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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No. 2022-000864

William D. Downes, Employee ..... Respondent,

v.

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

PETITION FOR WRIT OF SUPERSEDEAS

Pursuant to Rule 241, SCACR, Appellants/Petitioners Bon Secours Mercy Health, Inc. and Safety National Casualty Corporation seek a Writ of Supersedeas from this Court staying the back surgery ordered by the Commission until this appeal is finally resolved. Appellants/Petitioners are petitioning this Court because, as is set out below, extraordinary circumstances exist making it impracticable to seek such relief initially from the South Carolina Workers' Compensation Commission.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A brief summary of the facts and procedural posture of this case is necessary to understand why a Writ of Supersedeas should be granted. Respondent, Claimant William D. Downes, sustained an admitted injury to his low back on April 17, 2018 arising out of and in the course of his employment as a respiratory therapist with Bon Secours Mercy

Health. (Exh. A, Tr. p. 5, lines 15-19). He was assisting a large patient into a CT scanning area when the patient began to fall and, in the process of trying to catch her, Claimant felt a pop in his low back. (Exh. A, Tr. p. 16, lines 6-20). During the course of the medical treatment of his low back injury, Claimant also sustained an injury to his left Achilles tendon, for which Appellants/Petitioners provided medical treatment. The only issue on appeal to this Court—indeed the only issue before the Commission—is whether Claimant is entitled to additional treatment, specifically in the form of surgery by Dr. Phillip Esce, to his low back. (Exh. A, Tr. p. 5, lines 14-22). All of the doctors who have treated Claimant's low back, with the single exception of Claimant's hand-picked physician, Dr. Esce, have opined specifically that surgery to the L5-S1 disc is not recommended or appropriate for Claimant's back injury, and that he has reached maximum medical improvement ("MMI").

Claimant initially treated with Dr. Scott Grubbs with Workwell from April 19, 2018 to July 25, 2018. Dr. Grubbs arranged for Claimant to receive chiropractic treatment which Claimant indicated was helping. (Exh. B, Cl. APA pp. 2, 5, 12, 15-16, 18). Dr. Grubbs ordered an MRI of Claimant's lumbar spine, which was performed on July 2 2018. The Radiologist's impressions were, "[m]ild L3-4 through L5-S1 disc bulges. Midline L5-S1 disc protrusion. Mild left foraminal disc protrusion. Mild Left L3 foramen narrowing." (Exh. C, Def APA pp. 11-12). Dr. Grubbs stated that it was difficult to know whether the disc bulges were actually causing Claimant's issue because most of his symptoms were on the right and not the left. (Exh. B, CL APA pp. 15-16). On July 25, 2018, Dr. Grubbs felt it was appropriate for Claimant to see a back specialist, and recommended a "neurosurgical consultation or physiatry." (Exh. B, Cl. APA p. 18).

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

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

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

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

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

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

The MRI, performed at Piedmont Imaging on January 20, 2021, was noted to have been compared to the "MRI lumbar spine without contrast dated 07/02/2018." Dr. Raul Ceballos, the reviewing radiologist, noted repeatedly, that, "[a]gain," the later MRI showed "minimal canal, minimal right and mild left neural forminal stenosis at the L3-L4 level," "[a]gain, there is minimal canal and mild bilateral neural forminal stenosis at the L4-L5 level," and "[a]gain, there is minimal indentation of the ventral thecal sac and minimal bilateral neural foraminal encroachment at the L5-S1 level due to combined

decreased disc height, disc bulge and shallow posterior central disc protrusion." Dr. Ceballos concluded there was "[n]o interval change," only "[m]inor multilevel acquired spinal encroachment without spinal cord or nerve root compression apparent," and "[m]ultilevel degenerative disc disease, worse at the L5-S1 level." (Exh. J, Cl. APA pp. 68-69).

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

Claimant saw Dr. Charles Kanos of Southeastern Neurosurgical and Spine Institute on May 17, 2021 for an IME. Dr. Kanos noted Dr. Esce's recommendation for a microdiscectomy. Dr. Kanos evaluated Claimant's two MRIs, concluding, as had Dr. Ceballos, that the two MRIs were "similar." Dr. Kanos opined that he would not recommend the L5-S1 discectomy because "the odds of getting significant improvement in the back pain are low as his pain is strongly non mechanical." Dr. Kanos concluded Claimant was at MMI, assigned a 5% impairment rating to the lumbar spine and recommended sedentary activity, pain management, "medication, therapy or possible facet blocks or other injections." (Exh, K, Def. APA pp. 23-25).

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

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

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

Both parties appealed to the Full Commission. Among other things, Appellants/Petitioners sought correction of the Single Commissioner's erroneous findings of fact and conclusions of law that Claimant was not at MMI and was entitled to the surgery recommended by Dr. Esce. (Exh. N, Def's Form 30). Claimant sought to have Dr. Esce named as his treating physician. (Exh. O, Cl. Form 30).

The Full Commission upheld the Single Commissioner Order in part and reversed in part. As pertains to this appeal, the Full Commission also assigned more weight to Dr. Esce due to his office having seen Claimant more than once. The Full Commission found as a matter of fact and concluded as a matter of law that Claimant had not reached MMI

for his low back and ordered that the surgery recommended by Dr. Esce be provided, designating Dr. Esce as Claimant's authorized treating physician. (Exh. P, Commission Decision pp. 18-20).

Appellants/Petitioners timely appealed to this Court, which requested legal memoranda on the issue of appealability. In his Memorandum, Claimant sought, "[i]n the alternative," that if this Court require Appellants/Petitioners "to immediately provide" the ordered back surgery. After reviewing submissions by both sides, on August 3, 2022, this Court ordered that the appeal proceed to briefing, but without granting Claimant's request that the back surgery be provided "immediately."

While they object to providing the unnecessary back surgery, Appellants/Petitioners continue to pay Claimant Temporary Total Disability payments.

ARGUMENT

As a general rule, service of a notice of appeal stays matters decided in the order on appeal. Rule 241(a), SCACR. However, workers' compensation awards are one of the specifically-listed exceptions in Rule 241(b)(7). In turn, Rule 241(c)(1) provides, in pertinent part, that, "In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal." As this case is subject to an exception to the automatic stay provisions, Appellants/Petitioners submit this Petition under Rule 241(c)(1), seeking a stay of the ordered back surgery during the pendency of this appeal. "The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order … on appeal." Rule 241(c)(1), SCACR. As noted above, Appellants/Petitioners continue to pay Claimant TTD.

In deciding whether to impose a supersedeas of matters decided below, "the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to preserve a contested issue from becoming moot." Rule 241(c)(2), SCACR. Here, granting a Writ of supersedeas is necessary in order to preserve the sole contested issue on appeal, *i.e.*, whether the back surgery sought by Claimant should be provided in the first place. In other words, if Appellants/Petitioners are required to provide the surgery ordered by the Commission, the entire issue on appeal will become moot. Likely, that is Claimant's intention in filing his improper Motion to Compel with this Court.

As Appellants/Petitioners noted to this Court in their Memorandum of Appealability, the last sentence of the first paragraph of Section 1-23-380 provides that "[a] preliminary, procedural, or intermediate agency action or ruling *is immediately reviewable if review of the final agency decision would not provide an adequate remedy*." S.C. Code Ann. § 1-23-380 (emphasis added). Here, once the unnecessary surgery has been performed, there is no relief this Court could provide to Appellants/Petitioners who will be responsible, not only for the cost of the unnecessary surgery and recovery, but for any complications that arise as a result of the ill-advised surgery. *See*, *e.g.*, *Mullinax v. Winn-Dixie Stores*, 318 S.C. 431, 436, 458 S.E.2d 76, 79 (Ct. App. 1995) (noting "the great weight of authority holds the aggravation of the primary injury by medical or surgical treatment is compensable"). As noted above, in this case, Claimant's Achilles tendon injury arose from medical treatment for his low back and, accordingly, Appellants/Petitioners have provided medical treatment for that injury.

Surgery always carries a certain amount of risk, with back surgery certainly no exception, particularly where it is not medically necessary. Performing any surgery that has little likelihood of relieving a patient's symptoms is not only foolhardy but incredibly risky. Under the Commission Decision on appeal here, Appellants/Petitioners will be on the hook for the negative consequences that may arise from the unnecessary back surgery performed by Dr. Esce, with no adequate remedy after a final determination of benefits. Once the back surgery is performed, there is no "undoing" it. Consequently, a Writ of Supersedeas is necessary in order to preserve Appellants/Petitioners appeal.

Finally, this Court previously denied Claimant's request that, should the Court find that the Commission Decision is immediately appealable, Appellants/Petitioners be required immediately to provide the surgery he has requested. Now he has filed a Motion to Compel the surgery. Clearly, Appellants/Petitioners are in need of a Writ of Supersedeas in order to preserve the sole issue pending on appeal..

CONCLUSION

For the reasons stated herein, this Court should grant a Writ of Supersedeas and stay any requirement that Appellants/Petitioners provide him with the requested back surgery during the pendency of this appeal.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

MCANGUS GOUDELOCK & COURIE, LLC

August 22, 2022

s/Helen F. Hiser

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Attorneys for Appellants Bon Secours Health System, Inc. and Safety National Casualty Corporation

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1809996

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

COMMISSION HEARING

****

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

COPY

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

EXHIBIT
A

APPEARANCES

Donald E. Kamb, Jr., Esquire
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Greenville, South Carolina 29601
Attorney for the Claimant

Ashley Rudisill Forbes, Esquire
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Attorney for the Carrier

Also present:
William Downes

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EXHIBITS

(There were no exhibits marked during the hearing.)

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

CLAIMANT'S POSITION:

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

COMMISSIONER CAMPBELL: Okay.

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

COMMISSIONER CAMPBELL: 2021. Okay. Thank you.

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

COMMISSIONER CAMPBELL: No, take your time.

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

A: Just the chiropractor and that was it.
Q: Okay. If you would tell us what happened just -- and it's not denied, but to give the Commissioner an idea of what happened tell us about the accident on April 17, 2018?
A: I was tasked with taking a 482 comatose patient to the CT scanner.
Q: 482 pounds?
A: Yes.
Q: Sorry. Go ahead.
A: And basically she would not fit on the table. And so it was just me and just a couple of CT girls that worked in there and we couldn't get her to the scanner and we had to try to get her back off the table and when I was trying to help them get her off the table she almost fell off and I had to catch her and I felt something popped in my back and it was excruciating. So that's basically the long and the short of what happened.
Q: Did you -- when that happened did you feel symptoms any place other than your back?
A: Down my legs.
Q: And you're saying legs, so both of them?
A: Both legs, yes, sir.

SS#:5011 DOI:04/17/18 DOS:04/19/18 MD:SG

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

DOI:
04/17/18

SUBJECTIVE:
Initial visit for lower back pain/strain with some radiation of pain down the legs. Mr. Downs is a respiratory therapist. He has been her about 26 years at St. Francis. He was helping an extremely heavy patient on and off the CT scanner gantry. As he took her off and put her on the stretcher, he developed sharp pain in the lower lumbar region and SI region, right a bit more than left. He notes the discomfort will radiate down the back of the thigh to the knee and maybe a bit below that. It is a bit worse if he sits or stands too long. He can typically find a comfortable position sitting if he can shift around. He takes ibuprofen two every four hours without much benefit. He took one-half of a Soma last night, which he had from previous neck problems. He does not tolerate Flexeril, which gives him

have a history of bulging disc in the neck, for which he has been seen by Dr. Bucci and by Dr. Grier at Pain Management. He has had two epidural steroid injections for those, and it is for his neck that he is receiving the Soma. He says he only takes it rarely. I advised him that it can be habit forming, but the way he is using it should be okay.

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

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

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

In the meantime, he can continue chiropractic care as long as it seems to be helping.

EXHIBIT
B

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

DOI:
04/17/18

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

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

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

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

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

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

DATE: 06/18/18
PATIENT: DOWNES, William
COMPANY: St. Francis Health System
SS#: 5011

DOI:
04/17/18

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

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

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

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

SS#:5011 DOI:04/17/18 DOS:07/25/18 MD:SG

DATE: 07/25/18
PATIENT: DOWNES, William
COMPANY: St. Francis Health System
SS#: 5011

DOI:
04/17/18

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

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

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

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

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

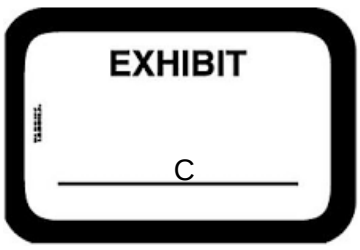


EXHIBIT
C

Problem List (continued) as of 8/21/2018 — Reviewed: 4/20/2017 10:14 AM by Sadowski, Brian M

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

All Notes

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

Author: Bucci, Michael N, MD
Filed: 08/23/18 1533
Editor: Bucci, Michael N, MD (Physician)
Service: —
Encounter Date: 8/21/2018
Author Type: Physician
Status: Signed

History of Present Illness

Patient Words: 53 y.o.

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

Past Medical History:

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

No Known Allergies

Family History

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

Social History

Social History

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

Occupational History
- Not on file.

Social History Main Topics

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

Other Topics	Concern
• Not on file	

Social History Narrative

Current Outpatient Prescriptions

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

All Notes (continued)

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

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

Patient Active Problem List

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

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

Vitals:

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

Physical Exam

The physical exam findings are as follows:

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

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

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

Sensory: Normal to touch, pinprick and vibration.

Gait: Normal gait.

Tremor: No tremor noted.

Cerebellar: No cerebellar signs present.

Left lower extremity boot limits examination of

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

the left ankle and foot.

She is

Assessment & Plan

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

Nonsurgical. Pain management referral. He has been seeing a chiropractor weekly and was encouraged to continue

[redacted]

1. Acute bilateral low back pain without sciatica [22817891] - 2. DDD (degenerative disc disease), lumbar [3033351]

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

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

Authorized by: Provider, Historical

Discontinued by: Mathias Reed Anderson, MD 01/28/19 0855

[redacted]

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

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

Authorized by: Provider, Historical

CLINICAL LAB RESULTS

Lab Results

None

Patient Reported Taking

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
NEW PATIENT EVALUATION

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**10/17/18**
PHYSICIAN:	**Sung Han, M.D.**	**DOD:**	**10/17/18**
SSN:	**251-31-5011**	**DOT:**	**10/18/18**

Referring Physician: Workers' Comp.

Chief Complaint: Low back pain.

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

Past Medical History: ADD, depression.

Past Surgical History: Pilonidal cyst resection.

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

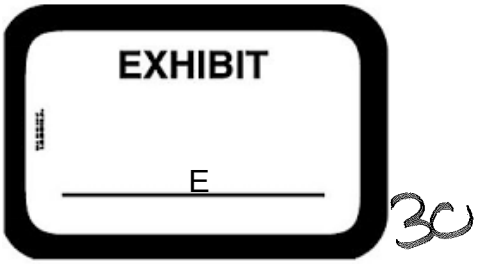
Allergies: None.

Current Medications: Cymbalta, Concerta, naproxen.

Review of Systems: As above.

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

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



5. Work injury on April 17, 2018.

Plan:

1. Schedule the patient for a lumbar epidural steroid injection.

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**12/12/18**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**12/12/18**
SSN:	**251-31-5011**	**DOT:**	**12/13/18**

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

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

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

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

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

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

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

Name:

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

Date: 12-19-05

Procedure: Lumbar interlaminar epidural steroid injection

Level Done: L5-S1

Indication: 53 y/o male with spinal stenosis + radiculitis presents for LESI

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

Note:

Plan: f/u 4 wks 12-19-05

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**01/25/19**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**01/25/19**
SSN:	**251-31-5011**	**DOT:**	**01/27/19**

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

Physical Exam: He presents with a large boot on the left lower extremity. Heel exam shows some

Multifactorial lumbar disc bulges with radiculitis, status post two epidural injections, improved

in physical therapy with great progress.

Plan:

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

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

Sung J. Han, M.D.
SJH/DTT user/mt D/61324
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC

PROGRESS NOTE

PATIENT: DOWNES, WILLIAM **DOS:** 03/08/19

PHYSICIAN: Sung J. Han, M.D.

presenting for follow-up. The patient has had epidural injections with some benefit. He continues to have back pain. He is still having issues with left ankle pain. He is status post surgery. He still is wearing a boot. He follows closely with physical therapy as well as his orthopedic surgeon. He states that his current therapy facility is not really doing any modalities; they are just doing an exercise regimen.

Physical Exam: He presents with a walk boot on the left lower extremity. Back exam shows no deformity. Positive tenderness on palpation and pain with range of motion in all planes. No sensorimotor deficits.

Assessment:

1. Multilevel lumbar disk bulges with radiculitis, status post epidural injections with some benefit.
2. Has seen Dr. Bucsi, not a surgical candidate for the lumbar spine.

Plan:

1. Continue his physical therapy at the current location for three more additional visits and reassess any of this, I would recommend another physical therapy facility.

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

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**05/01/19**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**05/01/19**
SSN:	**251-31-5011**	**DOT:**	**05/02/19**

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

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

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

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

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

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

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**06/21/19**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**06/21/19**
SSN:	**251-31-5011**	**DOT:**	**06/23/19**

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

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

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

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

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

Sung J. Han, M.D.
SJH/DTI user7mt D177994
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**07/24/19**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**07/24/19**
SSN:	**251-31-5011**	**DOT:**	**07/24/19**

History of Present Illness: This is a 54-year-old male with lumbar spinal stenosis and radiculitis and left ankle pain presenting for followup. His ankle pain is improving daily. He is still having some back

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

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

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

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

Name:

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

Date:

6-14-09

Procedure: Lumbar interlaminar epidural steroid injection

Level Done: L5-S1

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

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

physical therapy. It is helping. Work hardening and physical therapy is tolerable and the [illegible] under the care of Dr. Tollison.

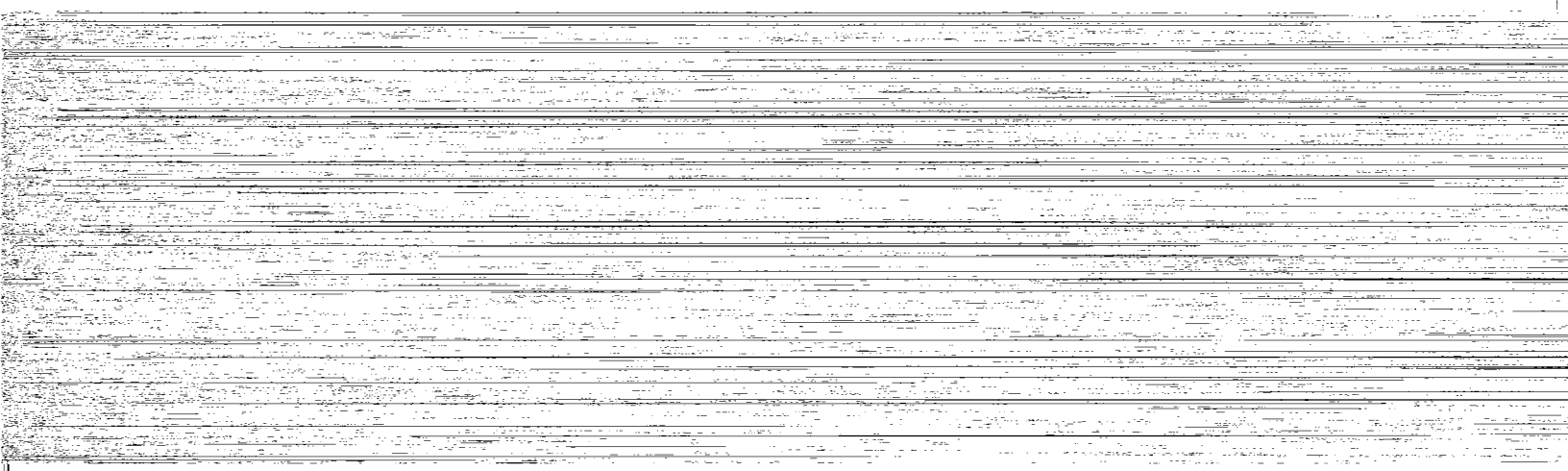
Note:

Plan: RTC 2-4 wks

40

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

SOMA TABLET (CARISOPRODOL TABS)
CELEXA 40 MG ORAL TABLET (CITALOPRAM HYDROBROMIDE) ; Route: ORAL
CYMBALTA 60 MG ORAL CAPSULE DELAYED RELEASE PARTICLES (DULOXETINE HCL) ; Route: ORAL



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

William Downes
Male DOB: 07/17/1965 232994 Home: (864) 630-5665
Ins: Aetna RHP (USE) payer 60054

Current Allergies (reviewed today):
No known allergies

Review of Systems
Psychiatric: Positive for anxiety, depression.

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

Family History
Lung Disease (Father)
Cancer (Father, Mother)

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**12/04/19**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**12/04/19**
SSN:	**251-31-5011**	**DOT:**	**12/05/19**

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

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

Assessment:

Neurologic evaluation reveals normal sensation, normal coordination and upper and lower extremity deep tendon reflexes intact bilaterally .
Cranial Nerves - Normal II - XII.

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

Global Assessment

ASSESSMENT

Lumbar DDD/Spondylosis L5-S1 disc bulge

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

PLAN

Follow up PRN

Matthew Estell AGACNP-BC transcribing for Dr. Monroe

New Orders:
Lifestyle Education Regarding Hypertension [SCT-443402002]
Finding of Hypertension Episode [SCT-62275004]

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	**DOWNES, WILLIAM**	**DOS:**	**01/03/20**
PHYSICIAN:	**Sung J. Han, M.D.**	**DOD:**	**01/03/20**
SSN:	**251-31-5011**	**DOT:**	**01/05/20**

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

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

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

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

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

Sung J. Han, M.D.
SJH/DTI user7mt D1949[illegible]
Dictated - Not Read

PIEDMONT COMPREHENSIVE PAIN MANAGEMENT GROUP, LLC
PROGRESS NOTE

PATIENT:	DOWNES, WILLIAM	DOS:	04/01/20
PHYSICIAN:	Sung J. Han, M.D.	DOD:	04/01/20
SSN:	251-31-5011	DOT:	04/02/20

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

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

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

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

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

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

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

William Downes
Male DOB: 07/17/1965 232994

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

10/24/2018 - Office Visit: NP: Lumbar
Provider: Timothy Monroe MD
Location of Care: Carolina Orthopaedic & Neurosurgical Associates

History of Present Illness
Mr. William Downes is a 53 Years Old White / Caucasian male, who is here for a new problem.
Chief Complaint: scribe.cc
History From: Patient
Race: White / Caucasian
Family Physician: Dr. Reed Nataias
The onset of the pain has been gradual and has been occurring in constant pattern since April. He reports no symtoms prior to his owrk injury in April. The course has been gradually worsening. The pain is described as moderate. The pain is described as being located in the lower back. The problem is aggravated by daily activities, movement, standing and walking. The symptoms are relieved by : rest and medication. There has been associated paresthesias, numbness and weakness. Previous diagnostic tests have included MRI (at GHS). Treatment included analgesics, muscle relaxant, home exercise program and chiropractic adjustments. There is no previous spine surgery. The pain interferes with work, daily activities, leisure activities and sleep.

Injury / Condition
Was this the result of an injury? no

Are you claiming as Workers Compensation? no

Type of Problem
pain 5/10

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

History of OA Fractures or Procedures:

Past Medical History
No significant medical history
Active Medications Prior to This Update (reviewed today):
NAPROXEN SODIUM TABLET (NAPROXEN SODIUM TABS)
SOMA TABLET (CARISOPRODOL TABS)
CELEXA 40 MG ORAL TABLET (CITALOPRAM HYDROBROMIDE)
CYMBALTA 60 MG ORAL CAPSULE DELAYED RELEASE PARTICLES (DULOXETINE HCL)

Current Medications (reviewed today):
NAPROXEN SODIUM TABLET (NAPROXEN SODIUM TABS)
SOMA TABLET (CARISOPRODOL TABS)
CELEXA 40 MG ORAL TABLET (CITALOPRAM HYDROBROMIDE) ; Route: ORAL
CYMBALTA 60 MG ORAL CAPSULE DELAYED RELEASE PARTICLES (DULOXETINE HCL) ; Route: ORAL

William Downes Home: (864) 630-5665
Male DOB: 07/17/1965 232994 Ins: Aetna RHP (USE) payer 60054

[redacted]

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

[redacted]

VITAL SIGNS

[redacted]

BMI (in-lb) 30.24
P: **69** R: **15** BP: **107/73**

[redacted]

Mental Status: Alert & Oriented x 3. No Acute Distress
Hand Dominance: Right
Gait: Normal
[redacted]
Lumbar Xray reveals Lumbar DDD/Spondylosis

General
Build & Nutrition - Well nourished and Well developed.

Head and Neck
Neck
Global Assessment - normal alignment, tracheal midline, full range of motion, non-tender.
Thyroid
Gland Characteristics - no palpable enlargement.

Eye
Sclera/Conjunctiva - Bilateral - Normal.
Pupil - Bilateral - Normal.

William Downes

Male DOB: 07/17/1965 232994 Ins: Aetna RHP TUSE1 baver 88004

ENMT

Mouth and Throat

Inspection

Auscultation

Neurologic
Neurologic evaluation reveals - normal sensation, normal coordination and upper and lower extremity deep tendon reflexes intact bilaterally .
Cranial Nerves - Normal II - XII.

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

Global Assessment

ASSESSMENT

Lumbar DDD/Spondylosis L5-S1 disc bulge

Follow up PRN

Matthew Estell ACACNP-BC transcribing for Dr. Monroe

New Orders:
Lifestyle Education Regarding Hypertension (SCT-443402002)
Finding of Hypertension Episode (SCT-622750004)

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

William Downes

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

Scott Grubbs, MD

April 19, 2018
Dr. Grubbs of WorkWell Occupational Health diagnosed Mr. Downes with strain of lower back (S39.012A). He placed Mr. Downes on work restrictions of no strenuous pulling/pushing, weight limit 60 lbs, limited lifting at waist level with weight limit 20 lbs, limited lifting from floor to waist with weight limit 20 lbs. Dr. Grubbs prescribed Mr. Downes Naproxen and wanted to see him in 8 days for a follow up.

April 27, 2018
Dr. Grubbs saw Mr. Downes for his follow up appointment regarding his work injury. Dr. Grubbs determined that Mr. Downes' diagnosis of low back strain was the same, but it had improved slightly. Dr. Grubbs maintained his work restrictions, represcribed Mr. Downes Naproxen, and wanted to see him in 10 days for a follow up.

May 7, 2018
Dr. Grubbs saw Mr. Downes for his follow up appointment. Dr. Grubbs determined that Mr. Downes' diagnosis of low back strain was the same and persistent with no obvious improvement. Dr. Grubbs maintained his work restrictions and wanted to see him for a follow up.

May 30, 2018
Dr. Grubbs saw Mr. Downes for his follow up appointment. Dr. Grubbs determined that Mr. Downes' diagnosis of low back strain was the same and significant with no obvious improvement. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), gave him a back brace as needed, and wanted to see him for a follow up in 2 weeks.

June 18, 2018
Dr. Grubbs saw Mr. Downes for his follow up appointment. Mr. Downes stated that his low back pain was still present, and he began to experience lower extremity radiation of pain. Dr. Grubbs decided to refer Mr. Downes to a chiropractor for 6 week sessions. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), newly prescribed OTC biofreeze, and told him to use the back brace as needed.

July 2, 2018
Dr. Grubbs ordered an MRI of Mr. Downes' lumbar spine without contrast. The MRI (read by Jeffery Shramek, MD) showed mild L3-4 through L5-S1 disc bulges, midline L5-S1 disc protrusion, mild left foraminal L3-4 disc protrusion, and mild left L3 foramen narrowing.

EXHIBIT
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July 11, 2018
Dr. Grubbs saw Mr. Downes for a follow up appointment. Dr. Grubbs determined that in addition to the low back pain, Mr. Downes may also have an achilles tendon tear. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), and wanted to see him in 2 weeks for a follow up.

July 25, 2018
Dr. Grubbs saw Mr. Downes for his follow up appointment. Dr. Grubbs determined that Mr. Downes had low back strain and facet S1 disc issue. Dr. Grubbs maintained his work restrictions for Mr. Downes, represcribed naproxen (500mg), told him to use the back brace as needed, and wanted to see him in 4 weeks for a follow up.

Michael Tollison, MD

August 9, 2018
Dr. Tollison of Piedmont Orthopaedics saw Mr. Downes for his lower extremity/achilles tendon pain. Dr. Tollison determined that Mr. Downes had (in addition to the low back pain) left achilles tendonosis and suspected partial tear. Dr. Tollison placed him in a 3D boot and advised him to get an even-up device online to level the pelvis due to low back pain. Dr. Tollison also ordered an MRI of the left Achilles to assess for achilles tendon tearing. Dr. Tollison gave work restrictions (out of work until August 13).

August 24, 2018
Dr. Tollison saw Mr. Downes for his follow up appointment. Dr. Tollison reviewed the MRI results (August 17, read by Jeffrey Shramek, MD), which showed severe achilles tendonitis, intermediate severity interstitial partial-thickness tear, and peritendinitis; these were age indeterminate findings. Dr. Tollison discussed the option of surgery with Mr. Downes, to which Mr. Downes agreed. Dr. Tollison placed Mr. Downes on an out of work order until the surgery scheduled.

October 22, 2018
Dr. Tollison saw Mr. Downes for his preoperative appointment. Consent was explained and signed by Mr. Downes. Surgery was scheduled for October 31, 2018. Dr. Tollison ordered a knee scooter for Mr. Downes and wanted to see Mr. Downes for an additional postoperative appointment.

October 31, 2018
Dr. Tollison performed left achilles tendon debridement with reconstruction and great toe tendon transfer on Mr. Downes. The surgery took place at Bon Secours St. Francis Downtown Hospital. Surgery was successful without complications.

November 13, 2019
Dr. Tollison saw Mr. Downes for his postoperative appointment. His splint was removed, and Dr. Tollison noted no complications. Sutures were left intact. Dr. Tollison maintained his out of work order, ordered a leg brace for the left ankle and a handicap parking placard (4 months), and wanted to see Mr. Downes for an additional postoperative appointment.

November 21, 2018

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

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

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

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

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

Within a reasonable degree of medical certainty, William "Danny" Downes sustained injuries to his lumbar spine and left Achilles tendon in the accident described above as occurring on April 17, 2010 20 was working as a respiratory therapist at Saint Frances Hospital, assisting a patient in and out of a CT scanner. William Downes has had an exacerbation of his psychological depression secondary to the lumbar spine and left Achilles tendon injuries. Within a reasonable degree of medical certainty, William Downes has reached maximum medical improvement for these injuries. Based on The American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, William Downes has 17% lumbar spine permanent and partial impairment under DRE lumbar category III, table 15 – 3, page 384. William Downes has 50% left lower extremity permanent and partial impairment secondary to his Achilles tendon injury and subsequent repair/reconstruction under ankle and foot motion impairment tables 17 – 11 and 12, page 537 with impairment due to lower extremity muscle weakness table 17 – 8, page 532. William Downes has an additional 10% left foot permanent and partial impairment secondary to left great toe weakness as a residual from the tendon graft for his Achilles injury. In order to maintain his current level of function, William Downes will need six physician visits per year and 16 physical therapy visits per year for treatment of acute exacerbations of his lumbar spine and left lower extremity conditions. Additional lumbar spine evaluation and treatment may be necessary. William Downes is suitable only for sedentary desk type work at this time.

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

William DeVault, MD, MD

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

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

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

William Downes
Male DOB: 07/17/1965 232994

Home: (864) 630-5665

Family History
Lung Disease (Father)
Cancer (Father, Mother)

Directives Added:
Added new directive of DISCUSSED - NO DECISION MADE

VITAL SIGNS

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

GENERAL EXAM
Appearance: Healthy
Mental Status: Alert & Oriented x 3, No Acute Distress
Hand Dominance: Right
Gait: Normal
Durable Goods: No
PHYSICAL EXAM:
General
Build & Nutrition – Well nourished and well developed.
Head and Neck
Neck – Global Assessment – Normal alignment, tracheal midline, full range of motion, nontender.
Thyroid – Gland characteristics – no palpable enlargement.
Eye
Sclera/conjunctiva – Bilateral – Normal.
Pupil – Bilateral – Normal.
ENMT
Nose and Sinuses – External Inspection of the nose – The nose is normal. Inspection of the nares – bilateral – symmetric.
Mouth and Throat – Oral cavity/Oropharynx – Oropharynx – normal, no evidence of any airway distress observed.
Chest and Lung Exam
Chest and lung exam reveals - Normal excursion with symmetric chest walls and normal respiratory effort.
Cardiovascular Exam
Cardiovascular evaluation reveals - Carotid auscultation reveals no bruits and normal pedal pulses bilaterally.
Neurologic
Neurologic evaluation reveals - Normal sensation and upper and lower extremity deep tendon reflexes are intact bilaterally.
Coordination – Tandem walking normal, walking on toes normal, and walking on heels normal.
Neuropsychiatric
Mental status exam performed with the findings of – Oriented x3 with appropriate mood and affect.
Musculoskeletal
Global Assessment: Strength – Normal – Right upper extremity, left upper extremity, right lower extremity and left lower extremity.
Spine/Ribs/Pelvis – Gait and station – Normal gait patterns – nonantalgic gait. Lumbosacral spine -
Examination of the lumbosacral spine reveals – no tenderness to palpation, no pain, normal strength and tone, no laxity or crepitus and no paraspinous muscle spasm. Functional testing – Negative straight leg raise, right, negative straight leg raise, left, Babinski test. He has mild tenderness in his lower lumbar paraspinals. He has an Achilles tendon injury on the left so, therefore, he is unable to give full extension.

Male DOB: 07/17/1985 232904

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

Lumbar PNP

Low back pain (ICD-724.2) (ICD10-M54.5)
Prolapsed lumbar intervertebral disc (ICD-722.10) (ICD10-M51.26)

PLAN

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

Dictated by: Julie S. Justice, FNP
gb

New Orders:
Finding of Hypertension Episode [SCT-62275004]
Lifestyle Education Regarding Hypertension [SCT-4434022002]
Referral to Alternate Provider [SCT-183516009]
Est. Level 4 [CPT-99214]
Lumbar Spine w/ Oblique min 4 Views [72110]

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

The patient declined the influenza vaccine

Electronically signed by Julie Justice NP on 04/11/2024 at 9:58 PM

William Downes Home: (864) 630-5665
Male DOB: 07/17/1965 232994

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

History of Present Illness
Mr. William Downes is a 55 Years Old White / Caucasian male, who is here for a follow-up appointment.
Chief Complaint: Low back pain to left lower extremity along the posterior aspect of the leg.
History From: Patient
Race: White / Caucasian
Family Physician: Dr. Reed Natalas
This is a 55-year-old male we are bringing back in today for MRI follow-up. On initial visit, this was a male who was reported having back pain and was seeing one of my prior partners. Apparently, he had been working as a respiratory therapist when he had a patient fall on him and started having difficulty with his back and leg. Underwent physical therapy, injections, multiple medications without any long term help. He never underwent any sort of lumbar surgery. In any event, since the persistent of symptoms, we ordered a new MRI on him. Patient rates pain 6/10. Worse with any sort of activity, sitting, standing or bending. Unable to do any work and has not worked since the injury.

DT: 01/21/2021 11:59 am
Was this the result of an injury? yes
Injury Date: 04/17/2018

Type of Problem
pain 6/10

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

History of OA Fractures or Procedures:

Past Medical History
Depression / Anxiety

***** Please Note *****
Patient has Metal in Body.

Current Medications (reviewed today):
No known medications

Current Allergies (reviewed today):

decreased disk height.

ASSESSMENT

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

PLAN

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

Dictated by: Phillip G. Esce, MD

kb

New Orders:
Est. Level 4 [CPT-99214]

Disposition: Return to office post op

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

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

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

William Downes
Male DOB: 07/17/1965 232994

Home: (864) 630-5665

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

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

Injury / Condition
Was this the result of an injury? no

Are you claiming as Workers Compensation? no

Type of Problem
pain 6/10

Location of Your Injury / condition
Ankle (Left),Back Pain (Both sides), back pain bilateral

History of OA Fractures or Procedures:

Past Medical History
Depression / Anxiety

***** Please Note *****
Patient has Metal in Body.

Current Medications (reviewed today):
No known medications

Current Allergies (reviewed today):
No known allergies

Right to amend the Form 50

11a. List names and addresses of all physicians or other medical specialists who have seen or treated claimant as a result of the accident: Michael Tollison, M.D., Piedmont Ortho. Assoc., 35 International Dr., Greenville, SC 29615; Michael N. Bucci, M.D., Piedmont Spine & Neurosurg Group, 3 St. Francis Dr., Ste. 490, Greenville, SC 29601-3973; Jeffrey Smith, M.D., Piedmont Physical Serv., 2044 Woodruff Rd, Greenville, SC 29607; William C. Esch, M.D., Carolina Ortho. & Neurosurg. Assoc., 1330 Spring Forest Rd., Ste. 160B, Spartanburg, SC 29301; Thomas Fox, Piedmont Physical Therapy, 3000 Poinsett Hwy., Greenville, SC 29609; Dr. Greer, SC 29651; ATI P.T., 315 Medical Parkway, #150, Greer, SC 29650; Garber P.T., 300 N. Main St., Greer, SC 29650; Sung Han, M.D., Piedmont Comp. Pain Mgt. Group, 3 St. Francis Dr., Ste. 480, Greenville, SC 29601

Neurologic: Positive for numbness, tingling, weakness.

Psychiatric: Positive for anxiety, depression.

Heme/Lymphatic: Patient denies abnormal bruising.

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

[redacted]

Social History

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

Family History

Lung Disease (Father)

Directives Added:
Added new directive of DISCUSSED - NO DECISION MADE

VITAL SIGNS

Body Mass Index in lb

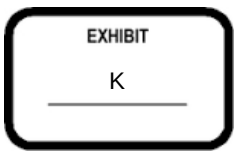
Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

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

Signature of Claimant/Representative	Attorney Title	dkamb@williamskamb.com Email	2/26/2021 Date

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



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

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

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

CLAIMANT'S BIOGRAPHICAL INFORMATION

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

STATEMENT OF THE CASE

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

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

EVIDENCE OF THE CASE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

13. Did the Single Commissioner err in placing lesser weight on the opinions of Dr. Bucci (Cl. APA 21-29), Dr. Monroe (Cl. APA 47-54), Dr. Kanos (D. APA 23-27), Dr. Han (D. APA 30-46), Dr. Gao (D. APA 14-22) and Dr. DeVault (D. APA 3-10), where the greater weight of the evidence would suggest such opinions should be provided equal or greater weight than the opinion of Dr. Esce?

14. Did the Single Commissioner err in concluding as a matter of law that Claimant has not reached maximum medical improvement from his injuries where the greater weight of the evidence and applicable case and statutory law does not support such a finding?

15. Did the Single Commissioner err in concluding as a matter of law that claimant is entitled to and defendants are responsible for the back surgery recommended by Dr. Esce where the greater weight of the evidence and applicable case and statutory law does not support such a finding?

16. As a result of the foregoing, did the Single Commissioner err in ordering that Defendants shall provide the back surgery recommended by Dr. Esce where the greater weight of the evidence and applicable case and statutory law does not support such an order?

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
P. O. Box 1715 - 1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

WCC File No. **1089996**
Carrier File #
Carrier Code #
Employer FEIN

William D. Downes
Claimant's Name SSN

Address City State Zip
(864) ( )
Home Phone Work Phone

Bon Secours Mercy Health, Inc.
Employer's Name

Address City State Zip
Safety National Casualty Corp.
Insurance Carrier

Williams & Kamb, LLC (864) 235-6254
Preparer's Name Phone #

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

The undersigned makes application for review of the Hearing Commissioner's findings in the above matter. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one

EXHIBIT
O

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

4. The Hearing Commissioner erred in ordering that "defendants shall provide the back surgery recommended by Dr. Esce by a physician of the defendants' choosing with a specialty to the back"; the error being that the conflict between the parties on the issue of back surgery empowers the Commission to designate the treating physician to provide the treatment awarded and the evidence overwhelmingly demonstrates that claimant is entitled to such treatment and has shown good cause under the circumstances supporting a change to Dr. Esce as the treating physician for the purposes of providing the treatment awarded .

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

FILE NO.: **1809996**

William D. Downes, Employee-Claimant,

Respondent-Appellant,

vs.

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

Appellants-Respondents.

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

Appearances:	Don Kamb, Esq. of Williams & Kamb, LLC of Greenville, South Carolina for claimant
	Ashley R. Forbes, Esq. of McAngus, Goudelock & Courie, LLC of Greenville, SC for defendants.
Purpose:	Appellate Panel Review of issues set forth on the parties' respective Form 30 Requests for Commission Review
Filed:	June 8, 2022

EXHIBIT
P

STATEMENT OF CASE

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

11. On March 1, 20211, on a questionnaire obtained by claimant, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5- S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury." (Cl's APA pgs. 66-67) This finding is based on the medical records of Dr. Esce.

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

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

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

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

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

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

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

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

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

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

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

This finding is based on claimant's testimony.

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

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

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

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

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

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

RULINGS OF LAW

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

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

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

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

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

ORDER

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

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

1. The Hearing Commissioner erred in placing lesser weight on the opinions of five physicians who evaluated Claimant prior to the Claimant's lumbar MRI on January 20, 2021.

    a. The Hearing Commissioner provided no reasoning as to why there was a "benefit" to having reviewed the most recent MRI.
    b. The reliable and probative evidence in the record establishes that there was no overall interval change in the MRI.

[redacted]

3 The Hearing Commissioner erred in failing to find that the

help him. An MRI scan was obtained, and claimant stated that he was sent to Dr. Bucci and

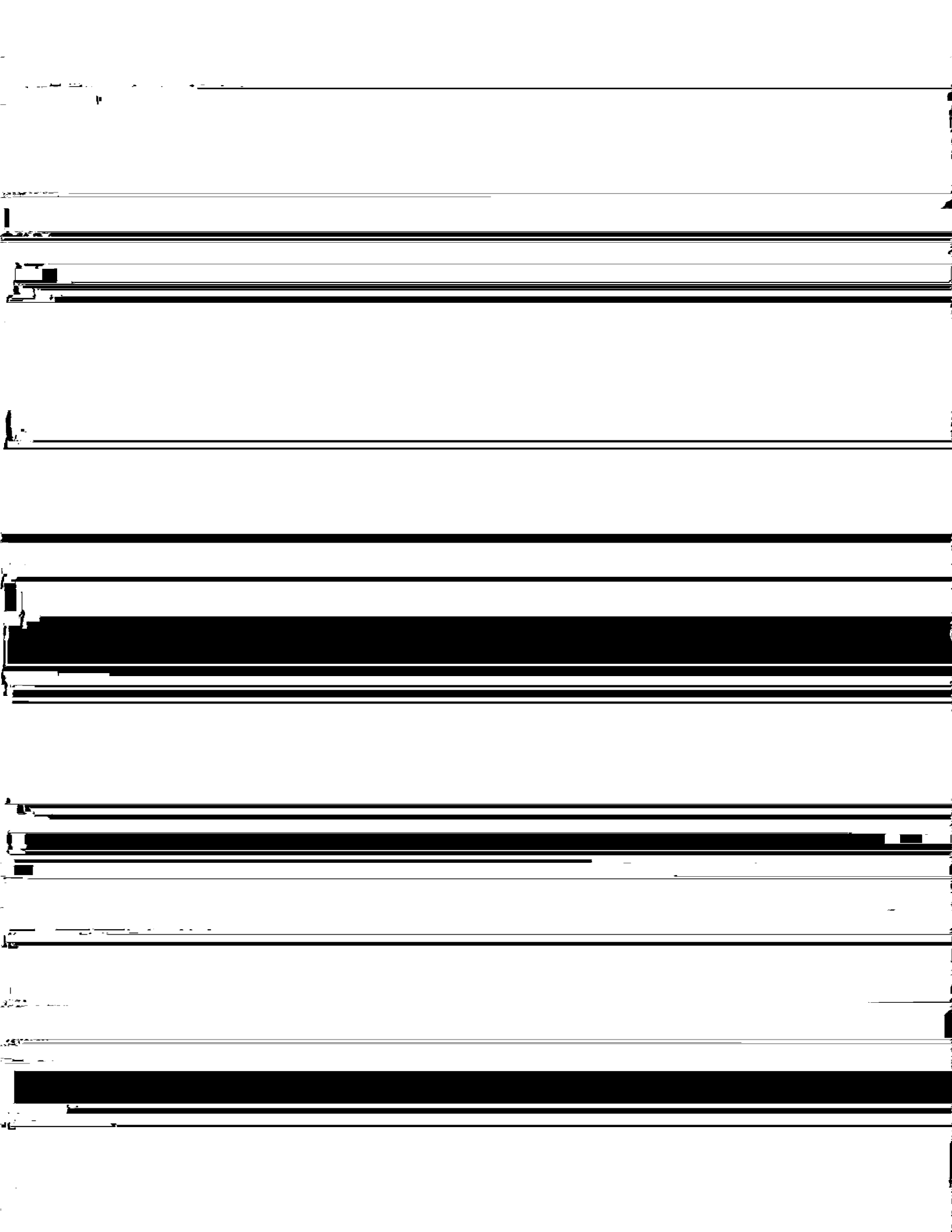
a period of time and was eventually referred for MRI scanning and neurosurgical evaluation when symptoms were determined to potentially include radiculopathy.

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

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

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

On January 6, 2021 claimant saw Julie Justice N.P. of Carolina Orthopaedic &



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

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

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

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

DECISION

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

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

FINDINGS OF FACT

1 An employee/employer relationship existed between the parties at the time

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

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

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

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

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

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

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

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

11. On March 1, 20211, on a questionnaire obtained by claimant, Dr. Esce opined to a reasonable degree of medical certainty: "It is more likely than not that Danny Downes low back injury, including but not limited to lumbar disc protrusion at L5-S1 with radiculopathy, was either caused or was aggravated by his work accident on or about April 17, 2018 when a patient fell on him. The medical treatment provided to or recommended for Danny Downes, including but not limited to L5- S1 micro discectomy, was either provided or recommended in an effort to affect a cure, give relief, and reduce the period of disability stemming from his work-related low back injury." (Cl's APA pgs. 66-67) This finding is based on the medical records of Dr. Esce.

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

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

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

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

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

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

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

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

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

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

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

This finding is based on claimant's testimony.

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

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

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

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

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

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

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

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

RULINGS OF LAW

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

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

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

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

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

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

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

ORDER

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

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

AND IT IS SO ORDERED.

S.C. WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Commissioner

CONCUR:

Susan S. Barden, Commissioner

Order Served via E-Mail:

Donald E. Kamb, Jr. Williams & Kamb dkamb@williamskamb.com Joe Mooneyham	Ashley Rudsill Forbes McAngus, Goudelock, & Courie, LLC Ashley.forbes@mgclaw.com

RECEIVED
Aug 22 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appeal No.: 2022-000864

William D. Downes, Employee ..... Respondent,

v.

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

PROOF OF SERVICE

I certify that I have served the Appellants/Petitioners' **Petition for Writ of Supersedeas** on William D. Downes, by emailing it to his attorneys of record as follows:

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August 22, 2022

MCANGUS GOUDELOCK & COURIE, LLC

By: *s/Helen F. Hiser*
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Reply To
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RECEIVED
Aug 22 2022
SC Court of Appeals

August 22, 2022

Via S.C. Courts E-filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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

Dear Ms. Kitchings:

Enclosed please find Appellants' Petition for Writ of Supersedeas, and the Proof of Service in the above-referenced matter. We are serving counsel of record via email.

Pursuant to the Supreme Court's August 25, 2021 Order No. 2021-08-25-03 regarding Reduced Number of Copies Required in Appellate Matters, we are sending an unbound copy of the original of the Petition, along with our firm's check in the amount of $50 for the filing fee, via U.S. Mail. If the Court needs additional copies, please let us know.

If you have any questions, please do not hesitate to contact me.

Sincerely,
McAngus Goudelock & Courie, LLC

Helen F. Hiser

Enclosures

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