. p. 72, lines 4-6). Additionally, Respondent cites the fact that Appellant has family in the food business. (R. p. 87, lines 13-16). None of these facts show Appellant is capable of maintaining the earning capacity he had before the injury.

"The appellate Panel's factual findings will normally be upheld; however, such a finding may not be based upon **surmise, conjecture, or speculation**, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Thompson ex rel. Harvey v. Cisson Const. Co., 377 S.C. 137, 153, 659 S.E.2d 171, 179 (Ct App. 2008) (citations omitted). The facts cited above are mere conjecture that Appellant would be able to run a restaurant and retain the same earning capacity as before his accident. Additionally, these facts are in contrast to the rest of the record. The single commissioner himself stated "[f]rankly, [appellants] confidence runs contrary to the greater weight of the other evidence in the record." (R. p. 15, lines 24-25).

Therefore, the Court of Common Pleas Charleston County erred in holding there was substantial evidence to support a finding that claimant was capable of running a restaurant and thus did not suffer a wage loss under S.C. Code Ann. § 42-9-20 (1976).

II. THE COURT OF COMMON PLEAS CHARLESTON COUNTY COMMITTED AN ERROR OF LAW IN AFFIRMING AN AWARD THAT LIMITED CLAIMANT'S RECOVERY TO THE BACK UNDER S.C. CODE ANN. § 42-9-30 (1976).

Respondent argues that there is substantial evidence for an award under

S.C. Code Ann. § 42-9-30. Respondent urges that the commission did not find that the Appellant suffered a separate injury to his right leg merely that his symptoms arose from his injury to his back, therefore an award under § 42-9-30 was correct. However, our states law only requires a scheduled injury affect another body part to be taken outside the purview of §42-9-30. Bass clearly states, "only where a scheduled loss is not accompanied by additional complications affecting another part of the body is the scheduled recovery exclusive. Bass v. Kenco Group, 366 S.C. 450, 463, 622 S.E.2d 577, 583 (citations omitted).

In the case at bar, the Single Commissioner not only found that Appellant suffered an injury to his back, but also suffered radicular symptoms into his right leg which affect the function of that leg. (R. p. 15, lines 7-8).

Therefore, with Appellant suffering injury to his back and symptoms which affect the function of his leg, along with significant wage loss Appellant is not limited to recovery under § 42-9-30. Further, it was an error of law for the Single commissioner to limit his recovery to § 42-9-30.

III. THE COURT OF COMMON PLEAS CHARLESTON COUNTY COMMITTED AN ERROR OF LAW IN NOT REMANDING THE CLAIM TO THE COMMISSION TO MAKE FINDINGS OF FACT SUFFICIENT FOR APPELLATE REVIEW AS TO THE CLAIMANT'S CURRENT EARNING CAPACITY AND/OR THE EXTENT OF HIS LOSS OR LOSS OF USE OF HIS BACK, LEG, AND/OR WHOLE PERSON.

The "duty on the part of the Commission requires that, not only must

findings of fact be made upon the essential factual issues, but that they be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings." Hill v. Jones, 225 S.C. 219, 223-224, 178 S.E.2d 142, 144 (1972).

The Single Commissioner relied on speculative testimony and disregarded expert testimony in the record in making a finding of fact that Appellant failed to prove that he suffered a loss of earning capacity under § 42-9-20. The finding of fact regarding Appellants current, or post injury, earning capacity is therefore insufficient for appellate review and the issue needs to be remanded.

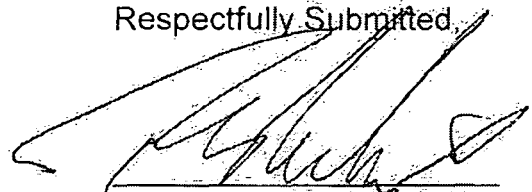
Additionally, appellant alleged at each level of adjudication that he was entitled to benefits not only under § 42-9-30 but also § 42-9-20 and § 42-9-10 because of injury to his back and leg. However, the single commissioner made no finding whatsoever as to appellants loss or loss of use of his leg and/or whole person.

Accordingly, the Court of Common Pleas Charleston County committed an error of law in not remanding the claim to the commission to make findings of fact sufficient for appellate review as to the appellant's current earning capacity and/or the extent of his loss or loss of use of his back, leg, and/or whole person.

CONCLUSION

Appellant suffered a loss of use to both his back and right leg. Therefore, appellant is not limited to recovery to the back under § 42-9-30. Additionally, appellant has suffered a substantial loss of earning capacity due to these injuries. Consequently, the Order of the Court of Common Pleas Charleston County affirming the single Commissioner and the Commission Appellate Panel's Orders should be reversed or modified with instructions that appellant receive either total disability under § 42-9-10 / § 42-9-30 or wage loss under § 42-9-20. In the alternative, if the Order of the Court of Common Pleas Charleston County is not reversed or modified the case should be remanded back to the Commission to make findings of fact sufficient for appellate review as to the Claimant's current earning capacity and/or the extent of his loss or loss of use of his back, leg, and/or whole person.

Respectfully Submitted,



Thomas M. White, Esquire

DATED: _____

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Franklin Hutson,

Appellant.

v.

S.C. State Ports Authority,
Employer, and State Accident
Fund, Carrier,

Respondents.

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Opinion No. 4737
Submitted May 3, 2010 – Filed September 8, 2010

AFFIRMED IN PART AND REMANDED

Thomas M. White, of Goose Creek, for Appellant.

Margaret Mary Urbanic, of Charleston, for
Respondents.

THOMAS, J.: This is a workers' compensation case. At issue in this appeal is the award to the claimant, Franklin Hutson, following his attainment of maximum medical improvement (MMI), that limited his recovery to

correspond with a thirty-percent loss of use to his back. We affirm in part and remand this matter to the commission for further proceedings.¹

FACTS AND PROCEDURAL HISTORY

In 1997, Hutson began working as a crane operator for the State Ports Authority (SPA). He had extensive prior experience in this line of work and attained an average weekly salary of \$1,730. On October 21, 2004, Hutson was injured while attempting to remove a container from a ship. SPA admitted the injury and paid Hutson benefits.

In December 2004, Hutson began treatment with Dr. Stovall, an orthopaedic surgeon. On June 27, 2005, Dr. Stovall determined Hutson reached MMI and discharged him, noting that surgical intervention would not help him. Dr. Stovall assigned Hutson an impairment rating of ten percent of the whole person for his injury. He also noted that Hutson's permanent work restrictions would include lifting no more than thirty-five pounds on an occasional basis and no more than twenty-five pounds on a frequent basis, but otherwise opined that Hutson "should be able to carry on a moderate level of activity at medium work capacity."

On July 29, 2005, Hutson filed a request before the South Carolina Workers' Compensation Commission seeking continuation of his benefits. Hutson maintained he was permanently and totally disabled because of the effect of his injury on his back and right leg. On August 9, 2005, SPA filed a response denying Hutson was permanently disabled and admitting that only Hutson's back injury was compensable. On August 31, 2005, the State Accident Fund, on behalf of SPA, filed a Form 21 in which it sought to stop compensation on the ground that Hutson had reached MMI. The Fund also requested credit for overpayment of temporary total compensation.

When the matter first came before the single commissioner, Hutson had not yet completed the training at the South Carolina Vocational Rehabilitation Center that his vocational consultant had recommended. The

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

matter was continued pending either Hutson's completion of the program or a determination that he was unable to undergo further training.

The single commissioner heard the matter on August 1, 2006. Hutson testified he was forty-four years old and had finished high school. He further testified he had studied business management, culinary arts, and food sanitation at Trident Tech, but never received a degree or certificate. For most of his adult life, he had worked as a crane operator, and the only other significant experience he had was work as a rigger. He was unable to return to either line of work under the restrictions that were imposed as a result of his injury. Hutson described at length how the pain he experienced from his injury affected his day-to-day living. He acknowledged that when he was twelve, his hand was injured when someone shot him with a high-powered rifle. The accident resulted in a loss of coordination and several unsuccessful surgeries, but did not affect his ability to perform his work as a crane operator before his accident.

Hutson also testified that, as his vocational consultant had recommended, he made several visits to Vocational Rehabilitation, but was not offered any type of education, training, or other help. Although Hutson estimated he made three visits, the single commissioner found the program was commenced and completed on October 9, 2005. Hutson stated he then made unsuccessful applications for positions in a variety of settings, including a grocery store, a plumbing company, and a landscaping business.

In response to questions from his attorney about his future plans, Hutson stated he wanted to start a business of his own and was looking into a restaurant business. He testified he had studied culinary arts and other food-related courses at Trident Tech, and his family had been in the restaurant business "all their lives." He further noted that cooking, a pursuit that he enjoyed, was "not as strenuous as manual labor," and surmised he could make a decent salary if he could supervise others to work for him. The single commissioner himself questioned Hutson about his plans to pursue a career in the food service industry, asking Hutson if he was sure he could run a restaurant. Hutson answered he was "sure" he could, but was unable to say how much money he could earn. On redirect examination, however, Hutson

testified that one reason he decided on a plan to open a restaurant was to try to move up to a higher income bracket.

By order dated January 11, 2007, the single commissioner found Hutson had reached MMI on June 27, 2005. The commissioner further found Hutson failed to prove a loss of earning capacity to qualify for compensation under the general disability statutes; however, he found Hutson suffered a thirty-percent loss of use to his back and awarded compensation for a scheduled loss. In addition, the Fund was awarded a credit for overpayment of temporary total benefits.

Hutson moved for reconsideration. The single commissioner held a second hearing, but declined to alter his ruling. Hutson appealed the single commissioner's decision to the appellate panel, which, in a 2-1 vote, affirmed the single commissioner. Hutson then petitioned for judicial review. Following a hearing on March 11, 2008, the court of common pleas affirmed the appellate panel's order.²

ISSUES

- A. Was there substantial evidence to support a finding that Hutson was capable of running a restaurant and therefore could not receive compensation for partial disability?
- B. Was the decision to limit Hutson's recovery to loss of use of his back an error of law?
- C. Should the matter have been remanded to the commission for findings of fact regarding Hutson's current earning capacity or the extent of his injuries?

² In her order, the circuit judge noted the single commissioner assigned a thirty-percent impairment to the "whole person." The single commissioner, however, found Hutson suffered a thirty percent loss of use of his back.

STANDARD OF REVIEW

"In workers' compensation cases, the Full Commission is the ultimate fact finder." DeBruhl v. Kershaw County Sheriff's Dep't, 303 S.C. 20, 24, 397 S.E.2d 782, 785 (Ct. App. 1990). "Our standard of review requires that we determine whether the circuit court properly found the Commission's findings of fact are not supported by substantial evidence in the record." Doe v. S.C. Dep't of Disabilities and Special Needs, 377 S.C. 346, 349, 660 S.E.2d 260, 262 (2008). "While a finding of fact of the commission will normally be upheld, such a finding may not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Edwards v. Pettit Constr. Co., 273 S.C. 576, 579, 257 S.E.2d 754, 755 (1979). "Under the scope of review established in the APA, this Court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law." Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005).

LAW/ANALYSIS

A. Evidence of wage loss

In his order, the single commissioner noted that had Hutson not made assurances that he was capable of running a restaurant, he would have been found to be permanently and totally disabled. On appeal, Hutson does not take issue with the denial of compensation for total disability; however, he asserts he is entitled to recover for partial disability. We disagree.

Under the South Carolina Workers' Compensation Act, "a claimant may proceed under § 42-9-10 or § 42-9-20 to prove a general disability; alternatively, he or she may proceed under § 42-9-30 to prove a loss, or loss of use of, a member, organ, or part of the body for which specific awards are listed in the statute." Fields v. Owens Corning Fiberglas, 301 S.C. 554, 555, 393 S.E.2d 172, 173 (1990).³ "It is well-settled that an award under the

³ Section 42-9-10 of the South Carolina Code (1985 & Supp. 2009) describes various criteria that satisfy the requirements for a finding that a claimant is

general disability statutes must be predicated upon a showing of a loss of earning capacity, whereas an award under the scheduled loss statute does not require such a showing." *Id.* A reversal of the finding that Hutson could not recover under section 42-9-20, then, would require a showing by Hutson that the record lacked substantial evidence to support the appellate panel's determination that he failed to show a loss of earning capacity resulting from his injury. We hold, however, that there was substantial evidence in the record to support the finding that Hutson was capable of running a restaurant and that this finding in turn precluded an award under section 42-9-20.

On appeal, Hutson contends the only evidence to support the finding that he could run a restaurant was his own testimony, which he describes as "speculative." He further argues the commissioner and the appellate panel disregarded the only expert evidence in the record, namely, the written statement of his vocational consultant. We do not agree with these arguments.

First, as the South Carolina Supreme Court has stated: "[W]hile medical testimony is entitled to great respect, the fact finder may disregard it if there is other competent evidence in the record." Tiller v. Nat'l Health Care Ctr. of Sumter, 334 S.C. 333, 340, 513 S.E.2d 843, 846 (1999). We see no reason not to apply this rule to other expert testimony.

Moreover, we disagree with Hutson's position that the vocational consultant's opinion was the only expert assessment of his ability to work.⁴

totally disabled and the method for computing the compensation to which a totally disabled claimant is entitled. Section 42-9-20 of the South Carolina Code (1985) gives the method for computing compensation for partial disability. In section 42-9-30 of the South Carolina Code (1985 & Supp. 2009), the legislature provides a detailed schedule of varying time periods of compensation for particular injuries. This section was amended in 2007; however, the changes do not affect the merits of this appeal.

⁴ Hutson may have misinterpreted the vocational consultant's opinion regarding his ability to work. In his brief, he asserts that the vocational consultant indicated that "upon successful completion of a vocational training

According to his notes, Dr. Stovall opined that Hutson "should be able to carry on a moderate level of activity at the medium work capacity" and assigned only weight-lifting restrictions. In addition, on the advice of his attorney, Hutson consulted another physician, who indicated that Hutson could return to work on light duty.

We also agree with the circuit judge that Hutson's testimony regarding his plans to work in the restaurant business was not speculative. Hutson stated (1) he had studied culinary arts and food sanitation at Trident Technical College; (2) his family had been in the restaurant business for many years, so he was aware of the demands of the work and the initial investment necessary to invest in an establishment; (3) since his release from treatment he had been working on the restaurant project, researching locations, getting menu selections, and pricing equipment; and (4) he could perform in a supervisory capacity as well as work the register. We do not believe that the fact that Hutson had never actually attempted to handle the day-to-day tasks of running a restaurant necessarily makes his statements speculative. Cf. Sellers v. Pinedale Residential Ctr., 350 S.C. 183, 191-92, 564 S.E.2d 694, 699 (Ct. App. 2002) (rejecting the employer's argument that evidence of the claimant's future earnings was too speculative, that evidence consisting of (1) the claimant's demonstrated interest, aptitude, and ability to become an electrician, (2) his stated ambition to become a master electrician, and (3) his demonstrated work ethic).

Finally, we concur in the single commissioner's decision to emphasize the fact that the testimony about Hutson's ability to work in a restaurant came from Hutson himself, who had the burden of proving his case. Cf. Smith v. Michelin Tire Corp., 320 S.C. 296, 298, 465 S.E.2d 96, 97 (Ct. App. 1995) (affirming the denial of benefits for the claimant's alleged psychological problems even though she received benefits for permanent partial disability for a physical injury and noting "[t]he claimant has the burden to prove such

program, . . . his earnings would be between \$5.15 and \$6.50 an hour." The consultant actually stated that without a vocational rehabilitation plan, she was "of the opinion that Mr. Hutson will encounter very significant difficulty re-entering the competitive job market and will be relegated to at or near minimum wage (\$5.15 - \$6.50 per hour)."

facts as will render the injury compensable"). This emphasis seems especially appropriate considering the efforts by the single commissioner to allow Hutson to qualify or otherwise explain his testimony about his ability to pursue a career in the restaurant business. Moreover, Hutson also admitted he drove himself to the hearing and took care of his household chores. Although these admissions alone may not support a finding that he could manage a restaurant, they would not undermine it.

B. Limitation of Hutson's recovery to loss of use of his back

Hutson alleges error in the determination that his recovery should be limited to the loss of use of his back, pointing to statements by the single commissioner both during the hearing and in his order that he had intended to take into account his belief that Hutson's injury affected his right leg as well as his back and the combination of the two injuries would enable Hutson to recover under section 42-9-20 as well as section 42-9-30. As we have previously determined, the record has substantial evidence to support the appellate panel's finding that Hutson did not prove a loss of earning capacity that would enable him to receive compensation benefits under section 42-9-20. We agree with Hutson, however, that he may be entitled to additional compensation under section 42-9-30 for the symptoms he was experiencing with his leg after his accident.

Although "an award under general disability statutes must be predicated upon a showing of a loss of earning capacity, . . . an award under the scheduled loss statute does not require such a showing." Fields, 301 S.C. at 555, 393 S.E.2d at 173. "An award under the scheduled loss statute, however, is premised upon the threshold requirement that the claimant prove a loss, or loss of use of, a specific 'member, organ, or part of the body.'" Id. at 556, 393 S.E.2d at 173 (quoting S.C. Code Ann. § 42-9-30(22) (Supp. 2009)). Although most of the reported decisions concerning claims for more than one scheduled injury focus on whether the claimant is eligible to recover under one of the general disability statutes, the South Carolina Supreme Court has expressed its approval of awarding compensation for multiple scheduled losses under section 42-9-30. See Lail v. Georgia-Pacific Corp. 285 S.C. 234, 236, 328 S.E.2d 911, 912 (1985) (reversing an award for loss of use of the hand and remanding the matter to the commission for factual

findings regarding the percentage of loss of use of the thumb and third finger and referencing the "legislative plan providing scheduled amounts for loss of use of thumbs and fingers").

In his order, the single commissioner made a finding of fact that Hutson suffered radicular symptoms in his right leg that affected the functioning of the limb. He reiterated this finding when, in commenting on Hutson's assurances that he was capable of running a restaurant, he indicated that but for this testimony, he would have found Hutson to be permanently and totally disabled "with affects to the right leg." Given this finding, which neither the SPA nor the Fund has appealed, we hold Hutson has established at least a prima facie case for compensation for the injury to his leg pursuant to section 42-9-30 and remand the matter to the commission for further findings of fact on this matter based on the present record. See Sigmon v. Dayco Corp., 316 S.C. 260, 262, 449 S.E.2d 497, 498 (Ct. App. 1994) (noting that only the commission is authorized to make findings of fact in workers' compensation cases and remanding the matter to the commission for a determination anew based on the present record of the claimant's right to workers' compensation benefits).

C. Remand

Finally, Hutson argues the court of common pleas should have remanded the matter to the commission for findings of fact regarding his current earning capacity or the extent of his injuries. In view of our decisions to affirm the finding that he is not entitled to benefits under section 42-9-20 and to remand the issue of additional compensation for his leg injuries pursuant to section 42-9-30, we decline to address this issue. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when its decision on a prior issue is dispositive).

CONCLUSION

We affirm the finding that Hutson failed to show a loss of earning capacity that would have entitled him to compensation under section 42-9-20 following his attainment of MMI. We hold, however, Hutson may be entitled

to additional compensation under section 42-9-30 for injuries to his leg and therefore remand this case to the commission for further findings of fact on this issue.

AFFIRMED IN PART AND REMANDED.

FEW, C.J, and PIEPER, J., concur.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

CASE NO.: 2007-CP-10-2305

FRANKLIN HUTSON, Employee, ... Appellant,

v.

SC STATE PORTS AUTHORITY, Employer,
and STATE ACCIDENT FUND, Carrier, ... Respondents

APPELLANT'S PETITION FOR REHEARING

The Appellant, Franklin Hutson, (herein after "Hutson"), petitions the south Carolina Court of Appeals pursuant to SCACR Rule 221(a) to rehear and vacate the Courts opinion filed September 8, 2010 on the following grounds:

(1) In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the court of Appeals overlooked the records below and misapprehended the applicable law governing the awarding of wage loss benefits under S.C. Code section 42-9-20 of the South Carolina Workers' Compensation Act.

The Appellant argues that the substantial evidence in the record below established Hutson suffered a significant wage loss and is entitled to benefits under section 42-9-20.

It is well settled that the Workers' Compensation Act should be liberally construed in favor of the Claimant. "The Workmen's Compensation Act is entitled to a

liberal construction in furtherance of the beneficial purposes for which it was designed." Carter v. Penny Tire & Recapping Co., 261 S.C. 341 (1973). "Workers' Compensation Act should be construed in favor of coverage, and any reasonable doubts as to construction of the Act should be resolved in favor of the claimant." Hall v. Desert Aire, Inc., 376 S.C. 338 (Ct. App. 2007).

Section 42-9-20 entitles an injured Claimant to benefits which equal two-thirds (2/3) the difference between his average weekly wage before the injury and the average weekly wage which ***he is able to earn thereafter*** (emphasis added).

An award may not rest on surmise, conjecture or speculation. It must be founded on evidence of sufficient substance to afford a reasonable basis for it. Wynn v. People's Natural Gas Co. Of South Carolina, 238 S.C. 1, 110 S.E.2d 812, (S.Ct.SC, 1961). According to Webster's New World Dictionary 4th Edition, to Speculate is "to ponder; esp., to conjecture." The 4th Edition goes on to define Conjecture as "an inferring, theorizing, or predicting from incomplete evidence; guesswork."

The single Commissioner whom the Appellate Panel, Circuit Court, and now this Court have affirmed, based his decision that the Claimant had no loss of earning capacity solely on the Claimant's guesswork that he could probably run a restaurant although he had never tried to do this type of work before. However the uncontroverted vocational expert evidence stated that without vocational training the Claimant would be relegated to at or near minimum wage (\$5.15 - \$6.50 per hour)(R. p. 289). The Commissioner even stated that the Claimant's "confidence runs contrary to the greater weight of the other evidence in the record." (R. p. 15, lines 24-25).

In this case, the finding that the Claimant could work in the restaurant business and had not suffered a wage loss under §42-9-20 is speculative on two grounds and should be reversed and remanded for findings by the Workers' Compensation Commission to determine if the Claimant can work in a restaurant and in what capacity and what the Claimant is capable of earning in which job to establish benefits under §42-9-20. The Court is speculating, conjecturing and predicting from incomplete evidence in the findings that had previously been made. The Claimant had worked as a crane operator for twenty-four of the previous twenty-five years. Claimant learned to be a crane operator from his father (R. p. 7). At the time of the hearing, he was forty-four

years of age (R.p. 6). He had been a crane operator for twenty-four of the previous twenty-five years which would carry him back to age nineteen. All he had ever done was operate a crane except work as a rigger for one year. He had taken a couple of courses at Trident Tech and never finished and never received a degree in Culinary Art. To find that he was employable in the restaurant business is predicting from incomplete evidence. If he could work in the restaurant business, what could he do? Could he own a restaurant? Could he manage a restaurant? Could he be the chef? Could he be a waiter? Could he be a busboy? There is absolutely no evidence any where in the record establishing what he could do in the restaurant and if he had any skills to work in a restaurant. This finding was pure speculation.

Secondly, even if he could work in a restaurant, there must be a finding that he could earn the same wages as he earned as a crane operator otherwise he is entitled to benefits under §42-9-20 if that would maximize his recovery. He had injuries to the back that affected his leg and §42-9-20 would be an appropriate section to award benefits. If you believe there is evidence in the record to support he could work in a restaurant, again, you have no idea what he could do in the restaurant. You would then have to make a finding as to what he could earn in the restaurant to give an opinion that §42-9-20 did not apply if he had not suffered a loss of earning capacity or if his earnings were going to be so close to his previous earnings that it would not be beneficial for him to go under §42-9-20. There is no evidence about this in the record. How could there be a finding that §42-9-20 does not apply when even if you can assume he could work in a restaurant, there is nothing in the record about how much money he would make. How much money would he make busing tables, how much would he make as a waiter, how much would he make as a manager, how much would he make as a chef, how much would he make as an owner. He was making \$89,960.00 per year as a crane operator. If he could work in the restaurant industry, there has to be a finding as to what he could earn. If he could make \$25,000.00 a year as a manager, he would still be entitled to benefits under §42-9-20 because he had suffered a substantial wage loss. If he could make \$35,000.00 as a chef, he would still be entitled to benefits under §42-9-20.

The Claimant has the right to pick the appropriate section to maximize his recovery. The ONLY evidence in the record is that he could earn \$5.15 to \$6.50 per hour if he did not complete the vocational rehabilitation program. He did not complete the program and, again, the only evidence in the record that is uncontradicted by the Defendants is that he could make \$5.15 to \$6.50 per hour. This is \$13,520.00 a year. This should be the income for calculation under §42-9-20. All other evidence in the record is conjecture, speculation and predicting from incomplete evidence.

If the finding is that he can work in a restaurant, the case should then be remanded back to the Full Commission to determine what he could do in a restaurant and what that rate of pay would be to calculate his benefits under §42-9-20. From the Wynn case, our Court states that, "The increasing tendency to accept awards unsupported by medical testimony should not be allowed to obscure the basic necessity of establishing medical causation by expert testimony in all but simple and routine cases". Here, the expert testimony clearly shows the Claimant is employable at a maximum earning capacity of \$5.15 to \$6.50 per hour and the Court of Appeals has taken the Claimant's testimony (which was total guesswork) to refute the evidence of the only expert when that testimony was simply speculation, conjecture and a prediction from incomplete evidence.

The whole philosophy of our Workers' Compensation Act is to compensate for, or relieve from, the loss or impairment of an employee's capacity to earn or from the deprivation of support from his earnings and not to indemnify for any physical impairment or impairment as such, except in the classes of cases specifically provided in the Act. Jewel v. R.V. Pond, 198 S.C. 86, 15 S.E. 684, 686 (S.Ct. S.C. 1941).

Accordingly, taking into consideration the record as a whole as well as the principle that the Workers' Compensation Act should be construed liberally in favor of injured Claimant's, It is this Courts duty to either reverse the Circuit Courts Decision and Order or remand the issue of whether or not Claimant suffered wage loss under Section 42-9-20 to the South Carolina Workers' Compensation Commission for further findings of fact in accordance with the above cited statutory and case law.

(2) In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the court of Appeals overlooked the records below and misstated that the Appellant did not take issue and appeal his denial of total disability compensation.

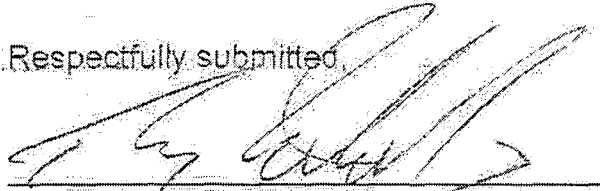
The Record on Appeal is replete with the Appellant's position that he is permanently and totally disabled under either S.C. Code Ann. Section 42-9-10 or 42-9-30(21).

Subsequent to the Single Commissioner's Decision and Order the Appellant filed a request for Full Commission Review on January 19, 2007 and argued that the Single Commissioner erred in not finding the Claimant was permanently and totally disabled under Sections 42-9-10 or 42-9-30(21) (R. p. 41). This was again argued in the Appellant's Brief to the Appellate Panel (R. p. 46). After the Appellate Panel rendered their Decision and Order the Appellant again argued that he was permanently and totally disabled under Sections 42-9-10 or 42-9-30(21) in his Appeal to the Court of Common Pleas Charleston County on May 30, 2007 (R. p. 64).

Finally, the Appellant specifically stated in the Final Appellant Brief that "the Order of the Court of Common Pleas Charleston County affirming the single commissioner and the Commission Appellate Panel's Orders should be reversed or modified with instructions that Claimant receive either *total disability* under Section 42-9-10/42-9-30 or wage loss under Section 42-9-20" (Appellant's Final Brief p. 16) (emphasis added). The Appellant again argued he was entitled to total disability benefits in his Reply Brief as well (Appellant's Reply Brief p. 6).

Therefore, the Court of Appeals opinion dated September 8, 2010 should be vacated and a new opinion should be published showing that the Appellant did indeed take issue and appeal his denial of total disability compensation.

Respectfully submitted,



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Goose Creek, South Carolina

September 20, 2010

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

CASE NO.: 2007-CP-10-2305

FRANKLIN HUTSON, Employee, ... Appellant,

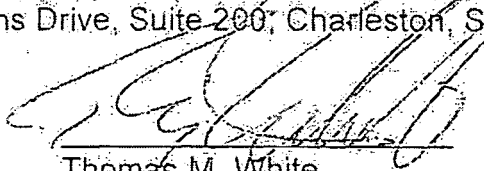
v.

SC STATE PORTS AUTHORITY, Employer,
and STATE ACCIDENT FUND, Carrier, ... Respondents

CERTIFICATE OF SERVICE

I certify that I have served Appellant's Petition for Rehearing on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September __, 2010, addressed to their attorneys of record, Margaret Mary Urbanic, Esquire at Clawson & Staubes, LLC., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492.

September 20, 2010


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No. 2007-CP-10-2305

Franklin Hutson
Claimant -
Appellant,

v.

South Carolina State Ports Authority,
Employer

State Accident Fund
Carrier, Respondents.

RESPONDENTS' REPLY TO PETITION FOR REHEARING

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Attorney for Respondents

The Order of the Court of Appeals dated, September 8, 2010 was correct and should not be reversed or modified.

The Court of Appeals was correct in affirming the lower court's finding that there was substantial evidence to support the findings that the Appellant did not suffer a wage loss. In particular, the findings that the Appellant can run a restaurant were not speculative and, are in fact, supported by the Appellant's own testimony. Appellant repeatedly testified with regards to the restaurant business at length in the record. Appellant testified extensively to the fact that he had been researching locations, menu selections and pricing equipment. (R. pp. 87-88). Appellant testified that he had been working on the restaurant project since the treating physician, Dr. Stovall, had released him from care. (R. p.91). Additionally, Appellant testified that he could sit, figure out menus, checks, bills, and work the register if necessary and help in the restaurant. (R. p. 96). Appellant repeatedly testified that he has family members in the business and that he understood that it took long hours and includes manual labor, and that it would likely be hard work. (R. pp. 100-101). As the Court noted, the Appellant has a burden of proving his case and he was the one who brought forth all the testimony about working on the restaurant. Clearly, there is enough evidence in the record to support the findings of the commission. It is contradictory for the Appellant to ask the courts to ignore his own testimony with regards to what he is capable of doing.

In Sellers vs. Pinedale Residential Center, 350 S.C. 183, 554 S.E.2d 694 (Ct. Ap. 2002), the Court of Appeals found that it was appropriate for the Commission to use the compensation rate for an electrician, although the Claimant was not working as a electrician at the time of the injury. The Commission relied on the testimony of Sellers in

determining Sellers' future earnings. The Commission was found to be correct to consider the future earnings of Sellers. Likewise, in the case at bar, the Commission was correct in considering the future earnings of the Appellant based on his own testimony of a restaurant owner.

The Court of Appeals did not overlook the records or misstate the Appellant's position. The Appellant stated three issues on appeal:

- I. Did the Court of Common Pleas Charleston County err in holding there was substantial evidence in the record to support a finding that Claimant was capable of running a restaurant and, therefore, did not suffer wage loss under S.C. Code § 42-9-30 (1976) when it was found the Claimant's injury affected his back and leg?
- II. Did the Court of Common Pleas Charleston County commit an error of law in affirming an award limiting Claimant's recovery to the back under S.C. Code Ann. § 42-9-30 (1976) when it was found the Claimant's injury affected his back and leg.
- III. Did the Court of Common Pleas Charleston County commit an error of law in not remanding the claim to the Commission to make findings of fact sufficient to for appellate review as to the Claimant's current capacity and/or the extent of his loss or loss of use of his back, leg and/or whole person?

The opinion of the Court of Appeals clearly discusses all of these issues in the opinion. Appellant did not appeal the denial of compensation for total disability. In the Appellant's arguments section of the second issue, Appellant specifically argues that the commission erred in failing to make a ruling as to Claimant's loss of use to his right leg. (Appellant's Brief, p. 12). Appellant never argues that the denial of total disability. Appellant only briefly references 42-9-10 in his "Conclusion" paragraph of his brief. An issue is deemed abandoned on appeal and not presented for review, if it is argued in a short, conclusory statement without supporting authority. Fields v. Melrose Ltd. Partnership, 312 S.C. 439,

S.E. 2d 283 (Ct. App. 1993).

Therefore, for all of the foregoing reasons, the order of the Court should be affirmed.

Respectfully submitted,



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September 29, 2010

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Judge Deadra L. Jefferson, Circuit Court Judge

CASE NO.: 2007-CP-10-2305

FRANKLIN HUTSON, Employee, ... Appellant,

v.

SC STATE PORTS AUTHORITY, Employer,
and STATE ACCIDENT FUND, Carrier, ... Respondents

**APPELLANT'S REPLY TO RESPONDENT'S RETURN TO
PETITION FOR REHEARING**

The Appellant, Franklin Hutson, (herein after "Hutson"), petitions the south Carolina Court of Appeals pursuant to SCACR Rule 221(a) to rehear and vacate the Courts opinion filed September 8, 2010 on the following grounds:

(1) In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the court of Appeals overlooked the records below and misapprehended the applicable law governing the awarding of wage loss benefits under S.C. Code section 42-9-20 of the South Carolina Workers' Compensation Act.

The Appellant argues that the substantial evidence in the record below established Hutson suffered a significant wage loss and is entitled to benefits under section 42-9-20.

The Respondent's argument that Sellers v. Pinedale Residential Center, 350 S.C. 183, 554 S.E.2d 694 (Ct. Ap. 2002) stands for the proposition that the Commission can rely on future earning capacity as stated solely by a Claimant is misplaced. In

Sellers, this Court specifically stated “The Commission based the pay scale on the **testimony of a vocational expert**. Employer offered no evidence to contradict this testimony.” Id. at 699 (emphasis added). Sellers is specifically on point with the case at bar in that the expert in this case opined that Hutson had suffered a significant wage loss and the employer offered no evidence to contradict this testimony. Therefore, any finding that Hutson did not suffer a significant wage loss is based merely on speculation.

(2) In its opinion dated September 8, 2010, affirming in part and remanding the Decision and Order of the Trial Court, the court of Appeals overlooked the records below and misstated that the Appellant did not take issue and appeal his denial of total disability compensation.

The Record on Appeal is replete with the Appellant’s position that he is permanently and totally disabled under either S.C. Code Ann. Section 42-9-10 or 42-9-30(21).

Subsequent to the Single Commissioner’s Decision and Order the Appellant filed a request for Full Commission Review on January 19, 2007 and argued that the Single Commissioner erred in not finding the Claimant was permanently and totally disabled under Sections 42-9-10 or 42-9-30(21) (R. p. 41). This was again argued in the Appellant’s Brief to the Appellate Panel (R. p. 46). After the Appellate Panel rendered their Decision and Order the Appellant again argued that he was permanently and totally disabled under Sections 42-9-10 or 42-9-30(21) in his Appeal to the Court of Common Pleas Charleston County on May 30, 2007 (R. p. 64).

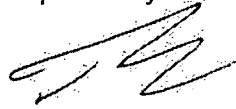
Finally, the Appellant specifically stated in the Final Appellant Brief that “the Order of the Court of Common Pleas Charleston County affirming the single commissioner and the Commission Appellate Panel’s Orders should be reversed or modified with instructions that Claimant receive either **total disability** under Section 42-9-10/42-9-30 or wage loss under Section 42-9-20” (Appellant’s Final Brief p. 16) (emphasis added). The Appellant again argued he was entitled to total disability benefits in his Reply Brief as well (Appellant’s Reply Brief p. 6).

The Respondent urges that the Hutson never argued the denial of total disability however, according to the above evidence this issue was specifically argued throughout

the appeals process. Further, in Appellant's Issue for Appeal #2 Hutson specifically argued that he was not limited to a scheduled member loss under S.C. Code §42-9-30. This issue encompasses the argument that Appellant was either totally disabled under Section 42-9-10/42-9-30 or suffered a wage loss under Section 42-9-20. To hold otherwise would unduly burden a workers' compensation Claimant in having to specifically argue for benefits under every possible section in the Act.

Therefore, the Court of Appeals opinion dated September 8, 2010 should be vacated and a new opinion should be published showing that the Appellant did indeed take issue and appeal his denial of total disability compensation.

Respectfully submitted,



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October 4, 2010

The South Carolina Court of Appeals

Franklin Hutson,

Appellant

v.

S.C. State Ports Authority, Employer,
and State Accident Fund, Carrier,

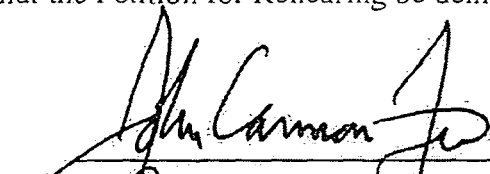
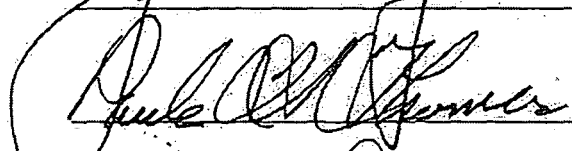
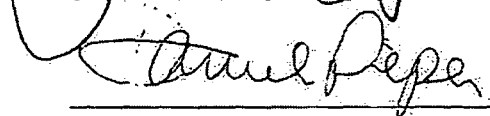
Respondents

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2007-CP-10-02305

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.


C. J.

J.

J.

Columbia, South Carolina

FILED

OCT 29 2010